Explanatory Notes Relating to the Income Tax Act, Excise Tax Act, Excise Act and Related Legislation

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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*¸ *Excise Tax Act*, *Excise Act* and related legislation. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Part 1 – Amendments to the Income Tax Act and to Related Legislation

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Work in progress

Income Tax Act (ITA)
10(14)

Section 34 of the *Income Tax Act* (Act) provides an exception to full accrual accounting in computing the income of a business that is a professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor by allowing the income to be determined without taking into account any work in progress at year end.

Subsection 10(14) of the Act provides, for the purposes of 10(12) and 10(13), that a property included in the inventory of a business includes professional work in progress that would be included if paragraph 34(a) (the basic rule described above) did not apply.

Consequential on the repeal of section 34, subsection 10(14) is repealed.

This amendment comes into force on January 1, 2024.

Work in progress – transitional rule

ITA
10(14.1)

Section 34 of the Act provides an exception to full accrual accounting in computing the income of a business that is a professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor by allowing the income from that business to be determined without taking into account any work in progress at year end.

Consequential on the repeal of section 34, new subsection 10(14.1) of the Act provides a five-year transitional rule for the purpose of valuing work in progress from a business that is a professional practice of one of the designated professions listed above. Subsection 10(14.1) provides that for the purposes of computing the income of a taxpayer from a business the cost and the fair market value of the taxpayer's work in progress from the business is deemed to be:

- 20 per cent of the cost and fair market value of the taxpayer's work in progress at the end of the first taxation year that begins after March 21, 2017;
- 40 per cent of the cost and fair market value of the taxpayer's work in progress at the end of the second taxation year that begins after March 21, 2017;
- 60 per cent of the cost and fair market value of the taxpayer's work in progress at the end of the third taxation year that begins after March 21, 2017; and
- 80 per cent of the cost and fair market value of the taxpayer's work in progress at the end of the fourth taxation year that begins after March 21, 2017.

For the fifth taxation year that begins after March 21, 2017, the full amount in respect of work in progress must be included in computing income from a professional business.

This transitional relief is available to a taxpayer who elected to exclude work in progress in computing income in respect of the last taxation year that begins before March 22, 2017.

New subsection 10(14.1) applies to taxation years ending after March 21, 2017.

Clause 3

Elective use of the mark-to-market method

ITA
10.1

New section 10.1 of the Act sets out rules for the timing of recognition of a taxpayer's profit or loss in respect of derivatives held on income account. These rules have two basic components.

The first component of these rules introduces a new elective regime that allows a taxpayer to mark-to-market its eligible derivatives (as defined in new subsection 10.1(5)) on an annual basis.

- New subsection 10.1(1) describes the process for electing into this mark-to-market regime.
- New subsection 10.1(2) provides taxpayers with the possibility of revoking an election.
- New subsection 10.1(3) ensures that any re-election into the mark-to-market regime will apply only on a prospective basis.
- New subsection 10.1(4) directs electing taxpayers to two separate mark-to-market valuation rules whose respective application depends on whether the taxpayer qualifies as a financial institution (as defined in subsection 142.2(1)).
- In general terms, new subsection 10.1(5) defines an eligible derivative as any financial derivative instrument held on income account that has a practically verifiable fair market value.
- New subsection 10.1(6) provides the mark-to-market valuation rule for eligible derivatives held by electing taxpayers that are not financial institutions.
- New subsection 10.1(7) defers the recognition of unrealized profits or losses that accrued on eligible derivatives held by a taxpayer at the beginning of an election year until the taxation year in which these derivatives are actually disposed of.
- New subsection 10.1(9) contains interpretative rules that apply for the purposes of new subsections 10.1(4) to (7).
- Consequential amendments to other provisions of the Act are also introduced to protect the integrity of the elective mark-to-market regime and to ensure that this choice does not lead to avoidance opportunities. For more information, see the commentary on paragraph 18(14)(c), new subsection 85(1.12), subsection 85(2), new paragraphs 87(2)(e.41) and (e.42), paragraph 88(1)(e.2), new paragraph 88(1)(j) and subsections 96(3) and 97(2).

The second component of these rules, contained in new subsection 10.1(8), imposes the realization method as the default method of profit computation for any derivative held on income account (including eligible derivatives) by a taxpayer that is not a financial institution and that has not elected into the mark-to-market regime.

These amendments apply to taxation years that begin after March 21, 2017.

Mark-to-market election

ITA
10.1(1)

New subsection 10.1(1) of the Act allows a taxpayer to recognize its profit or loss in respect of its eligible derivatives (as defined in new subsection 10.1(5)) on a mark-to-market basis by electing to have new subsection 10.1(4) apply to the taxpayer. New subsection 10.1(4) directs electing taxpayers to two separate mark-to-market valuation rules whose respective application depends on whether the taxpayer is a financial institution for the purposes of the mark-to-market property rules in sections 142.2 to 142.6.

An election to have new subsection 10.1(4) apply in a particular taxation year must be filed with the Minister of National Revenue on or before the taxpayer's filing due date for that taxation year. Once made, the election is valid for that taxation year and for all subsequent taxation years unless revoked with the concurrence of the Minister under new subsection 10.1(2).

For more information, see the commentary on new subsections 10.1(2) and (4) and the definition "eligible derivative" in new subsection 10.1(5).

Revocation

ITA
10.1(2)

New subsection 10.1(2) of the Act provides that the Minister of National Revenue may, on application by the taxpayer in prescribed form, grant permission to the taxpayer to revoke an election made under new subsection 10.1(1).

A revocation applies to each taxation year of the taxpayer that begins after the day on which the taxpayer is notified in writing that the Minister concurs with the revocation and is subject to such terms and conditions as are specified by the Minister. Where such notice is received in the same taxation year in which request to revoke the election is made, new subsection 10.1(4) will continue to apply – and an electing taxpayer will be required to stay in the mark-to-market regime – until the end of that taxation year.

For more information, see the commentary on new subsections 10.1(1) and (4).

Subsequent election

ITA
10.1(3)

New subsection 10.1(3) of the Act provides that, notwithstanding new subsection 10.1(1), a subsequent election under subsection 10.1(1) will result in new subsection 10.1(4) applying in respect of each taxation year of the taxpayer that begins after the day on which a prescribed form is filed by the taxpayer to make that subsequent election. As a result of this rule, the ability to make an election into the mark-to-market regime, with hindsight, will be limited to a taxpayer's first election under subsection 10.1(1). Any subsequent election will apply only on a prospective basis. This rule is intended to protect the integrity of the elective mark-to-market regime from transfers in and out of the regime with the benefit of hindsight regarding the performance of the eligible derivatives.

For more information, see the commentary on new subsections 10.1(1), (2) and (4).

Application

ITA
10.1(4)

New subsection 10.1(4) of the Act sets out the consequences of an election made under new subsection 10.1(1). It is divided into two paragraphs. Which paragraph applies depends on whether the electing taxpayer is a financial institution (as defined in subsection 142.2(1)).

If the electing taxpayer is a financial institution (as defined in subsection 142.2(1)), paragraph 10.1(4)(a) provides that each eligible derivative (as defined in new subsection 10.1(5)) held by the taxpayer at any time in a taxation year in respect of which subsection 10.1(4) applies to the taxpayer is, for the purpose of applying the provisions of the Act and with such modifications as the circumstances require, deemed to be mark-to-market property (as defined in subsection 142.2(1)) of the taxpayer for the taxation year. Section 142.5 requires a financial institution to recognize annually the change in value of its mark-to-market property. Certain derivatives held by financial institutions already qualify as mark-to-market property where they meet the definition "tracking property" and are "fair value property" of the financial institution for the year (as those terms are defined in subsection 142.2(1)). Where the electing taxpayer is a financial institution, the principal effect of paragraph 10.1(4)(a) is to broaden the category of derivatives that are marked to market under section 142.5 to include eligible derivatives of the financial institution.

If the electing taxpayer is not a financial institution (as defined in subsection 142.2(1)), paragraph 10.1(4)(b) provides that new subsection 10.1(6) applies to the taxpayer in respect of each eligible derivative held by the taxpayer at the end of a taxation year in respect of which subsection 10.1(4) applies to the taxpayer. Where the electing taxpayer is not a financial institution, the combined effect of paragraph 10.1(4)(b) and subsection 10.1(6) is that each eligible derivative of the taxpayer is marked to market in each taxation year to which the election applies.

For more information, see the commentary on new subsections 10.1(1) and (6) and the definition "eligible derivative" in new subsection 10.1(5).

Definition of "eligible derivative"

ITA
10.1(5)

New subsection 10.1(5) of the Act defines an "eligible derivative" of a taxpayer for a taxation year for the purposes of section 10.1. An eligible derivative of a taxpayer for a taxation year is intended to include any agreement that is a derivative financial instrument, held at any time in the taxation year by the taxpayer, and that meets the conditions set out in paragraphs 10.1(5)(a) to (c).

The first condition, in paragraph 10.1(5)(a), is that the agreement is not a capital property, a Canadian resource property, a foreign resource property or an obligation on account of capital of the taxpayer. By excluding capital properties and obligations that are on account of capital of the taxpayer, the effect of this condition is that a derivative must be held on income account in order to qualify as an eligible derivative. A Canadian resource property or a foreign resource property of a taxpayer (as those terms are defined for the purposes of the Act) do not qualify as an eligible derivative irrespective of whether they are held on income account.

The second condition, in paragraph 10.1(5)(b), is intended to ensure that the mark-to-market treatment of an electing taxpayer's eligible derivatives is based on fair market values that are practicably verifiable by the Minister of National Revenue. This second condition can be met in one of two ways.

The first way (set out in subparagraph 10.1(5)(b)(i)) to satisfy the second condition is that the taxpayer has produced audited financial statements prepared in accordance with generally accepted accounting principles in respect of the taxation year. This condition assumes that a derivative is generally required to be valued at its fair value under generally accepted accounting principles and is so valued in a taxpayer's audited financial statements.

The second way (set out in subparagraph 10.1(5)(b)(ii)) to satisfy the second condition is that the derivative has a readily ascertainable fair market value. This will be relevant only in cases where subparagraph 10.1(5)(b)(i) does not apply to an electing taxpayer, such as an individual, on the basis that the taxpayer has not produced audited financial statements. The fair market value of a derivative can be considered readily ascertainable where, for example, the derivative is actively traded on a public market, such as a derivatives exchange. A derivative would also generally be considered to have a readily ascertainable fair market value where

- a determination of its fair market value is accessible to the Minister, either directly or indirectly, from an independent third party such as a central counterparty or a third-party pricing source (*e.g.*, Bloomberg Valuation Service, registered securities dealers or brokers) or

- its fair market value is principally derived from, or corroborated by, values that are observable to the Minister of National Revenue (*e.g.*, a commodity price, currency exchange rate, index level, interest rate or stock price).

The third condition, in paragraph 10.1(5)(c), is relevant only where the derivative is held by a financial institution (as defined in subsection 142.2(1)). This condition requires that the agreement is not a tracking property (as defined in subsection 142.2(1)), other than an excluded property (as defined in subsection 142.2(1)). This condition ensures that the definition of an eligible derivative excludes derivatives that would otherwise be subject to the mark-to-market property rules in sections 142.2 to 142.6 of the Act. For more information, see the commentary on subsection 10.1(4).

Deemed disposition

ITA
10.1(6)

New subsection 10.1(6) of the Act sets out the mark-to-market rules for eligible derivatives held by an electing taxpayer that is not a financial institution (as defined in subsection 142.2(1)). Specifically, it requires each eligible derivative held by such a taxpayer at the end of a taxation year to be marked to market if subsection 10.1(4) applies to the taxpayer in respect of the taxation year. Subsection 10.1(6) does this by the combined effect of its paragraphs (a) and (b).

Paragraph 10.1(6)(a) deems the taxpayer to have disposed of each such eligible derivative immediately before the end of the year and to have received proceeds or paid an amount, as the case may be, equal to its fair market value at the time of disposition. In accordance with new subsection 10.1(9), where the eligible derivative is not a property of the taxpayer, the deemed disposition under paragraph 10.1(6)(a) will result in the eligible derivative being deemed to have been settled or extinguished in respect of the taxpayer.

Depending on whether the taxpayer is deemed to have received proceeds or paid an amount as a result of this deemed disposition, paragraph 10.1(6)(a) may result in the recognition of a profit or a loss in respect of the eligible derivative. Whether the taxpayer is deemed to have received proceeds or paid an amount as a result of the deemed disposition will depend on whether the derivative had a positive or a negative fair market value at the time of disposition.

Paragraph 10.1(6)(b) deems the taxpayer to have reacquired, or reissued or renewed, the eligible derivative at the end of the year at an amount equal to the proceeds or the amount, as the case may be, determined under paragraph 10.1(6)(a). A taxpayer would be deemed to have reissued or renewed the eligible derivative where it is not a property of the taxpayer at the end of the year (as is the case, for example, of an option written by the taxpayer where the taxpayer is not entitled to receive any payments from the holder).

For more information, see the commentary on new subsections 10.1(4) and (9).

Election year – gains and losses

ITA
10.1(7)

To mitigate any short-term advantage or disadvantage to a taxpayer of electing into the mark-to-market regime, new subsection 10.1(7) of the Act defers the recognition of unrealized profits or losses that accrued on eligible derivatives held by a taxpayer at the beginning of an election year until the taxation year in which these eligible derivatives are actually disposed of. Subsection 10.1(7) is also intended to ensure that the fair market value of an electing taxpayer's eligible derivatives at the beginning of an election year provides the starting point for their mark-to-market treatment over the duration of the election.

The preamble to subsection 10.1(7) sets out two conditions for the rules to apply. The first condition is that a taxpayer must hold the eligible derivative at the beginning of an election year of the taxpayer. For the purpose of subsection 10.1(7), an "election year" refers to the first taxation year in respect of which a taxpayer's first election, or any subsequent election made under subsection 10.1(1), applies. The second condition is that, in the taxation year immediately preceding that election year, the taxpayer did not compute its profit or loss in respect of that eligible derivative in accordance with a method of profit computation that produces a substantially similar effect to subsection 10.1(6). This second condition limits the application of new subsection 10.1(7) to electing taxpayers that did not compute their profit or loss in respect of eligible derivatives on a mark-to-market basis in the taxation year immediately preceding an election year.

Where these conditions are met, the taxpayer is deemed by subparagraph 10.1(7)(a)(i) to have disposed of the eligible derivative immediately before the beginning of the election year and received proceeds or paid an amount, as the case may be, equal to the fair market value of the eligible derivative at that time. In accordance with new subsection 10.1(9), the deemed disposition of a taxpayer's eligible derivative under subparagraph 10.1(7)(a)(i) includes its settlement or extinguishment in respect of the taxpayer where the eligible derivative is not a property of the taxpayer.

Under subparagraph 10.1(7)(a)(ii), the taxpayer is deemed to have reacquired, or reissued or renewed, the eligible derivative at the beginning of the election year at an amount equal to the proceeds or the amount, as the case may be, determined under subparagraph 10.1(7)(a)(i).

Paragraph 10.1(7)(b) defers the timing of recognition of the profit or loss that would arise (determined without reference to that paragraph) on the deemed disposition of a taxpayer's eligible derivative immediately before the beginning of an election year under new subparagraph 10.1(7)(a)(i). Under subparagraph 10.1(7)(b)(i), that profit or loss is deemed not to arise in the taxation year immediately preceding the election year. Rather, under subparagraph 10.1(7)(b)(ii), the profit or loss is deemed to arise in the taxation year in which the taxpayer disposes of the eligible derivative (otherwise than because of paragraph 10.1(6)(a) or 142.5(2)(a)).

New paragraph 10.1(7)(c) clarifies the application of the loss suspension rule in subsection 18(15) to the disposition referred to in subparagraph 10.1(7)(b)(ii). It provides that, for the purpose of applying subsection 18(15) to that disposition, the profit or loss that is deemed to

arise under subparagraph 10.1(7)(b)(ii) is included in determining the amount of the transferor's loss, if any, from the disposition.

For more information, see the commentary on new subsections 10.1(6) and (8).

Example 1 – Application of new paragraphs 10.1(7)(a) and (b)

At the beginning of taxation year 1, A enters into a futures agreement to buy a particular commodity in 5 years. At that time, the fair market value of the agreement is nil. In taxation year 1, A computes its profit or loss in respect of the derivative on a realization basis and, therefore, does not use a method of profit computation that produces a substantially similar effect to subsection 10.1(6).

The agreement continues to be held by A at the beginning of taxation year 2, at which time A makes an election under subsection 10.1(1).

The conditions for the application of subsection 10.1(7) having been met, subparagraph 10.1(7)(a)(i) deems A to have disposed of the derivative immediately before the beginning of taxation year 2. At that time, the derivative has a fair market value to A of -$10. Accordingly, subparagraph 10.1(7)(a)(i) deems A to have paid an amount equal to $10 at that time. Under subparagraph 10.1(7)(a)(ii), A is deemed to have reacquired the derivative at the beginning of taxation year 2 for an amount equal to the deemed amount paid (i.e.,-$10).

Immediately before the end of taxation year 2, the fair market value of the derivative has increased to $20. At that time, under paragraph 10.1(6)(a), A is deemed to have disposed of the derivative and to have received proceeds of $20. Accordingly, A recognizes a profit of $30 in respect of the derivative at that time (i.e., $20 – (-$10)). Under paragraph 10.1(6)(b), A is deemed to have reacquired the derivative at the end of taxation year 2 for an amount equal to the deemed proceeds received (i.e., $20).

Immediately before the end of taxation year 3, the fair market value of the derivative has increased to $30. At that time, under paragraph 10.1(6)(a), A is deemed to have disposed of the derivative and to have received proceeds of $30. Accordingly, A recognizes a profit of $10 ($30 - $20) at that time. Under paragraph 10.1(6)(b), A is deemed to have reacquired the derivative at the end of taxation year 3 for an amount equal to the deemed proceeds received (i.e., $30). In taxation year 4, A settles the derivative for proceeds of $40.

Determined without reference to paragraph 10.1(7)(b), a loss of $10 ($0 - $10) would arise in taxation year 1 on the deemed disposition in subparagraph 10.1(7)(a)(i), representing the amount of A's unrealized loss in respect of the derivative immediately before the beginning of taxation year 2 (i.e., the election year). However, the combined effect of subparagraphs 10.1(7)(b)(i) and (ii) is to deem this loss not to have arisen in taxation year 1 but, rather, in the taxation year in which A disposes of the derivative otherwise than because of paragraph 10.1(6)(a) (i.e., in taxation year 4). Accordingly, on the disposition of the derivative in taxation year 4, A would recognize no profit or loss (i.e., (($40 - $30) - $10)).

Example 2 – Application of new paragraph 10.1(7)(c)

Assume the facts are the same as in example 1, except that A disposes of the derivative in taxation year 4 for proceeds of $25. Assume further that the disposition is made to B, an affiliated person.

Under paragraph 10.1(7)(c), for the purpose of applying subsection 18(15) in respect of the disposition of the derivative, the loss of $10 that is deemed to arise in year 4 under subparagraph 10.1(7)(b)(ii) is included in determining the amount of A's loss, if any, from the disposition. Therefore, for the purpose of applying subsection 18(15), the amount of A's loss from the disposition (determined without reference to that subsection) would be $15.

Default realization method

ITA
10.1(8)

New subsection 10.1(8) of the Act provides the default method of profit computation that must be used in respect of any financial derivative instrument held on income account (including but not limited to eligible derivatives) by a taxpayer that is not a financial institution (as defined in subsection 142.2(1)) and that has not elected into the mark-to-market regime for eligible derivatives under subsection 10.1(1). The immediate effect of subsection 10.1(8) is to prevent such a taxpayer from using the mark-to-market method to compute its income from a business or property in respect of any financial derivative instrument held on income account where no election has been made.

It should be noted that subsection 10(15) and paragraph 18(1)(x) restrict a taxpayer's ability to use the lower of cost and market method to compute its income from a business or property in respect of a financial derivative instrument. Taken together, the combined effect of these provisions and subsection 10.1(8) is to impose the realization method as the default method of profit computation for financial derivative instruments that are held on income account by a taxpayer that is not a financial institution (as defined in subsection 142.2(1)), to the extent that subsection 10.1(4) does not apply in respect of eligible derivatives held by such a taxpayer.

For more information, see the commentary on subsections 10.1(1), (4) and (6).

Interpretation

ITA
10.1(9)

New subsection 10.1(9) of the Act provides two rules that apply for the purposes of new subsections 10.1(4) to (7). These rules are intended to ensure that the terminology used in these provisions is applicable to derivatives that are not property of a taxpayer.

The first rule, in paragraph 10.1(9)(a), provides that if an agreement that is an eligible derivative of a taxpayer is not property (as is the case, for example, of an option written by the taxpayer where the taxpayer is not entitled to receive any payments from the holder), the taxpayer is

deemed to hold the agreement at any time while the taxpayer is a party to the agreement. The second rule, in paragraph 10.1(9)(b), deems a taxpayer to have disposed of such an agreement when it is settled or extinguished in respect of the taxpayer.

Subsection 10.1(9) parallels the introduction of similar rules in new subsection 18(21). For more information, see the commentary on that provision.

For more information, see the commentary on new subsections 10.1(6) and (7).

Clause 4

Bond Premiums

ITA
12(1)(d.2)

New paragraph 12(1)(d.2) is added to the Act to include in income in a taxation year the amount of unamortized bond premium reserve that has been deducted under new paragraph 20(1)(m.3) in a preceding year.

For more information, see the comments under paragraph 20(1)(m.3).

This amendment applies to bonds issued after 2000.

Character Conversion

ITA
12(1)(z.7)(i) and (ii)

Paragraph 12(1)(z.7) of the Act requires the inclusion in computing a taxpayer's income of any profit from a derivative forward agreement, which is defined in subsection 248(1).

Subparagraph 12(1)(z.7)(i) applies to purchases of capital property under a derivative forward agreement. It provides that, if a taxpayer acquires a property under a derivative forward agreement in a taxation year, an amount is required to be included in computing the taxpayer's income for the year equal to the amount by which the fair market value of the property at the time it is acquired by the taxpayer exceeds the cost to the taxpayer of the property.

Subparagraph 12(1)(z.7)(i) is amended to provide that the amount required to be included in computing the taxpayer’s income in the taxation year is equal to the portion of the amount by which the fair market value of the property at the time it is acquired by the taxpayer exceeds the cost to the taxpayer of the property that is attributable to an underlying interest other than an underlying interest referred to in subparagraphs (*b*)(i) to (iii) of the definition of “derivative forward agreement” in subsection 248(1).

Subparagraph 12(1)(z.7)(ii) applies to sales of capital property under a derivative forward agreement. It provides that, if a taxpayer disposes of a property under a derivative forward agreement in a taxation year, an amount is required to be included in computing the taxpayer's income for the year equal to the amount by which the proceeds of disposition (within the

meaning assigned by subdivision c) of the property exceeds the fair market value of the property at the time the agreement is entered into.

Subparagraph 12(1)(z.7)(ii) is amended to provide that the amount required to be included in computing the taxpayer's income in the taxation year is equal to the portion of the amount by which the proceeds of disposition (within the meaning assigned by subdivision c) of the property exceeds the fair market value of the property at the time the agreement is entered into by the taxpayer that is attributable to an underlying interest other than an underlying interest referred to in clauses (c)(i)(A) to (C) of the definition of "derivative forward agreement" in subsection 248(1).

These amendments apply to acquisitions and dispositions of property that occur on or after September 16, 2016.

Clause 5

Work space in home

ITA
18(12)(b)

Subsection 18(12) of the Act restricts the deduction of expenses incurred by an individual in respect of a home office. No amount may be deducted in respect of a "work space" in a self-contained domestic establishment in which the individual resides unless certain conditions are met. The work space must be either the principal place of business of the individual or be used by the individual exclusively for the purpose of earning income from the business and for meeting clients, customers, or patients on a regular and continuous basis.

Where these conditions are met, a deduction in respect of a home office may be claimed; however, paragraph 18(12)(b) limits such a deduction to the individual's income from the business for the year. Paragraph 18(12)(b) is amended to delete a cross reference to repealed section 34.2, which concerned the now-expired grandfathering for the 1995 fiscal period rules that apply to individuals who carry on a business.

This amendment applies to the 2011 and subsequent taxation years.

When subsec. (15) applies to adventurers in the nature of trade

ITA
18(14)(c)

Subsection 18(14) of the Act describes the conditions in which the loss-deferral rule in subsection 18(15) applies to dispositions of property that are described in an inventory of a business that is an adventure or concern in the nature of trade. Paragraph 18(14)(c) excludes from the application of the rule dispositions deemed to have occurred under specified provisions of the Act.

Paragraph 18(14)(c) is amended to add to the list of deemed dispositions those referred to in new subsections 10.1(6) and (7). Where they apply, these subsections deem dispositions of a

taxpayer's eligible derivatives (as defined in new subsection 10.1(5)) to have occurred for the purposes of the elective mark-to-market regime for eligible derivatives in new section 10.1. To the extent that an eligible derivative qualifies as inventory of a business that is an adventure or concern in the nature of trade, the loss-deferral rule in subsection 18(15) will not apply in determining the amount of a taxpayer's profit or loss in respect of such eligible derivatives as a result of these deemed dispositions.

For more information, see the commentary on new subsections 10.1(6) and (7) and the definition "eligible derivative" in new subsection 10.1(5).

This amendment applies to the taxation years that begin after March 21, 2017.

When subsec. (15) applies to adventurers in trade

ITA
18(14)(c)

Subsection 18(14) of the Act sets out the circumstances in which the loss-deferral rule in subsection 18(15) applies to dispositions of property that are described in an inventory of a business that is an adventure or concern in the nature of trade. Paragraph 18(14)(c) of the Act excludes from the application of this rule dispositions under specified provisions of the Act. As a consequence of the introduction of section 138.2 (a new rule that allows insurers to effect tax-deferred mergers of segregated funds), a reference to subsection 138.2(4) in paragraph 18(14)(c) is introduced so that "dispositions" that are qualifying transfers are also excluded from the application of subsection 18(15).

This amendment applies to taxation years that begin after 2017.

Straddle transactions

New subsections 18(17) to (23) of the Act introduce rules that are intended to prevent the deferral or avoidance of tax that is associated with tax-motivated straddle transactions. In such a transaction, a taxpayer typically enters into offsetting short and long positions and then selectively realizes the loss on the losing position in a taxation year and defers the recognition of the offsetting profit on the winning position until the following taxation year.

Subsection 18(18) provides the conditions for the application of subsection 18(19), which is the operative rule. In general terms, subsection 18(19) is a stop-loss rule that provides that a loss realized on the disposition of a particular position (as defined in subsection 18(17)) is recognized only to the extent that it exceeds the "net" amount of unrecognized profit on open positions, including the offsetting position (as defined in subsection 18(17)), in the straddle transaction at the end of the particular taxation year. The amount of the disallowed loss is carried forward to the next taxation year and its recognition is subject to the same limitation in that taxation year.

Subsection 18(20) provides for three exceptions to the application of this operative rule. Subsection 18(21) contain interpretative rules that apply for the purposes of subsections 18(17) to (23). Finally, subsections 18(22) and 18(23) are anti-avoidance rules that are intended to

prevent a deferral of income in situations where connected persons (as defined in subsection 18(17)), together hold offsetting positions but have different taxation year-ends.

These amendments apply in respect of a particular position of a person or partnership if

- the position is acquired, entered into, renewed or extended, or becomes owing by, the person or partnership after March 21, 2017; or
- an offsetting position in respect of the position is acquired, entered into, renewed or extended, or becomes owing, by the person or partnership or a connected person, after March 21, 2017.

Definitions

ITA
18(17)

New subsection 18(17) of the Act sets out relevant definitions that apply for the purposes of subsections 18(17) to (23).

"offsetting position"

An "offsetting position" in respect of a particular position of a person or partnership (referred to as the "holder") means one or more positions that satisfy the following conditions:

- they are held by the holder or by a person or partnership that does not deal at arm's length with, or is affiliated with, the holder (referred to as a "connected person") including, for greater certainty, by any combination of the holder and one or more connected persons;
- they have the effect, or would have the effect if each of the positions held by a connected person were held by the holder, of eliminating all or substantially all of the holder's risk of loss and opportunity for gain or profit in respect of the particular position, and
- if held by a connected person, they can reasonably be considered to have been held with the purpose of obtaining the effect described above.

The design of the definition is similar to that of the definition "synthetic disposition arrangement" in subsection 248(1). Therefore, for more information regarding the operation of this definition including the determination of whether all or substantially all of a holder's risk of loss and opportunity for gain or profit in respect of a position has been eliminated, see the commentary on the definition "synthetic disposition arrangement".

Offsetting positions are sometimes of the same kind. For example, a short derivative position could be an offsetting position to a long derivative position. Offsetting positions may also be of different kinds. For example, a short derivative position could be an offsetting position to a security or to a commodity; or a foreign currency debt owing could be an offsetting position to foreign currency.

For more information, see the commentary on the new definition "position".

“position”

A position of a person or partnership means one or more properties, obligations or liabilities of the person or partnership that satisfy two conditions.

The first condition (in paragraph (a)) is that each property, obligation or liability is:

- a share in the capital stock of a corporation;
- an interest in a partnership;
- an interest in a trust;
- a commodity;
- foreign currency;
- a financial derivative instrument;
- a debt owed to or owing by the person or partnership that, at any time, is
    - a foreign currency debt,
    - a debt with contingent interest, or
    - a debt that that is convertible into or exchangeable for an interest in, or right in, a share, a partnership interest, a trust interest or a commodity;
- an obligation to transfer or return to another person or partnership a property identical to any particular property described in any of subparagraphs (i) to (vii) of the definition that was previously transferred or lent to the person or partnership by that person or partnership; or
- an interest, or for civil law a right, in any property that is described in any of subparagraphs (i) to (vii) of the definition.

The second condition (in paragraph (b)), which is applicable when there is more than one property, obligation or liability, is that it must be reasonable to conclude that each is held in connection with the other.

“successor position”

A successor position in respect of a position (referred to as the “initial position”) means a particular position that satisfies the following conditions:

- the particular position is an offsetting position in respect of a second position,
- the second position was an offsetting position in respect of the initial position that was disposed of at a particular time; and
- the particular position was entered into during the period that begins 30 days before, and ends 30 days after, the particular time.

The definition “successor position” is an anti-avoidance rule that is intended to apply when a person or partnership disposes of a particular position in a straddle transaction and then replaces it in circumstances when the existing stop-loss rules of the Act do not suspend the loss realized on that particular position. Under these circumstances, any unrecognized profit or loss on the successor position at the end of the particular taxation year will be included in the amount determined by variable C under subsection 18(19).

For more information, see the commentary on new subsection 18(19) and the new definitions “offsetting position” and “position”.

“unrecognized loss”

An unrecognized loss in respect of a position of a person or partnership at a particular time in a taxation year means the loss, if any, that would be deductible in computing the income of the person or partnership for the year with respect to the position if it were disposed of immediately before the particular time at its fair market value at the time of disposition.

The terms “unrecognized loss” and “unrecognized profit” are used in the description of variables D and E under subsection 18(19). For more information, see the commentary on new subsection 18(19) and the new definitions “position” and “unrecognized profit”.

“unrecognized profit”

An unrecognized profit in respect of a position of a person or partnership at a particular time in a taxation year, means the profit, if any, that would be included in computing the income of the person or partnership for the year with respect to the position if it were disposed of immediately before the particular time at its fair market value at the time of disposition.

For more information, see the commentary on new subsection 18(19) and the new definitions “position” and “unrecognized loss”.

Example 1 – Definitions of Offsetting Position and Successor Position

On September 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset decreases in value. On November 1, 2017, the taxpayer disposes of the long position at a $75,000 loss, at which time there is $75,000 of unrecognized profit on the offsetting short position. At the same time, the taxpayer enters into a new long position that is offsetting with respect to the retained short position. The referenced asset increases in value from that time to the end of 2017. On December 1, 2017, the taxpayer disposes of the short position at a profit of $40,000, at which time there is $35,000 of unrecognized profit in the new long position. At the same time, the taxpayer enters into a new short position that is offsetting to the new long position. On January 2, 2018, the taxpayer disposes of the new long position at a profit of $45,000 and the new short position at a loss of $10,000.

Under these circumstances, the new long position is a successor position to the original long position at the end of 2017. Also, the new short position is an offsetting position to this successor

long position at the end of 2017. Therefore, the unrecognized profit on the new long position and the unrecognized loss on the new short position at the end of 2017 will be included in the amount determined by variable C under subsection 18(19).

Example 2 – Definitions of Offsetting Position and Successor Position

On August 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset decreases in value. On October 1, 2017, the taxpayer disposes of the long position at a $300,000 loss and the short position at a $300,000 profit. On October 1, 2017, the taxpayer enters into a new short position that is identical to the original short position. The referenced asset continues to decrease in value. At the end of 2017, there is $250,000 of unrecognized profit in respect of the new short position.

Under these circumstances, the new short position is not an offsetting position or a successor position to the long position at the end of 2017. Therefore, the unrecognized profit on the new short position will not be included in the amount determined by variable C under subsection 18(19).

Application of subsection 18(19)

ITA
18(18)

New subsection 18(18) of the Act sets out the conditions for the application of the stop-loss rule in subsection 18(19). Subsection 18(18) provides that subsection 18(19) applies in respect of a disposition of a particular position by a person or partnership (the "transferor") if

- the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1 or subsections 138(11.3) or 149(10);
- the transferor is not a financial institution (as defined in subsection 142.2(1)), a mutual fund corporation or a mutual fund trust, and
- the particular position was, immediately before the disposition, not a capital property, or an obligation or liability on account of capital, of the transferor.

For more information, see the commentary on new subsection 18(19) and the new definition "position" in new subsection 18(17).

Straddle losses

ITA
18(19)

In general terms, new subsection 18(19) of the Act contains a stop-loss rule that provides that a loss realized on the disposition of a particular position is recognized in a particular taxation year only to the extent that it exceeds the "net" amount of unrecognized profit on open positions of the straddle transaction at the end of that taxation year.

This stop-loss rule will typically apply to a loss realized on a particular position that is determined on a realization basis but it may also apply to a position that is subject to mark-to-market taxation when the conditions of application of the stop-loss rule are otherwise met.

This stop-loss rule is intended to prevent the deferral or avoidance of tax that is associated with a straddle transaction by deferring the recognition of any loss realized on the disposition of a particular position to the same taxation year in which the profits in respect of the relevant open positions of the straddle transaction are realized.

In particular, this stop-loss rule provides that the portion of the loss, if any, from the disposition of a particular position that is deductible in computing the transferor's income for a particular taxation year is the amount determined by the formula A + B – C.

Variable A is

- if the particular taxation year is the taxation year in which the disposition occurs, the amount of the loss otherwise determined which, for greater certainty, is subject to subsection 18(15), and
- in any other taxation year, nil.

Thus, in general terms, variable A is relevant only for the taxation year in which the disposition of the particular position occurs. For all other taxation years, variable A will be nil.

Variable B is

- if the disposition occurred in a preceding taxation year, the amount determined for C in respect of the immediately preceding taxation year, and
- in any other taxation year, nil.

Thus, variable B is, in effect, the amount of the loss (if any) disallowed in the immediately preceding taxation year that is carried forward to the particular taxation year to be retested under the stop-loss rule.

Variable C is the lesser of

- the amount determined for A for the taxation year in which the disposition occurs, and
- the amount determined by the formula D – (E + F).

Thus, variable C is, in effect, the amount of the loss that is disallowed in the particular taxation year.

Variable D is the total of all amounts of unrecognized profit at the end of the particular taxation year in respect of

- the particular position,
- offsetting positions in respect of the particular position,
- successor positions in respect of the particular position, and
- offsetting positions in respect of any successor position in respect of the particular position.

Variable E is the total of all amounts of unrecognized loss at the end of the particular taxation year in respect of the same positions referred to in the description of variable D (except for the particular position).

In the most basic straddle transaction, the transferor will dispose of the particular position shortly before its taxation year-end and then dispose of the offsetting position shortly after the beginning of the following taxation year. In such a transaction, variable C will equal the amount of unrecognized profit at the end of the particular taxation year in respect of the offsetting position to the particular position. In other words, variable C will simply equal the amount referred to in subparagraph (ii) of the description of variable D.

In more complex straddle transactions, shortly after disposing of the particular position, the transferor will enter into a successor position that is offsetting with respect to the retained position. By entering into such successor position, the transferor remains economically hedged until the end of the straddle transaction. Typically, the transferor will hold on to both these positions past its taxation year-end and then dispose of them shortly afterwards. In these cases, variable C will generally equal the "net" amount of unrecognized profit in respect of these open positions. In other words, variable C will equal D – E, that is the amount of unrecognized profit at the end of the particular taxation year in respect of these open positions minus the amount of unrecognized loss at the end of the particular taxation year in respect of these same open positions.

Finally, over the course of certain straddle transactions, the transferor will dispose of more than one loss position. In these cases, the amount determined by D – E will be reduced by any loss that is still suspended at the end of the particular taxation year for any position that was disposed of prior to the disposition of the particular position. Variable F, which represents the total of all amounts of suspended losses for prior dispositions of positions in the straddle transaction, is determined by the formula G – H. In this context, for each prior disposition, variable G is, in effect, the amount of the loss otherwise determined whereas variable H is, in effect, the amount of the loss allowed under subsection 18(19) for the particular taxation year or a preceding taxation year.

The application of the stop-loss rule contained in subsection 18(19) may be illustrated by the following examples. It is assumed in each example that a transferor with a calendar year-end enters into perfectly offsetting long and short derivative positions that reference the same asset.

For more information, see the commentary on new subsection 18(18) and the new definitions "offsetting position", "position", "successor position", "unrecognized loss", and "unrecognized profit" in new subsection 18(17).

Example 1 – Basic Straddle

On August 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset increases in value from that time to the end of 2017. On December 29, 2017, the taxpayer disposes of the short position at a $50,000 loss, at which time there is $50,000 of unrecognized profit in respect of the offsetting long position. On January 1, 2018, the taxpayer disposes of the long position at a profit of $50,500.

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the short position will be nil (i.e., A + B – C = $50,000 + 0 - $50,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $50,000), and*
- *D – (E + F) = $50,500 – (0 + 0)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the short position will be $50,000 (i.e., A + B – C = 0 + $50,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $50,000), and*
- *D – (E + F) = 0 – (0 + 0)*

In sum, the entire $50,000 loss on the disposition of the short position will be disallowed for the 2017 taxation year because there is $50,500 of unrecognized profit on the offsetting long position at year-end. This entire $50,000 loss will be allowed for the 2018 taxation year because the long position is disposed of in that year and, as a result, there is no unrecognized profit on the long position at year-end.

Example 2 – Successor Position

On September 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset decreases in value. On November 1, 2017, the taxpayer disposes of the long position at a $75,000 loss, at which time there is $75,000 of unrecognized profit in respect of the offsetting short position. At the same time, the taxpayer enters into a new long position (successor long position) that is offsetting with respect to the retained short position. The referenced asset then increases in value from November 1, 2017 to the end of 2017 and returns back to its September 1, 2017 level. On January 2, 2018, the taxpayer disposes of the successor long position at a profit of $75,000 and the offsetting short position at no profit or loss.

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be nil (i.e., A + B – C = $75,000 + 0 - $75,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = $75,000 – (0 + 0)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be $75,000 (i.e., A + B – C = 0 + $75,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = 0 – (0 + 0)*

In sum, the entire $75,000 loss on the disposition of the long position will be disallowed for the 2017 taxation year because there is an aggregate $75,000 of unrecognized profit on the successor position at year-end. This entire $75,000 loss will be allowed for the 2018 taxation year because both the successor long position and the offsetting short position are disposed of in that year and, as a result, there is no unrecognized profit on these positions at year-end.

In this example, the offsetting short position – the position that is held throughout the straddle transaction – has no unrecognized profit at the end of the 2017 taxation year. This unrecognized profit has completely shifted to the successor long position. Absent taking into account the unrecognized profit on the successor long position, the entire $75,000 loss on the disposition of the original long position would have been recognized in the 2017 taxation year.

Example 3 – Successor Position

Assume the facts are the same as in example 2, except that after decreasing in value from September 1, 2017, to November 1, 2017, the referenced asset increases in value from November 1, 2017, to the end of 2017 and partially returns to its September 1, 2017 level. On January 2, 2018, the taxpayer disposes of the successor long position at a profit of $40,000 and the offsetting short position at a profit of $35,000.

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be nil (i.e., A + B – C = $75,000 + 0 - $75,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = $75,000 (i.e., $40,000 + $35,000) – (0 + 0)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be $75,000 (i.e., A + B – C = 0 + $75,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = 0 – (0 + 0)*

In sum, the entire $75,000 loss on the disposition of the long position will be disallowed for the 2017 taxation year because there is $75,000 of unrecognized profit on both the successor long position and the offsetting short position at year-end. This entire $75,000 loss will be allowed for the 2018 taxation year because both the successor long position and the offsetting short position are disposed of in that year and, as a result, there is no unrecognized profit on these positions at year-end.

Example 4 – Successor Position

Assume the facts are the same as in example 2, except that after decreasing in value from September 1, 2017 to November 1, 2017, the referenced asset continues to decrease in value from November 1, 2017 to the end of 2017. On January 2, 2018, the taxpayer disposes of the successor long position at a loss of $75,000 and the offsetting short position at a profit of $150,000.

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be nil (i.e., A + B – C = $75,000 + 0 - $75,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = $150,000 – ($75,000 + 0)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the long position will be $75,000 (i.e., A + B – C = 0 + $75,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $75,000), and*
- *D – (E + F) = 0 – (0 + 0)*

In sum, the entire $75,000 loss on the disposition of the long position will be disallowed for the 2017 taxation year because there is $75,000 of "net" unrecognized profit on both the successor long position and the offsetting short position at year-end. This entire $75,000 loss will be allowed for the 2018 taxation year because both the successor long position and the offsetting short position are disposed of in that year and, as a result, there is no unrecognized profit on these positions at year-end.

Example 5 – Multiple Loss Positions

On August 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset decreases in value. On November 1, 2017, the taxpayer disposes of the long position at a $200,000 loss, at which time there is an unrecognized profit of $200,000 on the short position. At the same time, the taxpayer enters into a new long position (successor long position) that is offsetting with respect to the retained short position. The referenced asset then increases in value. On December 1, 2017, the taxpayer disposes of the successor long position at a profit of $200,000, at which time there is no unrecognized profit or loss on the retained short position. At the same time, the taxpayer enters into a new long position (successor to successor long position) that is offsetting with respect to the retained short position. On December 28, 2017, the taxpayer disposes of the short position at a loss of $300,000. On January 2, 2018, the taxpayer disposes of the successor to the successor long position at a profit of $300,000.

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the original long position will be nil (i.e., A + B – C = $200,000 + 0 - $200,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $200,000), and*
- *D – (E + F) = $300,000 – (0 + 0)*

For the 2017 taxation year, the amount of the taxpayer's loss from the disposition of the short position will be $200,000 (i.e., A + B – C = $300,000 + 0 - $100,000). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $300,000), and*
- *D – (E + F) = $300,000 – (0 + $200,000)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the original long position will be $200,000 (i.e., A + B – C = 0 + $200,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $200,000), and*
- *D – (E + F) = 0 – (0 + 0)*

For the 2018 taxation year, the amount of the taxpayer's loss from the disposition of the short position will be $100,000 (i.e., A + B – C = 0 + $100,000 - 0). Under these circumstances, variable C will be equal to the lesser of:

- *A for the 2017 taxation year (i.e., $300,000), and*
- *D – (E + F) = 0 – (0 + 0)*

In sum, the entire $200,000 loss on the disposition of the long position and a $100,000 loss on the disposition of the short position will be disallowed for the 2017 taxation year because there is $300,000 of unrecognized profit on the successor to the successor long position at year-end. These losses will be allowed for the 2018 taxation year because the successor to the successor long position is disposed of in that year and, as a result, there is no unrecognized profit on that position at year-end.

Absent the adjustment under variable F when determining the loss from the disposition of the short position for the 2017 taxation year, the entire $300,000 loss would have been disallowed which would have effectively represented an over-counting of the $300,000 of unrecognized profit on the successor to the successor long position at year-end.

Example 6 – Coordination With Existing Stop-Loss Rules

On September 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset increases in value from that time to the end of 2017. On December 30, 2017, the taxpayer disposes of the short position to an affiliated person at an $80,000 loss, at which time there is $80,000 of unrecognized profit in respect of the offsetting long position. On January 1, 2018, the taxpayer disposes of the long position at a profit of $80,500. On January 1, 2019, the affiliated person disposes of the short position to a non-affiliated person.

Assuming that subsection 18(15) suspends the $80,000 loss realized on the disposition of the short position, then subsection 18(19) would not apply to this loss because it only suspends a

loss if it is otherwise available. Therefore, the $80,000 loss realized on the disposition of the short position would only be unsuspended on January 1, 2019 pursuant to subsection 18(15).

Exceptions

ITA
18(20)

New subsection 18(20) of the Act provides for three exceptions to the application of the stop-loss rule under subsection 18(19).

The first exception (in paragraph (a)) applies to a particular position when either the particular position, or the offsetting position in respect of the particular position, consists of:

- commodities that the holder of the position manufactures, produces, grows, extracts or processes, or
- debt that the holder of the position incurs in the course of a business that consists of one or any combination of the activities described above.

This first exception is intended to exclude certain business hedging arrangements. For example, this exception would generally apply to the disposition of a short futures contract that was entered into by a farmer to protect against a potential decline in the price of his or her crop.

The second exception (in paragraph (b)) applies to a particular position if the transferor continues to hold the position – that would be an offsetting position in respect of the particular position if the particular position continued to be held by the transferor – throughout a 30-day period beginning on the date of disposition of the particular position and at no point during the period

- is the transferor's risk of loss with respect to the position reduced in any material respect by another position entered into or disposed by the transferor, or
- would the transferor's risk of loss with respect to the position be reduced in any material respect by another position entered into or disposed by a connected person, if the other position were entered into or disposed by the transferor.

The use of a 30-day period of full economic exposure to the remaining position as a proxy for the *bona fide* purpose of the straddle transaction is consistent with the definition "successor position" in subsection 18(17).

For more information, see the commentary on new subsection 18(19).

Example – 30-day Exception

On August 1, 2017, a taxpayer enters into offsetting long and short positions. The referenced asset increases in value. On December 29, 2017, the taxpayer disposes of the short position at a $225,000 loss, at which time there is $225,000 of unrecognized profit in respect of the offsetting long position. On February 9, 2018, the taxpayer disposes of the long position at a $250,000 profit.

In these circumstances, the second exception will apply to the short position as the taxpayer continues to hold the long position throughout a 30-day period beginning on the date of disposition of the particular position (i.e., the 30-day period beginning on December 29, 2017 and ending on January 28, 2018).

The third exception (in paragraph (c)) applies to a particular position if it can reasonably be considered that none of the main purposes of the series of transactions or events, or any of the transactions or events in the series, of which the holding of both the particular position and offsetting position are part, is to avoid, reduce or defer tax that would otherwise be payable under the Act.

This third exception is intended to exclude non-tax motivated transactions that merely happen to involve offsetting positions and that may not fall within the scope of the first two exceptions. For example, this third exception would generally apply to transactions undertaken primarily with the intention of generating profits on the spread between two offsetting positions. However, this third exception would not apply if the tax benefit resulting from such a transaction is disproportionate to the profit earned on it. This third exception may also apply to *bona fide* business hedging arrangements that do not fall within the scope of the first exception in paragraph (a). Finally, this third exception may apply to other types of non-tax motivated arrangements where the unrecognized profit with respect to an open position arises primarily in a different period from when the realized loss with respect to the particular position arose.

Example – Commercial Exception

On April 1, 2017, a taxpayer enters into a long position. The referenced asset decreases in value. On December 2, 2017, the taxpayer enters into a short position referencing the same asset. At that time, the short position is an offsetting position to the long position. On December 3, 2017, the taxpayer disposes of the long position at a $50,000 loss. The taxpayer holds on to the short position past its taxation year-end and disposes of it on January 1, 2018 at a $35,000 profit.

In these circumstances, the third exception will generally apply to the long position as the realized loss on the position arose primarily in a different period from when the unrecognized profit on the short position arose.

Application

ITA
18(21)

New subsection 18(21) of the Act provides for four supporting rules that apply for the purposes of subsections 18(17) to 18(23).

The first rule (in paragraph (a)) provides that, if a particular position is not property, as is the case, for example, a written option or a debt that is owed by a person or partnership, the person or partnership is deemed:

- to hold the position while it is a position of the person or partnership, and
- to have disposed of the position when the position is settled or extinguished in respect of the person or partnership.

The second rule (in paragraph (b)) provides that a disposition of a position is deemed to include a disposition of a portion of the position. After the disposition of a portion of a position, the holder of the original position will be, when appropriate, considered to hold the remaining portion as a position for the purposes of subsection 18(19).

Example – Disposition of a Portion of a Position

On September 1, 2017, a taxpayer enters into offsetting long (forward contract to buy 100,000 barrels of crude oil) and short (forward contract to sell 100,000 barrels of crude oil) positions. The price of crude oil increases. On December 28, 2017, the taxpayer partially closes out its short position by closing out on the sale of 40,000 barrels of crude oil. On January 3, 2018, the taxpayer partially closes out its long position by closing out on the purchase of 40,000 barrels of crude oil.

Under these circumstances, the second rule clarifies that the partial close out of the short position is a disposition of a position for the purposes of subsections 18(17) to (23).

The third rule (in paragraph (c)) is an anti-avoidance rule that supplements the definition "offsetting position" in subsection 18(17). In particular, this rule deems a position to be an offsetting position in respect of a particular position of a person or partnership if:

- there is a high degree of negative correlation between changes in value of the position and the particular position, and
- it can reasonably be considered that the principal purpose of the series of transactions or events, or any of the transactions in the series, of which the holding of both the particular position and offsetting position are part, is to avoid, reduce or defer tax that would otherwise be payable under this Act.

This anti-avoidance rule may apply, for example, to straddle transactions constructed with options that may eliminate the opportunity for gain or profit or the risk of loss, but not both as is required by the definition "offsetting position" in subsection 18(17).

The fourth rule (in paragraph (d)) is an anti-avoidance rule that supplements the definition "successor position" in subsection 18(17). In particular, this rule deems one or more positions to be a successor position in respect of a particular position of a person or partnership if:

- a portion of the particular position was disposed of at a particular time;
- the position is, or the positions include, a position that consists of the portion of the particular position that was not disposed of (referred to as the "remaining portion of the particular position");

- if there is more than one position, the position or positions that do not consist of the remaining portion of the particular position were entered into during the period that begins 30 days before, and ends 30 days after, the particular time;
- the position is, or the positions taken together would be, an offsetting position in respect of a second position (within the meaning of the definition "successor position");
- the second position was an offsetting position in respect of the particular position; and
- it can reasonably be considered that the principal purpose of the transactions or events, or any of the transactions in the series, of which the disposition of a portion of the particular position and the holding of one or more positions are part, is to avoid, reduce or defer tax that would otherwise be payable under the Act.

This anti-avoidance rule is intended to prevent the use of partial dispositions of positions in order to avoid the application of these rules.

For more information, see the commentary on new subsections 18(18) to (23) and the new definitions "offsetting position" and "position" in new subsection 18(17).

Different Taxation Years

ITA
18(22)

New subsections 18(22) and 18(23) of the Act are anti-avoidance rules that are intended to prevent a deferral or avoidance of tax in situations where connected persons, as defined in subsection 18(17), together hold offsetting positions but have different taxation year-ends.

Subsection 18(22) provides that the deeming rule in subsection 18(23) applies if:

- at any time in a particular taxation year of a transferor, a gain position (as defined) is held by a connected person;
- the connected person disposes of the gain position in the particular taxation year; and
- the taxation year of the connected person in which the disposition of the gain position occurs ends after the end of the particular taxation year.

For more information, see the commentary on new subsection 18(23) and the new definition "offsetting position" in new subsection 18(17).

Different Taxation Years

ITA
18(23)

Subsection 18(23) of the Act deems a portion of the profit, if any, realized from the disposition of a gain position referred to in subsection 18(22) to be unrecognized profit in respect of the gain

position until the end of the taxation year of the connected person in which the disposition occurs. That portion of the profit is determined by the formula A x B/C.

Variable A is the amount of the profit otherwise determined.

Variable B is the number of days in the taxation year of the connected person in which the disposition of the gain position occurs that are after the end of the particular taxation year.

Variable C is the total number of days in the taxation year of the connected person in which the disposition of the gain position occurs.

For more information, see the commentary on new subsection 18(22).

Example – Different Taxation Year-Ends

K and L are connected persons as defined in subsection 18(17). K has a December 31 taxation year-end whereas L has a December 29 taxation year-end. On November 1, 2017, they enter into offsetting long and short positions. The referenced asset increases in value. On December 31, 2017, K disposes of the short position at a $100,000 loss. On the same day, L disposes of the long position at a $100,000 profit.

Even though the two positions are disposed of on the same day, the overall transaction will result in a deferral benefit on the basis that the $100,000 loss will be recognized in K's December 31, 2017 taxation year whereas the $100,000 profit will be recognized in L's December 29, 2018 taxation year.

Absent the anti-avoidance rules in subsections 18(22) and 18(23), subsection 18(19) would not prevent the deferral of income associated with the transaction. Subsection 18(19) would only suspend K's loss on the disposition of the short position to the extent that L has an unrecognized profit on the long position at the end of K's taxation year in which the disposition of the short position occurs. On December 31, 2017, L would have no unrecognized profit on the long position since that position is disposed of on that day.

In this context, subsections 18(22) and 18(23) will apply to deem $99,452 (i.e., A x B/C = $100,000 x 363/365) of the $100,000 profit realized on the disposition of the long position to be unrecognized profit in respect of the long position until December 29, 2018.

Clause 6

Bond Premiums

ITA
20(1)(m.3)

New paragraph 20(1)(m.3) is introduced to provide relief in situations where a premium is received by a taxpayer upon the re-opening of a bond issue where the bond's interest rate is higher than the market rate of interest for similar debt instruments at the time of such re-opening.

This new provision allows a taxpayer to claim a reserve in a taxation year for the unamortized amount at the end of the year of any premium received on the issuance of a bond (referred to in

new paragraph 20(1)(m.3) as the “new bond”) that arose on the re-opening of a prior issuance of bonds (referred to in new paragraph 20(1)(m.3) as the “original issuance”) by the taxpayer.

More specifically, a taxpayer may claim a reserve for the amount that may reasonably be considered to be in respect of the unamortized amount at the end of the year of a premium received by the taxpayer in the year, or a previous year, for the issuance of a new bond where

- the terms of the new bond are identical to the terms of bonds previously issued (referred to in new paragraph 20(1)(m.3) as the “old bonds”) , except for the date of issuance and total amount of the bonds,
- the old bonds were issued by the taxpayer as part of the original issuance,
- the interest rate on the old bonds was reasonable at the time of the original issuance,
- the new bond is issued on the re-opening of the original issuance,
- the premium received by the taxpayer on issuance of the new bond is reasonable in consideration of prevailing interest rates for similar debt instruments of the time of the new bond’s issuance, and
- the amount of the premium has been included in computing the taxpayer’s income for the year or a previous taxation year.

New subparagraph 12(1)(d.2) includes the amount of the reserve in computing a taxpayer’s income for the following taxation year.

This amendment applies to bonds issued after 2000.

Character Conversion

ITA
20(1)(xx)

Paragraph 20(1)(xx) of the Act provides a deduction in computing a taxpayer's income of a loss from a derivative forward agreement, which is defined in subsection 248(1). The amount of the deduction that is available in a particular year is determined by the formula A – B.

Variable A is the lesser of subparagraphs (i) and (ii). Subparagraph (i) represents the accumulated losses under the derivative forward agreement. Subparagraph (ii) limits deductions in respect of partial (i.e., not final) settlements of a derivative forward agreement to the amount of income that has been included in respect of the agreement.

Subparagraph (i) of variable A provides the cumulative total of losses under the agreement. Clause (i)(A) applies to purchases and clause (i)(B) applies to sales.

The amount determined for clause (i)(A), is the amount by which the cost to the taxpayer of the property exceeds the fair market value of the property at the time it is acquired by the taxpayer. Clause (i)(A) is amended to provide that the amount determined by that clause is equal to the portion of the amount by which the cost to the taxpayer of the property exceeds the fair market value of the property at the time it is acquired by the taxpayer that is attributable to an underlying

interest other than an underlying interest referred to in subparagraphs (b)(i) to (iii) of the definition of “derivative forward agreement” in subsection 248(1).

The amount determined for clause (i)(B) is the amount by which the fair market value of the property at the time the agreement is entered into exceeds the proceeds of disposition (within the meaning assigned by subdivision c) of the property. Clause (i)(B) is amended to provide that the amount determined by that clause is equal to the portion of the amount by which the fair market value of the property at the time the agreement is entered into by the taxpayer exceeds the proceeds of disposition (within the meaning assigned by subdivision c) of the property that is attributable to an underlying interest other than an underlying interest referred to in clauses (c)(i)(A) to (C) of the definition of “derivative forward agreement” in subsection 248(1).

These amendments apply to acquisitions and dispositions of property that occur on or after September 16, 2016.

Clause 7

Professional business

ITA
34

Section 34 of the Act provides an exception to full accrual accounting in computing the income of a business that is the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor by allowing the income from that business to be determined without taking into account any professional work in progress at year end.

Paragraph 34(a) of the Act is amended to limit the ability of a professional to elect to exclude work in progress at the end of the year to taxation years that begin before March 22, 2017.

The amendment to paragraph 34(a) applies to taxation years ending after March 21, 2017.

Section 34 is repealed, effective January 1, 2024. For more information, see the commentary on the transitional rules in subsection 10(14.1).

Clause 8

Scientific Research and Experimental Development

ITA
37

Section 37 of the Act sets out the rules governing the deductibility of expenditures incurred by a taxpayer for scientific research and experimental development (SR&ED).

ITA
37(8)(a)(ii)(B)(II)

Paragraph 37(8)(a) of the Act provides rules for interpreting the expression "expenditures on or in respect of scientific research and experimental development" which is used in subsections 37(1), (2) and (5).

Clause 37(8)(a)(ii)(B) provides for the alternative "proxy" method for determining SR&ED expenditures and lists the expenditures that a taxpayer can deduct, if the taxpayers makes an election to use the proxy method for determining SR&ED expenditures.

Subclause 37(8)(a)(ii)(B)(II) is amended by replacing the phrase “in respect of” in the subclause with “for” in the English version of the Act. This change ensures that wording in the English and French versions of the Act is consistent and ensures that the English version reflects properly the underlying tax policy. The case law has established that the phrase “in respect of” has the broadest meaning possible. However, this is not the tax policy intent in respect of expenditures described in subclause 37(8)(a)(ii)(B)(II).

This amendment applies to expenditures incurred after September 16, 2016.

Filing requirement

ITA
37(11)

Section 37 provides, among other things, that a taxpayer carrying on business in Canada may deduct certain expenditures of a current nature incurred in respect of scientific research and experimental development (SR&ED) carried on in Canada.

Subsection 37(11) is amended (and new subsection (11.1) is introduced) to clarify the filing requirements (and the consequences for failing to provide required information) in respect of SR&ED claims. Under subsection 37(11), a taxpayer must file a prescribed form with the Minister in respect of any expenditure that is claimed by the taxpayer for the year as a deduction under subsection 37(1), identifying the expenditure and supporting its characterization as SR&ED as well as any claim preparer information (as defined in subsection 162(5.3)). The form must be filed with the Minister within one year of the taxpayer’s filing-due date for the year in which the expenditure was incurred.

This amendment applies on Royal Assent.

Failure to file

ITA
37(11.1)

New subsection 37(11.1) generally provides that a taxpayer who fails to file a prescribed form, containing information identifying an expenditure and supporting its characterization as SR&ED (as referred to in paragraph 37(11)(a)), with the Minister may not deduct that amount as a SR&ED expenditure under subsection 37(1).

Subsection 162(5.1) contains a penalty for failing to provide information relating to the claim preparer. This amendment clarifies that failure to provide the required claim preparer information will not prevent a taxpayer from deducting an amount in respect of the expenditure under subsection 37(1).

This amendment applies on Royal Assent.

Clause 9

Business investment loss

ITA
39(1)(c)(iv)(B)

A taxpayer's business investment loss for a taxation year is determined under paragraph 39(1)(c). Clause 39(1)(c)(iv)(B) refers to debts owing by a Canadian-controlled private corporation that is a bankrupt.

Clause 39(1)(c)(iv)(B) is amended to remove an expired reference to the definition "bankrupt" in subsection 128(3), which was repealed by 1998, c. 19. "Bankrupt" is now defined in subsection 248(1).

Upstream loan – transitional set-off

ITA
39(2.1) to (2.3)

Subsection 39(2.1) is a temporary measure that sets off, in certain circumstances, foreign exchange gains or losses of a taxpayer on the repayment of a debt obligation owing to a foreign affiliate of the taxpayer against the related losses or gains of the foreign affiliate from the repayment. This provision is intended to provide relief to taxpayers that repay "upstream loans" in order to avoid the application of new subsection 90(6).

An election for the set-off in subsection 39(2.1) not to apply is added in new subsection 39(2.3) (described below). In addition, subsection 39(2.1) is amended in three ways, each of which expands the scope of its application. First references are added to subparagraph 40(2)(g)(ii), to make relief under subsection 39(2.1) available where a repayment of a non-interest bearing upstream loan results in a foreign exchange loss to the creditor foreign affiliate. In the absence of such references, relief would not be available in that situation because the loss is otherwise denied under subparagraph 40(2)(g)(ii), on the basis that a non-interest bearing debt is not acquired by the creditor foreign affiliate for the purpose of earning income.

Second, subsection 39(2.1) is modified to apply in cases where the foreign exchange capital gains or losses of the creditor foreign affiliate resulting from the repayment of an upstream loan are not equal to the debtor's foreign exchange capital losses or gains from the repayment. Prior to this amendment, a set-off was available under subsection 39(2.1) only where these amounts were equal.

Third, subsection 39(2.1) is modified to introduce the concept of a "qualifying entity" (defined in new subsection 39(2.2)), effectively extending relief under subsection 39(2.1) to situations where the specified debtor under the upstream loan is not the taxpayer of which the creditor foreign affiliate is a foreign affiliate, but rather another member of the taxpayer's corporate group (e.g., a wholly-owned subsidiary of the Canadian taxpayer) of which the creditor foreign affiliate is not a foreign affiliate (or of which the creditor foreign affiliate is a foreign affiliate, but the member has only an indirect equity interest in the creditor foreign affiliate). These changes also allow relief in limited circumstances where the specified debtor under an upstream loan from a particular creditor foreign affiliate is not a member of the Canadian taxpayer's group, provided that all or substantially all of the shares of the Canadian taxpayer are owned by corporations resident in Canada that are specified debtors in respect of upstream loans from the particular creditor foreign affiliate because of the application of the back-to-back upstream loan rule in subsection 90(7). Prior to these amendments, the set-off under subsection 39(2.1) was available only where the debtor was the taxpayer itself.

New subsection 39(2.3) allows taxpayers to opt out of the transitional set-off under subsection 39(2.1) by filing an election with the Minister of National Revenue before 2019. If a valid election is filed, neither subsection 39(2.1) nor paragraph 95(2)(g.04) apply in respect of a repayment, in whole or in part, of an upstream loan. The election must be filed before 2019 jointly by:

- the borrowing party referred to in subsection 39(2.1);
- if the creditor is a creditor affiliate referred to in subsection 39(2.1), each qualifying entity of which the creditor affiliate is a foreign affiliate; and
- if the creditor is a creditor partnership referred to in subsection 39(2.1), each qualifying entity of which a member of the creditor partnership is a foreign affiliate.

The election in new subsection 39(2.3) recognizes that the application of subsection 39(2.1) may have unfavourable tax consequences in certain circumstances, for example where, on a repayment of an upstream loan, a taxpayer realizes a foreign exchange loss and the creditor affiliate realizes a foreign exchange gain. If the creditor affiliate also has a separate loss from another source that could otherwise have been used to offset the foreign exchange gain, the application of subsection 39(2.1) could result in this other loss being "stranded" in the creditor affiliate.

Given their connection to the upstream loan rules in subsections 90(6) to (15), the application dates for these amendments correspond with the transitional rule for the upstream loan rules and are the same as the dates for the set-off provision in subsection 39(2.1) in general. Thus, these amendments apply only to a foreign exchange gain or loss of a taxpayer on the repayment of the portion of a debt obligation outstanding on August 19, 2011 where that repayment occurs on or before August 19, 2016.

For more information, see the comments under paragraph 95(2)(g.04).

Clause 10

Principal residence – reduction of gain

ITA
40(2)(b)

Paragraph 40(2)(b) of the Act applies in computing the gain for a taxation year of an individual or trust (the "taxpayer") from the taxpayer's disposition in the year of a property that is the taxpayer's principal residence at any time after the taxpayer acquired (or last acquired) the property. The paragraph reduces the taxpayer's gain, otherwise determined, from the disposition by the amount computed under the formula in that paragraph.

Under the formula, a taxpayer's gain from the disposition is effectively reduced to nil (i.e., is exempt from taxation) if each of the taxpayer's taxation years during the taxpayer's ownership period is an eligible taxation year. The taxpayer's ownership period begins with the year in which the taxpayer acquired (or last acquired) the property and ends with the year in which the disposition occurs.

Element B of the formula is the sum of one plus (the "one-plus rule") the number of the taxpayer's eligible taxation years in the taxpayer's ownership period. Under element B, an eligible taxation year is a taxation year of the taxpayer during which the taxpayer is resident in Canada and for which the property is the taxpayer's principal residence.

The definition "principal residence" in section 54 does not allow a taxpayer (and members of the taxpayer's family unit) to designate more than one property as the family's principal residence for a taxation year. This is intended to limit the tax benefit to one property per family unit. However, this limit precludes a taxpayer who disposes of a principal residence in one year and acquires a replacement residence in the same year from designating both properties as a principal residence for the year. The one-property limit is not meant in this circumstance to deny the taxpayer the exemption in respect of both properties for the year.

The special one-plus rule in element B responds to this issue by effectively allowing taxpayers one extra taxation year of exemption room. The one-plus rule is not intended, however, to permit a taxation year throughout which a taxpayer is non-resident to be an eligible taxation year in the taxpayer's ownership period.

Element B of the formula is amended so that the "one plus" factor in element B applies only where the taxpayer is resident in Canada during the year in which the taxpayer acquires the property.

This amendment applies to dispositions that occur after October 2, 2016.

Deemed gain – negative adjusted cost base

ITA
40(3)(d) and (e)

Subsection 40(3) of the Act applies where, at a particular time in a particular taxation year, the adjusted cost base (“ACB”) of a capital property (other than an interest in a partnership) of a

taxpayer has been reduced below nil as a result of certain adjustments to ACB required under subsection 53(2). This ensures that the "negative" ACB is generally treated as a capital gain of the taxpayer from a disposition of a property.

Paragraph 40(3)(c) deems there to be a gain from a disposition of the property. Paragraphs 40(3)(d) and (e) deem there to be a disposition of the property for the purposes of sections 93 and 110.6, respectively.

Paragraph 40(3)(d) is amended to deem there to be a disposition by the taxpayer for the purposes of subsections 116(6) and (6.1) at the time the ACB has been reduced below nil. Paragraph 40(3)(e) is amended to deem there to be a disposition by the taxpayer in the taxation year for the purposes of subsection 2(3) and section 150.

These amendments are strictly technical. The addition of a reference to subsection 2(3) clarifies that, consistent with the clear policy intent, a non-resident is subject to tax in Canada in respect of a deemed gain under paragraph 40(3)(c) from a disposition of a property that is taxable Canadian property (other than treaty-protected property) of the taxpayer, as defined in subsection 248(1) of the Act. The taxable portion of the deemed gain, which is described in paragraph 115(1)(b), is included in computing the non-resident's taxable income earned in Canada for the taxation year, by virtue of subparagraph 115(1)(a)(iii).

The addition of the references to section 150 and subsections 116(6) and (6.1) clarifies that a non-resident is required to file an income tax return for each taxation year for which it is deemed under paragraph 40(3)(c) to have a gain from a disposition of a taxable Canadian property – unless the property is a treaty-protected property (as defined in subsection 248(1)), in which case it is intended that the deemed disposition qualify as an excluded disposition (within the meaning of subsection 150(5)) for the purposes of section 150.

The amendments to subsection 40(3) apply in respect of gains from dispositions that occur on or after September 16, 2016.

Deemed gain for certain partners

ITA
40(3.1)(b)

Subsection 40(3.1) of the Act deems a member of a partnership to realize a gain from a disposition of the member's interest in the partnership equal to the "negative adjusted cost base" of the member's interest at the end of the fiscal period of the partnership, provided that the member is a limited partner or was, since becoming a partner, a "specified member of the partnership".

Paragraph 40(3.1)(a) deems there to be a gain from a disposition of the member's partnership interest. Paragraph 40(3.1)(b) deems the member to have disposed of the partnership interest for the purposes of section 110.6.

Paragraph 40(3.1)(b) is amended to deem the member to have disposed of the partnership interest at the end of the fiscal period of the partnership, for the purposes of subsection 2(3), subsections 116 (6) and (6.1) and section 150.

These amendments are strictly technical and clarifying. They clarify that, consistent with the clear policy intent, a non-resident is subject to tax in Canada in respect of a deemed gain under paragraph 40(3.1)(a) from a disposition of a property that is taxable Canadian property (other than treaty-protected property) of the taxpayer. They also clarify that a non-resident is required to file an income tax return for each taxation year for which it is deemed under paragraph 40(3.1)(a) to have a gain from a disposition of a taxable Canadian property – unless the property is a treaty-protected property.

These amendments are analogous to the amendments being made to subsection 40(3). For more information, see the commentary on that subsection.

The amendments to subsection 40(3.1) apply in respect of gains from dispositions that occur on or after September 16, 2016.

Principal residence – transitional rules

ITA
40(6) and (6.1)

The definition "principal residence" in section 54 of the Act does not allow a taxpayer and members of the taxpayer's family unit to designate more than one property as the family unit's principal residence for a taxation year. For this purpose, a family unit generally refers to a taxpayer, the taxpayer's spouse and their minor children. This one-property requirement also applies to a family unit whose additional residence is owned by a personal trust that is otherwise eligible to designate a property as its principal residence. The one-property requirement applies to designations for tax years after 1981.

Subsection 40(6) contains transitional rules that apply where more than one property was owned by members of a family unit at the end of 1981 – including through a personal trust that was eligible at the end of 1981 to designate a property as a principal residence – and the property is, on its first subsequent disposition after 1981, designated as a principal residence of a member of the family unit (or, in the case of a trust, by the trust). The transitional rule generally ensures that, in computing under paragraph 40(2)(b) the exempt portion of the taxpayer's gain from the disposition, the portion of the gain that accrued before 1982 is computed without reference to the one-property requirement.

Subsection 40(6) is amended consequential on the introduction of new subsection 40(6.1). A trust otherwise eligible to compute a gain by reference to subsection 40(6) will no longer apply that subsection if subsection 40(6.1) applies to the disposition. In these cases, the transitional relief otherwise provided to the trust by subsection 40(6) is provided under subsection 40(6.1).

New subsection 40(6.1) of the Act is introduced consequential on the introduction of new paragraph (c.1)(iii.1) of the principal residence definition. That subparagraph limits the types of trusts that are eligible to designate a property as a principal residence for a taxation year that begins after 2016.

Subsection 40(6.1) applies if a trust owns a property at the end of 2016, the trust is not described in subparagraph (c.1)(iii.1) of the principal residence definition for the trust's first taxation year

that begins after 2016 and on the trust's first disposition of the property after 2016 the trust chooses to designate the property as its principal residence for any of its taxation years in which it owns the property. In this case, the trust's gain determined under the principal residence rules (i.e., under paragraph 40(2)(b)) is the amount determined under subsection 40(6.1).

The formula in subsection 40(6.1) separates the computation of the trust's gain into two separate periods. Under element A of the formula, the trust computes its "first" gain under paragraph 40(2)(b) on the basis that the trust notionally disposed of the property on December 31, 2016 for proceeds equal to its fair market value on that date. Under this element, that first gain is computed as normally under the principal residence exemption rules that apply to the trust for taxation years that begin before 2017 (i.e., those rules apply in computing the first gain without regard to the new requirements found in subparagraph (c.1)(iii.1) of the principal residence definition). Under element B of the formula, the trust computes its "second" gain under paragraph 40(2)(b) on the basis that the trust notionally acquired the property at the start of 2017 at a cost equal to the fair market value of the property on December 31, 2016 (i.e., the proceeds used in determining the first gain). This second gain is computed as normally under the principal residence exemption rules as they apply to dispositions in taxation years that begin after 2016, but on the assumption that the "one-plus rule" in paragraph 40(2)(b) does not apply. Element C of the formula reduces the total of A and B to the extent that the property's fair market value on December 31, 2016 (i.e., the proceeds from the first notional disposition under A) exceeds the proceeds of disposition of the property on its actual disposition (i.e., the total of A + B is reduced by the amount of any actual loss that accrued on the period after December 31, 2016).

This transitional rule is intended to ensure that a trust that owns a principal residence at the end of 2016, but no longer qualifies to designate the property as its principal residence because of new subparagraph (c.1)(iii.1) of the principal residence definition, may on the trust's first disposition of the property after 2016 continue to benefit from the exemption on its gain accrued up to the end of 2016 to the extent that the trust otherwise qualified for the exemption in respect of that gain. A trust that is not, at any time in or after its first taxation year that begins after 2016, a trust described in that subparagraph, is not eligible to claim the exemption in respect of the portion of its gain that accrues after 2016.

In the case that a trust to which subsection 40(6.1) applies would otherwise have qualified for transitional relief under subsection 40(6) in respect of a property owned by the trust at the end of 1981 and not disposed of until after 2016, a special rule in element A of the formula in subsection 40(6.1) provides that the trust's gain under its first notional disposition under that subsection is computed as though subsection 40(6) applied.

Clause 11

Ecological gifts

ITA
43(2)

Subsection 43(2) of the Act applies where the part of a property donated as an ecological gift is a covenant, easement or servitude established under common law, the civil law of the province of

Quebec or the law of other provinces allowing for their establishment. Subsection 43(2) ensures that a portion of the adjusted cost base ("ACB") of the land to which the covenant, easement or servitude relates is allocated to the donated covenant, easement or servitude. For this purpose, the allocation of the ACB of the land to the gift is calculated in proportion to the percentage decrease in the value of the land as a result of the donation.

Subsection 43(2) currently applies to "real servitudes" under the *Civil Code of Quebec*. Subsection 43(2) is amended to also make it applicable to certain "personal servitudes" under the *Civil Code of Quebec* consequential on the amendments to paragraph 110.1(1)(d) and paragraph (a) of the definition "total ecological gifts" in subsection 118.1(1), which extend the applicability of these provisions to certain gifts of land that are "personal servitudes" under the *Civil Code of Quebec*.

This amendment applies in respect of gifts made after March 21, 2017.

Clause 12

Partnership stop-loss rules

ITA
53(2)(c)(i)(C)

Paragraph 53(2)(*c*) of the Act provides that certain amounts must be deducted in computing the adjusted cost base (ACB) of a taxpayer's partnership interest. In general terms, subparagraph 53(2)(c)(i) reduces the ACB of a partnership interest by the taxpayer's share of losses of the partnership that are not included in the taxpayer's limited partnership losses.

Clause 53(2)(c)(i)(C) provides that any loss of a partnership is to be determined without reference to subsections 100(4), 112(3.1) and (4.2) (as subsection 112(4.2) read in its application to dispositions of property that occurred before April 27, 1995) of the Act. Under those subsections, a taxpayer's share of a partnership loss from the disposition of shares can be reduced by certain dividends received by the taxpayer on the shares.

Clause 53(2)(c)(i)(C) is amended to include references to subsections 112(4) and (5.2).

This amendment is deemed to have come into force on September 16, 2016.

Clause 13

Definitions

ITA
54

Section 54 of the Act defines various terms for the purposes of Subdivision C – Taxable Capital Gains and Allowable Capital Losses.

“superficial loss”

ITA
54 “superficial loss” (c)

The definition “superficial loss” in section 54 of the Act excludes losses on dispositions listed in paragraphs (c) to (h) of the definition. As a consequence of the introduction of section 138.2 (a new rule that allows insurers to effect tax-deferred mergers of segregated funds), a reference to subsection 138.2(4) is introduced so that “dispositions” that are qualifying transfers are also excluded under paragraph (c) of the definition “superficial loss” in section 54.

This amendment applies to taxation years that begin after 2017.

“principal residence”

The principal residence definition sets out the requirements that apply in order for a property (typically a housing unit, but also including certain leasehold interests, and shares of a cooperative housing corporation, in respect of a housing unit) to be a taxpayer's principal residence for a taxation year. Only taxpayers who are individuals or personal trusts are eligible to have a principal residence. A property must be a taxpayer's principal residence for a taxation year in order for that taxation year to apply in reducing, under the formula in paragraph 40(2)(b) of the Act, the taxpayer's gain from a disposition of the property in that year or a later year. These rules are commonly referred to as the "principal residence exemption rules".

In the case where the taxpayer is a personal trust, a property does not qualify as the trust's principal residence for a taxation year unless the requirements in paragraph (c.1) of the definition are met. That paragraph includes the requirements that the trust designate, in prescribed form, the property as the trust's principal residence for the taxation year and that the designation identify each individual who in the taxation year is a specified beneficiary of the trust for the year. For this purpose, a specified beneficiary of a trust for a taxation year is an individual who in the taxation year is beneficially interested in the trust and who (or whose spouse or common-law partner, former spouse or common-law partner or child) ordinarily inhabits the housing unit in the taxation year.

Paragraph (c.1) is amended to introduce additional requirements in order for a property to qualify as a trust's principal residence for a taxation year that begins after 2016. In general terms, these requirements are that the trust be an eligible trust one of whose beneficiaries (the "eligible beneficiary") is resident in Canada in the year and a specified beneficiary of the trust for the

year. Eligible trusts fall into three categories, although a trust may qualify as an eligible trust under more than one of the categories:

- In the first case, an eligible trust is an *alter ego* trust, spousal or common-law partner trust, joint spousal or common-law partner trust, or certain trusts for the exclusive benefit of the settlor during the settlor's lifetime. In this case, the eligible beneficiary is the individual whose death (at any time after the start of the year) determines a day for the trust under subsection 104(4). In effect, the eligible beneficiary must be, depending upon the type of trust, the trust's settlor, or the spouse or common-law partner or former spouse or common-law partner of the settlor. A joint spousal or common-law partner trust may have more than one eligible beneficiary for a taxation year.
- In the second case, an eligible trust is a testamentary trust that is a qualified disability trust for the taxation year. In this case, the trust's eligible beneficiary must be an electing beneficiary under the trust for the year who is a spouse or common-law partner, former spouse or common-law partner or a child of the trust's settlor. The trust may have more than one eligible beneficiary for a taxation year.
- In the final case, an eligible trust is a trust the settlor of which died before the start of the year. In this case, the eligible beneficiary must be an individual who has not reached 18 years of age before the end of the year and whose mother or father is the settlor. If a mother or father of the individual is alive in the year, the trust must have arisen on and as a consequence of the death of the settlor (or, if no mother or father of the individual is alive before the start of the year, the trust may be an *inter vivos* trust). The trust may have more than one eligible beneficiary for a taxation year.

This amendment applies in determining whether a trust that disposes of property, in (or after) the trust's first taxation year that begins after 2016, may designate the property as its principal residence for the year of disposition and any earlier taxation years of the trust. In this regard:

- For the trust to be eligible to designate the property as its principal residence for any taxation years of the trust that begin after 2016, the trust must meet for the year the requirements introduced by new subparagraph (c.1)(iii.1). This is the case whether the trust acquired the property before 2017 or after 2016.
- However, if the trust owned the property before 2017, new subparagraph (c.1)(iii.1) does not apply in determining whether the property may be designated as a principal residence of the trust for a taxation year that begins before 2017. In addition, in this case, the trust's gain from the disposition may be determined using the special transitional rule in new subsection 40(6.1) of the Act if the requirements in that subsection are met.

This amendment does not apply in determining whether a trust that disposes of property in the trust's 2016 taxation year (or, in the case of a graduated rate estate that has a 2017 taxation year that began in 2016) may designate the property for that year and any earlier taxation years of the trust.

Clause 14

Pooled registered pension plans

ITA
56(1)(z.3)

Subsection 56(1) of the Act describes certain amounts that are required to be included in computing the income of a taxpayer for a taxation year.

Paragraph 56(1)(z.3) creates a reference to amounts required to be included in income because of section 147.5. Section 147.5 provides rules relating to pooled registered pension plans (PRPPs) and, in general terms, amounts distributed from a taxpayer's account under a PRPP are required to be included in computing the taxpayer's income.

Paragraph 56(1)(z.3) is amended to exempt from inclusion in the income of the taxpayer an amount paid out of a PRPP as a refund of contributions made to the PRPP where:

1) the refund is described under clause 147.5(3)(d)(ii)(A) or (B) (i.e., a refund of contributions made to the PRPP as a result of a reasonable error or a refund to avoid the revocation of the PRPP); and

2) the amount is not deducted as a PRPP contribution for the taxation year in which the refund is made or for any preceding taxation year.

This amendment is deemed to have come into force on December 14, 2012.

Clause 15

Restrictive Covenants

ITA
56.4

Section 56.4 of the Act provides rules for amounts that are received or receivable with respect to restrictive covenants.

Realization of goodwill

ITA
56.4(7)(b), (c) and (g)

Subsection 56.4(7) provides a set of conditions that, if met, result in subsection 56.4(5) applying with respect to a restrictive covenant granted by a taxpayer with the result that section 68 does not apply to deem consideration to be received or receivable by a taxpayer for granting the restrictive covenant. In general, for subsection 56.4(7) to apply, a non-compete covenant is required to be granted in conjunction with a realization of a “goodwill amount” or the disposition of property. The conditions that must be satisfied differ depending on whether the restrictive covenant is granted to a person who deals with the vendor on an arm’s length basis or is made to an eligible individual (i.e., a related individual who has attained the age of 18 years).

Subsection 56.4(7) is amended in three respects.

(1) Clause 56.4(7)(b)(ii)(A)

Paragraph 56.4(7)(b) provides conditions that must be met in the case of a grant of a non-compete restrictive covenant by a taxpayer (the vendor) to another taxpayer (the purchaser) who deals at arm's length with the vendor. Subparagraph (7)(b)(i) requires that the amount of consideration that can reasonably be regarded as being for a non-compete covenant be included in computing a goodwill amount of the vendor (clause (A)) or be included in computing a goodwill amount of the vendor's eligible corporation (clause (B)). A "goodwill amount" is defined in subsection 56.4(1).

Although subparagraph (7)(b)(i) applies to goodwill amounts, concern has been expressed that subparagraph (7)(b)(ii) could also apply to property that is in respect of a goodwill amount, and that this can cause difficulty in applying paragraph (b). In general, clause (7)(b)(ii)(A) requires that it be reasonable to conclude that the restrictive covenant is integral to an agreement in writing under which the vendor or the vendor's eligible corporation disposes of property (other than property described in clause (B)) to the purchaser, or the purchaser's eligible corporation. Property described in clause (B) is excluded from the application of clause (A) (i.e., shares of a target corporation). Clause (A) does not exclude from its application an agreement that concerns property that is in respect of a goodwill amount to which subparagraph (7)(b)(i) could apply.

Clause (7)(b)(ii)(A) is amended to also exclude from its application property described in subparagraph (b)(i).

(2) Subclause 56.4(7)(c)(i)(B)(I)

An analogous issue to the one described above in respect of paragraph 56.4(7)(b) exists under paragraph 56.4(7)(c), which concerns a vendor's grant, on a non-arm's length basis, of a non-compete covenant to an eligible individual or an eligible corporation of the eligible individual. To address the concern, subclause 56.4(7)(c)(i)(B)(I) is amended to exclude from its application property described in clause (7)(c)(i)(A).

(3) Subparagraphs 56.4(7)(g)(i) and (ii)

Paragraph 56.4(7)(g) requires the filing of a joint election in prescribed form where the consideration in respect of a non-compete covenant is a goodwill amount to which subparagraph 56.4(7)(b)(i) or clause (c)(i)(A) applies.

Subparagraphs (g)(i) and (ii) are amended to clarify that the persons required to file the joint election are

- the person that includes the goodwill amount in computing its income (that is, the vendor or the vendor's eligible corporation), and
- the person that incurs the expenditure that is a goodwill amount (that is, the purchaser or the purchaser's eligible corporation). Concern has been expressed that the purchaser might also have to file the joint election in such a case. Under the change (which adds a parenthetical comma to subparagraphs (i) and (ii)), if for example, the vendor includes in its income the goodwill amount resulting from granting a non-compete covenant to the

purchaser's eligible corporation which incurs the expenditure, the joint election is to be filed by the vendor and the purchaser's eligible corporation.

These amendments apply to restrictive covenants granted on or after September 16, 2016.

Clause 16

Eligible Pension Income

ITA
60.03(1)

Subsection 60.03(1) provides definitions that apply for the purposes of the pension income splitting rules, which allow a taxpayer to allocate up to 50% of the taxpayer's "eligible pension income" to the taxpayer's spouse or common-law partner in certain circumstances.

The existing definition "eligible pension income" in subsection 60.03(1) includes a) eligible pension income as defined in subsection 118(7) and which applies in relation to the pension income credit, and b) income received from a retirement compensation arrangement (RCA) in certain circumstances.

The definition "eligible pension income" in subsection 60.03(1) is amended by adding paragraph (c) to also include amounts received by the taxpayer on account of a retirement income security benefit (RISB amount) under Part 2 of the Canadian Forces Members and Veterans Re-establishment and Compensation Act. The RISB amount to be split is capped at the amount described in subparagraph (c)(ii) of the definition. This amount is the defined benefit limit (as defined in subsection 8500(1) of the *Income Tax Regulations*) multiplied by 35 minus the total of the taxpayer's other eligible pension income and income received under an RCA.

The effect of new paragraph (c) will be to enable couples to split RISB amounts, but only to the extent that the total amount of eligible pension income they elect to split does not exceed the defined benefit limit multiplied by 35 ($101,150 for 2016). The defined benefit limit, multiplied by 35, is equal to the maximum defined benefit pension available under the existing registered pension plan limits for a 35-year career.

This amendment applies to the 2015 and subsequent taxation years.

Clause 17

Eligible moving expenses (students)

ITA
62(2)

Subsection 62(2) provides a deduction for the qualifying moving expenses of an individual who moves to or from Canada to pursue higher education. The provision contains a "read as" rule which provides that "both" in paragraph (b) of the definition "eligible relocation" in subsection 248(1) is to be read as "either or both".

Subsection 62(2) is amended to correct the reference to “both” in the definition “eligible location”, which is found in paragraph (c) of the definition.

Clause 18

Income exceeding income of supporting person

ITA
63(2)(b)

Section 63 of the Act provides rules concerning the deductibility of child care expenses in computing an individual's income. When more than one taxpayer contributes to the support of an eligible child, the child care expense deduction must generally be claimed by the taxpayer with the lower income for the year. One of the exceptions to this rule is where a medical doctor certifies that the lower-income supporting individual is incapable of caring for children because of that individual's mental or physical infirmity.

Clause (i)(B) in the description of variable C in paragraph 63(2)(b) is amended to also authorize nurse practitioners to make such certifications.

This amendment applies to certifications made on or after September 8, 2016.

Clause 19

ITA
66

Section 66 of the Act provides for the deduction of certain resource related expenses.

ITA
66(12.601)

Subsections 66(12.601) and (12.602) allow eligible small oil and gas corporations (including any associated corporations) with total taxable capital employed in Canada of less than $15 million to collectively renounce up to $1 million of Canadian development expenses (CDE) per calendar year and have those expenses reclassified as Canadian exploration expenses (CEE) in the hands of flow-through shareholders. This allows flow-through shareholders to deduct 100% of the amount of renounced Expenses as CEE. CDE is deductible at a rate of 30% per year.

The CDE eligible for reclassification must generally be incurred within the 24-month period that begins on the day on which the relevant flow-through share agreement is entered into, and must be incurred on or before the effective date of the renunciation. In addition, under the “look-back” rule, expenses incurred and renounced in the first 60 days of a calendar year can be treated as having been incurred at the end of the preceding calendar year.

Paragraph 66(12.601)(b) is amended to no longer permit eligible small oil and gas corporations to reclassify the first $1 million of CDE as CEE. This amendment applies in respect of expenses incurred after 2018 (including expenses incurred in 2019 that are deemed to be incurred in 2018

because of the look-back rule). However, CDE expenses incurred after 2018 and before April 2019 that are renounced under a flow-through share agreement entered into after 2016 and before March 22, 2017 remain eligible for reclassification as CEE.

Clause 20

ITA
66.1

Section 66.1 of the Act provides the rules relating to the deduction of "Canadian exploration expense" (CEE) (as defined in subsection 66.1(6)). Specifically, the deduction of CEE is provided for through the concept of "cumulative Canadian exploration expense" (as defined in subsection 66.1(6)) and deductions under subsections 66.1(2) and (3) with respect to cumulative Canadian exploration expense. Subsections 66.1(2) and (3) allow a taxpayer a deduction for a taxation year of up to 100% of its cumulative Canadian exploration expense (cumulative CEE) at the end of the year.

ITA
66.1(6)

"Canadian exploration expense"

The definition "Canadian exploration expense" (CEE) in subsection 66.1(6) defines oil, gas, mining and Canadian renewable and conservation expenses that qualify for treatment as CEE, which expenses are fully deductible in the taxation year incurred or in a future taxation year.

Under subparagraph (d)(i) of the CEE definition, CEE includes a taxpayer's expenses incurred in a taxation year for drilling or completing an oil or gas well in Canada, only in the event that the drilling or completing of the well resulted in the initial discovery that a natural underground reservoir contains petroleum or natural gas, and the discovery occurred within six months after the end of the year.

Subparagraph (d)(i) of the CEE definition is amended by introducing new clause (i)(C). New subclause (i)(C)(I) provides for a grandfathering provision whereas new subclause (i)(C)(II) is the main provision which applies in all other cases.

Subclause (C)(II) ensures that expenditures related to drilling or completing a discovery well (or in building a temporary access road to, or in preparing a site in respect of, any such well) incurred after 2018 (including expenses incurred in 2019 that are deemed to have been incurred in 2018 because of the "look-back" rule) no longer qualify as CEE. By default, such expenses will be included in the definition "Canadian development expense" (CDE) in subsection 66.2(5).

Subclause (C)(I) is a grandfathering rule that ensures that expenses actually incurred before 2021 continue to qualify as CEE if the expenses are related to drilling or completing a discovery well, where the taxpayer has, before March 22, 2017, entered into a written commitment (including a commitment to a government under the terms of a license or permit) to incur those expenses.

Clause 21

Trust attribution

ITA
75(3)(d)

Subsection 75(2) of the Act generally provides for the attribution to a person resident in Canada of income and losses derived from certain trust property where the property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person). Subsection 75(3) exempts certain property from this attribution rule.

Paragraph 75(3)(d) provides for the exemption of a prescribed trust. No regulations are enacted under this prescribing power. The prescribing power in that paragraph is repealed and the paragraph is replaced by new paragraph 75(3)(d).

New paragraph 75(3)(d) provides that, if certain conditions are met, subsection 75(2) does not apply to property received by a trust from an individual who in turn received the property in respect of a child under section 4 of the *Universal Child Care Benefit Act* or as consequence of the operation of subsection 122.61(1) of the Act. To qualify, the trust's only beneficiaries must be children in respect of whom those benefits are received by an individual (e.g., the child's parent) from whom the trust acquired the property. Where these conditions are met in respect of a property received by the trust, paragraph 75(3)(d) also applies to the trust's property that is substituted for that property.

This amendment ensures that this attribution rule operates – with respect to Canada Child Tax Benefit, the Universal Child Care Benefit and the Canada Child Benefit amounts held in trust for a child – similarly to the attribution rule in subsection 74.1(2). This amendment does not affect the application of subsection 75(2) to a trust with respect to property of the trust not described by paragraph 75(3)(d).

This amendment applies to taxation years that end after on or after September 16, 2016.

Clause 22

Definitions – Deferred Recognition of Debtor's Gain on Settlement of Debt

ITA
80.03(1)

Section 80.03 of the Act contains rules relating to the debt forgiveness rules in section 80. Subsection 80.03(1) provides that a number of expressions used in the section have the meanings assigned by subsection 80(1).

Subsection 80.03(1) of the English version of the Act is amended to reinstate the definitions "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" which had been inadvertently deleted in the English version of the Act when the definition "taxable dividend" was repealed.

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

Clause 23

Eligible derivatives

ITA
85(1.12)

Subsection 85(1.1) of the Act describes the type of property (referred to as “eligible property”) that may be transferred to a corporation on a rollover basis under subsection 85(1).

New subsection 85(1.12) provides that, notwithstanding subsection 85(1.1), an eligible derivative (as defined in new subsection 10.1(5)) of a taxpayer to which new subsection 10.1(6) applies is not an “eligible property” of the taxpayer in respect of a disposition by the taxpayer to a corporation. Similar amendments are being made to the preambles to subsections 85(2) and 97(2), which provide for the rollover of certain properties by, or to, partnerships. These amendments ensure that a non-financial institution that has elected under new subsection 10.1(1) to mark to market its eligible derivatives cannot rely on the rollover mechanisms in subsections 85(1) and (2) and 97(2) to defer the recognition of any unrealized profit that accrued in the year of transfer in respect of such property, which are intended to be revalued to fair market value on an annual basis. The potential for such property to be rolled over to a transferee that has not made an election under subsection 10.1(1) could frustrate that policy objective. These amendments parallel the exclusion, under subparagraph 85(1.1)(g)(iii), of property that is a mark-to-market property of a financial institution.

For more information, see the commentary on new subsection 10.1(6) and the definition “eligible derivative” in new subsection 10.1(5).

This amendment applies to taxation years that begin after March 21, 2017.

Transfer of property to corporation from partnership

ITA
85(2)

Subsection 85(2) of the Act provides that the rules in subsection 85(1) will apply and allow a transfer on a tax-deferred basis of certain properties by a partnership to a taxable Canadian corporation in exchange for shares.

The preamble to subsection 85(2) is amended to provide that, if new subsection 10.1(6) applies to the partnership, property that is an eligible derivative (as defined in new subsection 10.1(5)) of the partnership is excluded from subsection 85(2). This amendment parallels the introduction of new subsection 85(1.12) and the amendment to the preamble to subsection 97(2).

For more information, see the commentary on new subsections 10.1(6), 85(1.12) and the definition “eligible derivative” in new subsection 10.1(5).

This amendment applies to taxation years that begin after March 21, 2017.

Clause 24

ITA
87(2)(e.41)

New paragraph 87(2)(e.41) of the Act applies with respect to each eligible derivative (as defined in new subsection 10.1(5)) of a predecessor corporation immediately before the end of its last taxation year where new subsection 10.1(6) applied to the predecessor corporation in its last taxation year. It provides that each such eligible derivative is deemed to have been reacquired or reissued or renewed, as the case may be, by the new corporation at its fair market value immediately before the amalgamation. As a result of new paragraph 87(2)(e.41), the cost to the new corporation of each such eligible derivative is equal to its fair market value immediately before the amalgamation.

It should be noted that the predecessor corporation is deemed to have disposed of each such eligible derivative immediately before the amalgamation and received proceeds or paid an amount, as the case may be, equal to its fair market value at the time of disposition. This deemed disposition occurs by the combined effect of paragraph 87(2)(a) and new subsection 10.1(6).

For more information, see the commentary on new subsection 10.1(6) and the definition “eligible derivative” in new subsection 10.1(5).

This amendment applies to taxation years that begin after March 21, 2017.

ITA
87(2)(e.42)

New paragraph 87(2)(e.42) of the Act is introduced consequential on the introduction of new subsection 10.1(7). In general terms, new subsection 10.1(7) defers the recognition of a taxpayer’s unrealized profit or loss in respect of eligible derivatives held by the taxpayer at the beginning of the first taxation year in respect of which an election made under new subsection 10.1(1) applies to the taxpayer until the taxation year in which they are actually disposed of by the taxpayer.

New paragraph 87(2)(e.42) provides that, for the purposes of new subsection 10.1(7), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

For more information, see the commentary on new subsection 10.1(7) and the definition “eligible derivative” in new subsection 10.1(5).

This amendment applies to taxation years that begin after March 21, 2017.

Foreign mergers - rollover

ITA
87(8.4) and (8.5)

New subsections 87(8.4) and (8.5) allow taxpayers to elect for dispositions of taxable Canadian property ("TCP") that is shares of a corporation or an interest in a partnership or trust to occur on a tax-deferred ("rollover") basis, where the disposition results from a foreign merger that meets certain conditions. A disposition of property by a merging foreign corporation on a foreign merger otherwise occurs on a taxable basis; the combined effect of subsections 87(8.4) and (8.5) is to provide tax-deferred rollover treatment in respect of a disposition of shares of a merging foreign corporation on a foreign merger, but not in respect of a disposition of property owned by the merging foreign corporations.

Subsection 87(8.4) contains the conditions of application for the operative rule in subsection 87(8.5). Subsection 87(8.4) provides that subsection 87(8.5) applies at any time if the following conditions are satisfied:

- There is, at that time, a foreign merger of two or more predecessor foreign corporations that were, immediately before that time, resident in the same country and related to each other (determined without reference to paragraph 251(5)(b)). The terms "foreign merger" and "predecessor foreign corporation" are defined in subsection 87(8.1), but for purposes of determining whether these conditions are satisfied, subsection 87(8.1) and (8.2) are to be read without reference to their exclusions for windings-up.
- Because of the foreign merger,
    - a predecessor foreign corporation (the "disposing predecessor foreign corporation") disposes of TCP (other than treaty-protected property) that is a share of the capital stock of a corporation, or an interest in a partnership or trust (the "subject property"), and
    - the subject property becomes property of a corporation that is a new foreign corporation for the purposes of subsection 87(8.1).
- No shareholder (other than a predecessor foreign corporation) that owned shares of a predecessor foreign corporation immediately before the foreign merger received consideration for the disposition of the shares on the merger, other than shares of the new foreign corporation.
- If the subject property is shares of a corporation or an interest in a trust, the corporation or trust (the shares of, or interest in, which are disposed of as a result of the foreign merger) is not – at any time in the 24–month period ending after that time, as part of a transaction or event, or series of transactions or events including the foreign merger – subject to a loss restriction event (as defined in subsection 251.2(2)).
- The new foreign corporation and the disposing predecessor foreign corporation jointly elect for tax-deferred treatment, in writing under paragraph 87(8.4)(e) in respect of the foreign merger, and file the election with the Minister of National Revenue on or before

the filing due-date of the disposing predecessor foreign corporation for the taxation year that includes that time.

Whether a foreign merger results in a disposition of property owned by a predecessor foreign corporation generally depends on the applicable foreign law. For example, in the case of a foreign “absorptive merger” (in which one corporation ceases to exist upon merging with and into a "surviving" corporation), the non-surviving predecessor foreign corporation could be considered to dispose of its property to the surviving foreign corporation. Since the deeming rules in subsection 87(8.2) allow an absorptive foreign merger to constitute a foreign merger within the meaning of subsection 87(8.1), and the surviving corporation on such a merger to be considered a “new foreign corporation” in respect of the foreign merger (even though such a merger does not legally result in a "new" foreign corporation being created), absorptive foreign mergers may, depending on the circumstances, satisfy the conditions in subsection 87(8.4).

Where the conditions in subsection 87(8.4) are satisfied, subsection 87(8.5) applies to provide a rollover in respect of the disposition of the subject property.

Paragraph 87(8.5)(a) sets out special rules in respect of a subject property that is a partnership interest. These rules are intended to provide similar tax results to those provided under paragraph 87(2)(e.1) where a partnership interest is acquired by a new corporation (as defined in subsection 87(1)) on an amalgamation of two taxable Canadian corporations. Subparagraph 87(8.5)(a)(i) ensures that no gain in respect of a “negative” adjusted cost base (ACB) in the partnership interest is realized under subsection 100(2) on the foreign merger, by deeming the disposing foreign predecessor corporation not to have disposed of the partnership interest (other than for purposes of determining whether the conditions in subsection 87(8.4) are met). As a result, a realization of any such gain would generally be deferred until the new foreign corporation ultimately disposes of the partnership interest or, if the new foreign corporation is a limited partner, a gain is deemed at the end of the partnership’s fiscal period under subsection 40(3.1).

Clauses 87(8.5)(a)(ii)(A) and (B) ensure that the new foreign corporation inherits the disposing predecessor foreign corporation’s cost in the partnership interest, and that all adjustments required to be made by the disposing predecessor foreign corporation in calculating the ACB of its partnership interest will be taken into account in computing any subsequent gain or loss of the new corporation in respect of the partnership interest. In particular, any “negative” ACB in respect of the partnership interest held by the disposing predecessor foreign corporation is preserved in relation to the new foreign corporation by the application of subsection 87(8.5).

Where the subject property is shares or a trust interest, paragraph 87(8.5)(b) deems:

- the subject property to have been disposed of, at the time of the foreign merger, by the disposing predecessor foreign corporation to the new foreign corporation for proceeds of disposition equal to the ACB of the subject property to the disposing predecessor foreign corporation immediately before the foreign merger; and
- the cost of the subject property to the new foreign corporation to be the amount of the deemed proceeds of disposition of the subject property.

These amendments apply to foreign mergers that occur on or after September 16, 2016.

Share deemed listed

ITA
87(10)

Subsection 87(10) of the Act provides a rule dealing with an amalgamation of two or more taxable Canadian corporations where shares of a predecessor corporation that are listed on a "designated stock exchange" are temporarily replaced by unlisted shares of the new corporation. Subsection 87(10) deems those temporary shares to have been listed on a designated stock exchange for certain purposes under the Act, such as for qualified investment rules for registered savings arrangements.

Subsection 87(10) is amended to replace the reference to subsection 205(1) with a reference to subsection 146.4(1), consequential on the repeal of section 205 and moving the definition "qualified investment" that previously appeared in that section for RDSP purposes to subsection 146.4(1).

This amendment comes into force on March 23, 2017.

Clause 25

Parked Debt

ITA
88(1)(e.2)

Subsection 88(1) of the Act provides rules that apply where a subsidiary has been wound up into its parent corporation, if both corporations are taxable Canadian corporations and the parent owns at least 90% of the issued shares of each class of the subsidiary's capital stock.

Paragraph 88(1)(e.2) provides that a number of the rules that apply to amalgamations under section 87 of the Act also apply, with certain modifications, to windings-up under subsection 88(1). Paragraph 87(2)(l.21) specifically allows for a deduction under subsection 80.01(10) to a successor corporation when a subsequent payment is made against a parked debt of one of the pre-amalgamation corporations.

Paragraph 88(1)(e.2) is amended to include a reference to paragraph 87(2)(l.21) in order to provide for the parent on a winding up to be deemed to be a continuation of its subsidiary for the purposes of subsection 80.01(10).

This amendment applies to taxation years ending after 2001.

ITA
88(1)(e.2)

Paragraph 88(1)(e.2) of the Act provides that a number of rules that apply to amalgamations under subsection 87(2) also apply, with certain modifications, to windings-up under subsection 88(1). This paragraph is amended to add a reference to new paragraph 87(2)(e.42). Accordingly,

for the purposes of new subsection 10.1(7), the parent is deemed to be the same corporation as, and a continuation of, the subsidiary.

For more information, see the commentary on new subsection 10.1(7) and new paragraph 87(2)(e.42).

This amendment applies to taxation years that begin after March 21, 2017.

ITA
88(1)(j)

New paragraph 88(1)(j) of the Act provides that, for the purposes of new subsection 10.1(6), the taxation year of a subsidiary in which an eligible derivative (as defined in new subsection 10.1(5)) was distributed to, or assumed by, the parent on a winding-up is deemed to have ended immediately before the time when the eligible derivative was distributed or assumed. Consequently, if subsection 10.1(6) applies to the subsidiary, it will deem the subsidiary to have disposed of the eligible derivative immediately before the distribution to, or assumption by, the parent and to have received proceeds or paid an amount, as the case may be, equal to its fair market value at the time of disposition.

For more information, see the commentary on new subsection 10.1(6) and the definition "eligible derivative" in new subsection 10.1(5).

This amendment applies to taxation years that begin after March 21, 2017.

Clause 26

Capital Dividend Account

ITA
89(1) "capital dividend account"

The definition "capital dividend account" is part of a mechanism for allowing capital gains to flow through a private corporation without attracting an extra level of tax. To the extent that a private corporation has a capital dividend account, it may generally elect to treat dividends that it pays as capital dividends. Capital dividends may be received tax-free by the corporation's shareholders.

Under paragraph (*a*) of the definition, the non-taxable portions of capital gains realized by a private corporation are added to its capital dividend account and these capital gains amounts are reduced by the non-allowable portions of the corporation's realized capital losses.

Under paragraph (*f*) of the definition, the non-taxable portions of capital gains distributed to a private corporation from a trust may be added to the corporation's capital dividend account. However, these amounts are not reduced by the non-allowable portion of the corporation's realized capital losses.

Paragraph (*a*) of the definition capital dividend account is amended so that in computing a private corporation's capital dividend account in respect of distributions from a trust after

September 15, 2016, it is the total of the non-taxable portions of capital gains distributed from the trust to the corporation and the non-taxable capital gains realized by the corporation that is reduced by the non-allowable portion of the corporation's realized capital losses.

Paragraph (*f*) of the definition remains in force in respect of distributions from a trust made before September 16, 2016.

Clause 27

Upstream loan continuity – reorganizations

ITA
90(6.1) and (6.11)

New subsections 90(6.1) and (6.11) provide "continuity" rules for purposes of the upstream loan rules in subsections 90(6) and 90(7) to (15) (and certain related temporary relieving rules) where there has been a reorganization of a corporation or partnership. These new subsections are intended to ensure that the upstream loan rules continue to apply, and cannot be avoided, where a reorganization occurs following the making of an upstream loan. They are also intended to ensure that a reorganization does not result in double taxation, either by causing the upstream loan rules to apply multiple times in respect of what is in substance the same debt, or by preventing a repayment of a debt from being effective for purposes of the rules.

New subsection 90(6.1) provides the conditions for the application of the continuity rules contained in new subsection 90(6.11). New subsection 90(6.1) provides that new subsection 90(6.11) applies where the following conditions are met:

- Immediately before the reorganization, a person or partnership (the "original debtor") owes an amount in respect of a loan or indebtedness (the "pre-transaction loan") to another person or partnership (the "original creditor");
- The pre-transaction loan was, at the time it was made or entered into, a loan or indebtedness that is described in subsection 90(6). It is intended that, where a pre-transaction loan arose prior to the introduction of the upstream loan rules, this condition is satisfied if the pre-transaction loan would have been described in subsection 90(6) had that subsection come into force prior to the time when the pre-transaction loan arose.
- In the course of an amalgamation, merger, foreign merger, winding-up or liquidation and dissolution,
    - the amount owing in respect of the pre-transaction loan becomes owing by another person or partnership (the "new debtor");
    - the amount owing in respect of the pre-transaction loan becomes owing to another person or partnership (the "new creditor"); or
    - the taxpayer, in respect of which the original debtor was a specified debtor at the time the pre-transaction loan was entered into, ceases to exist or merges with one or more corporations to form one corporate entity (the "new corporation").

Where the conditions in new subsection 90(6.1) are satisfied in respect of a reorganization, new subsection 90(6.11) provides deeming rules for the purposes of subsections 90(6), 90(7) to (15), 39(2.1) and (2.2) and paragraph 95(2)(*g.04*). Where, in the course of the reorganization, the amount owing in respect of the pre-transaction loan becomes owing by a new debtor, or to a new creditor, subsection 90(6.11) deems the loan or indebtedness that becomes owing by the new debtor, or to the new creditor, to be the same as that owing by the original debtor, or to the original creditor. Subsection 90(6.11) also deems the new debtor or new creditor to be the same as the original debtor or original creditor, respectively.

Paragraphs 90(6.11)(c) and (d) apply where the taxpayer is involved in a reorganization. If the taxpayer is amalgamated with one or more corporations to form a new corporation, paragraph 90(6.11)(d) deems the new corporation to be the same as, and a continuation of, the taxpayer.

Paragraph 90(6.11)(c) applies if the taxpayer is wound up. Subparagraph 90(6.11)(c)(i) deems any entity (referred to in paragraph 90(6.11)(c) as a "successor entity") that held an equity interest (e.g., a partnership interest in, or shares of, the taxpayer) immediately before the taxpayer ceased to exist to be the same as, and a continuation of, the taxpayer.

Subparagraph 90(6.11)(c)(i) is subject to subparagraph 90(6.11)(c)(ii), which pro-rates the amount that each successor entity may deduct upon repayment of an upstream loan. Specifically, for the purposes of applying subsection 90(13) and the description of A in subsection 90(14), subparagraph 90(6.11)(c)(ii) deems an amount, in respect of a loan or indebtedness, to have been included under subsection 90(6) in computing the income of each successor entity equal to:

- If the taxpayer is a partnership of which the successor entity is a member, the amount that may reasonably be considered to be the successor entity's share of the specified amount that was required to be included in computing the wound-up taxpayer's income under subsection 90(6) in respect of the loan or indebtedness, based on the successor entity's share in the income or loss of the taxpayer (determined in accordance with subsection 96(1)) for the taxpayer's final fiscal period.
- In any other case (*e.g.*, where the wound-up taxpayer is a corporation), the successor entity's pro-rated share of the specified amount included in the wound-up taxpayer's income under subsection 90(6), in respect of the loan or indebtedness, based on the proportion that the fair market value of the successor entity's equity interest in the wound-up taxpayer, immediately before the distribution of the taxpayer's assets on the winding-up, is of the total fair market value of all equity interests in the wound-up taxpayer at that time.

Subparagraph 90(6.11)(c)(ii) reflects a general policy that the continuity rules are not intended to give taxpayers a more favourable tax consequence through a reorganization than would have been available absent the reorganization. It is intended to address circumstances in which more than one successor entity is deemed to be the same as, and a continuation of, a taxpayer and, on repayment of an upstream loan, each successor entity claims a deduction under subsection 90(14) based on the specified amount included in the wound-up taxpayer's income in respect of the upstream loan.

Subparagraph 90(6.11)(c)(ii) ensures that the total amount that all successor entities described in subparagraph 90(6.11)(c)(i) may deduct does not exceed the amount that the wound-up taxpayer would have been able to deduct on repayment of an upstream loan but for the winding up. It also pro-rates the specified amount for purposes of subsection 90(13), to ensure that a corporation that held an equity interest in the wound-up taxpayer cannot claim an excessive deduction under subsection 90(9) in respect of the same portion of the specified amount that was the basis for a subsection 90(14) deduction in the taxation year or a preceding taxation year.

Subsections 90(6.1) and (6.11) are designed to ensure, among other things, that, consistent with the policy intent, the annual inclusions and deductions under subsections 90(12) and (9), respectively, continue to occur following a reorganization, notwithstanding that a taxpayer may have ceased to exist in the course of the reorganization. The rules are also intended to ensure that a reorganization does not cause a new income inclusion under subsection 90(6) in respect of an upstream loan for which there has already been a subsection 90(6) inclusion, or inappropriately interfere with the ability to qualify for relief under subsection 90(8) or (14) on a subsequent repayment of an upstream loan.

New subsections 90(6.1) and (6.11) apply in respect of transactions and events that occur on or after September 16, 2016. However, if a taxpayer files an election with the Minister of National Revenue before 2017, new subsection 90(6.1) and (6.11) apply in respect of the taxpayer as of August 20, 2011.

Example

Assumptions

- Canco1 and Canco2, are both corporations resident in Canada with December 31 taxation year-ends and each has a 50 per cent income share in LP, a partnership with a December 31 fiscal period end.
- LP owns all of the shares of FA, a non-resident corporation.
- On January 1, 2015, FA loans $100 to Canco2 (the “upstream loan”).
- On June 30, 2017, LP is wound up and the FA shares are distributed equally between Canco1 and Canco2, which also assume a debt owing by LP to an arm’s length secured creditor.
- On December 31, 2017, Canco2 repays the upstream loan.
- At all times, FA has exempt surplus of $50 and taxable surplus of $50, with no underlying foreign tax, in respect of Canco1 and Canco2.

Analysis

Because FA is a foreign affiliate of LP, and Canco2 is a specified debtor in respect of LP (as defined in subsection 90(15)), LP will have an income inclusion of $100 in its 2015 fiscal period

under subsection 90(6). As a result, $50 is allocated to, and included in the income of each of, Canco1 and Canco2 for their 2015 taxation years.

For the purposes of applying subsection 90(9), subsection 90(10) allocates $50 of the $100 included in LP's income under subsection 90(6) to each of Canco1 and Canco2. As a result, Canco1 and Canco2 may each deduct $25 under subsection 90(9) in their 2015 taxation years – the amount that, if the upstream loan were instead paid as a dividend, may reasonably be considered to have been deductible under paragraph 113(1)(a) in respect of FA's $50 exempt surplus in respect of Canco1 and Canco2. In their 2016 taxation years, Canco1 and Canco2 each have a $25 income inclusion under subsection 90(12) in respect of the amounts each deducted under subsection 90(9) in 2015 and can take an offsetting deduction under subsection 90(9).

In their 2017 taxation years, Canco1 and Canco2 each have a $25 income inclusion under subsection 90(12). Subparagraph 90(6.11)(c)(i) deems Canco1 and Canco2 to be the same entity as, and a continuation of, LP when it ceases to exist. As a result, Canco1 and Canco2 may each deduct $50 under subsection 90(14) for their 2017 taxation years when Canco2 repays the upstream loan. Since subparagraph 90(6.11)(c)(ii) pro-rates the specified amount between Canco1 and Canco2 for the purposes of subsection 90(13), neither Canco1 nor Canco2 is entitled to a deduction under subsection 90(9) in its 2017 taxation year.

Back-to-back loans

ITA
90(7)

Subsection 90(7) of the Act collapses certain back-to-back loans into one, to the extent of the lesser loan amount. This rule operates iteratively so that multiple loans may, in appropriate circumstances, all be collapsed into one.

Subsection 90(7) is amended to add references to subsections 39(2.1) and (2.2) and paragraph 95(2)(g.04), so that the back-to-back loan rules will apply for the purposes of those provisions. Subsections 39(2.1) and (2.2), together with their companion rule in paragraph 95(2)(g.04), provide a temporary measure that sets off, in certain circumstances, foreign exchange gains or losses of a taxpayer on the repayment of a debt obligation owing to a foreign affiliate of the taxpayer against the related foreign exchange losses or gains of the foreign affiliate from the repayment. These set-off rules apply only in respect of the repayment on or before August 19, 2016 of the portion of a debt obligation outstanding on August 19, 2011.

This amendment applies in respect of loans received and indebtedness incurred after August 19, 2011. However, the amendment also applies in respect of any portion of a particular loan received or a particular indebtedness incurred on or before August 19, 2011 that remains outstanding on August 19, 2014 as if that portion were a separate loan or indebtedness that was received or incurred, as the case may be, on August 20, 2014 in the same manner and on the same terms as the particular loan or indebtedness.

Corporations – deduction for amounts included under subsection 90(6) or (12)

ITA
90(9)(a)(ii)

Subsection 90(9) provides relief from the upstream loan rules. This rule, together with subsection 90(12), provides for a deduction and inclusion on an annual basis for the period during which the loan or indebtedness is outstanding. Essentially, this deduction is intended to allow taxpayers to make loans instead of paying dividends where there is no intention to achieve a Canadian tax benefit. The deduction under subsection 90(9) is for a particular amount in respect of the specified amount included in income under subsection 90(6) (or in respect of an amount included under subsection 90(12)) where the particular amount is the total of certain deductions that could have been claimed had the specified amount in respect of the upstream loan been instead distributed as dividends (as set out in paragraph 90(9)(a)), and where these same deductions have not been claimed in respect of other loans or distributions (as set out in paragraphs 90(9)(b) and (c)).

Under subparagraph 90(9)(a)(ii) of the existing rules, previously-taxed foreign accrual property income ("FAPI") is an element of the subsection 90(9) deduction, but only where the specified debtor is a non-resident person that does not deal at arm's length with the taxpayer or a partnership of which such a person is a member. Subparagraph 90(9)(a)(ii) is amended to instead include previously-taxed FAPI in the subsection 90(9) deduction only in the converse case: namely, only where the specified debtor is a person or partnership other than a non-resident person that does not deal at arm's length with the taxpayer or a partnership of which such a non-resident person is a member. On the one hand, this ensures that the rules apply as intended, to include previously-taxed FAPI in the subsection 90(9) deduction where the specified debtor is either the Canadian-resident taxpayer, a person resident in Canada that does not deal at arm's length with the taxpayer or a partnership no member of which is a non-resident person that does not deal at arm's length with the taxpayer. On the other hand, this amendment ensures that the subsection 90(9) deduction does not include previously-taxed FAPI in circumstances where a foreign multinational corporate group may otherwise synthetically repatriate the FAPI free of withholding tax.

The amendment to subparagraph 90(9)(a)(ii) applies in respect of loans received and indebtedness incurred after August 19, 2011, and any portion of a particular loan received or a particular indebtedness incurred on or before August 19, 2011 that remains outstanding on August 19, 2014. In respect of loans received and indebtedness incurred prior to September 16, 2016, subparagraph 90(9)(a)(ii) is to be read without reference to "unless the specified debtor is a person or partnership described in subclause (i)(D)(I) or (II)".

Definition "specified debtor"

ITA
90(15)

Subsection 90(15) defines certain terms that are relevant for purposes of the upstream loan rules in subsections 90(6) to (15). The definition "specified debtor", which is used in subsections 90(6)

and (9), defines the recipients of credit in respect of which the upstream loan rules apply. Specified debtors include the taxpayer, certain non-arm's length persons (other than controlled foreign affiliates ("CFA") of the taxpayer, as defined in subsection 17(15)) and certain partnerships of which the taxpayer or non-arm's length persons are members.

Paragraph (b) of the definition "specified debtor" is amended by adding a new exception, in new subparagraph (b)(ii), for certain non-arm's length persons, in addition to the existing exception for CFAs. The new exception is for a non-resident corporation (other than a CFA, as defined in subsection 17(15)) that meets the following conditions:

- it is a foreign affiliate of the taxpayer; and
- each share of the corporation is owned by any of
    - the taxpayer,
    - persons resident in Canada,
    - non-resident persons that deal at arm's length with the taxpayer,
    - CFAs of the taxpayer, as defined in subsection 17(15),
    - partnerships, each member of which is a person or partnership described in this list, and
    - corporations, each shareholder of which is a person or partnership described in this list.

This amendment applies in respect of loans received and indebtedness incurred after August 19, 2011 and in respect of any portion of a particular loan received or indebtedness incurred on or before August 19, 2011 that remained outstanding on August 19, 2014.

Example

Assumptions

- A corporation resident in Canada (Canco) owns 100% of the shares of two non-resident corporations (FA1 and FA2).
- FA1 owns a 99% interest in a partnership, with the other 1% partnership interest held by FA2.
- The partnership holds a 40% equity interest in another non-resident, joint venture corporation (FA3). The other 60% equity interest in FA3 is held by two non-resident corporations (40% and 20% respectively) that deal at arm's length with Canco and are not controlled foreign affiliates of a taxpayer resident in Canada.
- The shareholders of FA3 have entered into a unanimous shareholders' agreement ("USA") with FA3 that establishes certain rights and obligations in respect of the shares of FA3, the management and control of FA3, as well as other matters. In addition, there are a number of agreements between the parties with respect to resource projects of FA3

(the "project agreements"). The project agreements provide for funding of FA3's projects by its shareholders.

- The partnership makes loans to FA3 pursuant to the project agreements, to satisfy cash calls made for projects and operations. The other shareholders of FA3 similarly make loans to FA3 to satisfy cash calls.

Analysis

Each of FA1 and FA2 are foreign affiliates of Canco (as defined in subsection 95(1) of the Act) and controlled foreign affiliates of Canco (within the meaning assigned by section 17 of the Act). FA3 is a foreign affiliate, but not a controlled foreign affiliate, of Canco.

If it is determined, based on the above assumptions – in particular, the rights and obligations under the USA and the project agreements – that Canco, through its indirect interest in the partnership, does not deal at arm's length with FA3, then FA3 is a specified debtor in respect of Canco, unless each of the shares of FA3 is owned by one of the persons or partnerships enumerated in clauses (A) to (F) of subparagraph (*b*)(ii) of the definition "specified debtor". Each share of FA3 is owned either by non-resident persons that deal at arm's length with Canco (i.e., persons described in clause (C) of subparagraph (b)(ii)) or by the partnership. Since both members of the partnership (FA1 and FA2) are CFA's (as defined in subsection 17(15)) of Canco (i.e., persons described in clause (D) of subparagraph (b)(ii)), the partnership is described in clause (E) of subparagraph (b)(ii). Accordingly, FA3 is not a specified debtor, with the result that the upstream loan rule in subsection 90(6) does not apply to loans from the partnership to FA3.

Clause 28

Amounts to be included in respect of share of foreign affiliate

ITA
91

New subsections 91(1.1) to (1.4) of the Act are introduced to ensure that the appropriate amount of foreign accrual property income (FAPI) is included in a taxpayer's income under subsection 91(1) where:

- the taxpayer is subject to an acquisition of control and the FAPI earned by a foreign affiliate of the taxpayer prior to the acquisition of control is not included in another taxpayer's income because of the application of paragraph 95(2)(f.1); or
- the taxpayer's interest in a foreign affiliate is reduced in certain circumstances.

Absent the application of subsection 91(1.2) in such circumstances, the taxpayer would generally not be required to include in its income the "stub-period FAPI" – i.e., the FAPI earned by the foreign affiliate in the portion of the affiliate's taxation year prior to either the acquisition of control or the reduction of the taxpayer's interest, as the case may be.

Related amendments are also made in subsections 5907(8) and (8.1) of the Regulations.

Subsection 91(1.1) provides that the operative rule in subsection 91(1.2) applies at a particular time in respect of a particular foreign affiliate of a taxpayer if the conditions in paragraphs 91(1.1)(a) to (d) are satisfied.

Paragraph 91(1.1)(a) requires that an amount would be included in the taxpayer's income under subsection 91(1) – in respect of a share of the particular affiliate or another foreign affiliate of the taxpayer that has an equity percentage in the particular affiliate – for the taxation year of the particular affiliate (determined without reference to the deeming rule in subsection 91(1.2)) that includes the particular time (referred to as the particular affiliate's "ordinary taxation year"), if the taxation year ended at the particular time. Thus, subsection 91(1.2) applies only if the particular affiliate earns FAPI during the stub period ending at the particular time.

Paragraph 91(1.1)(b) requires that, immediately after the particular time, there is either

- an acquisition of control of the taxpayer (subparagraph 91(1.1)(b)(i)), or
- a triggering event that can reasonably be considered to result in a change to the aggregate participating percentage of the taxpayer in respect of the particular affiliate for the ordinary taxation year of the particular affiliate (subparagraph 91(1.1)(b)(ii)).

For these purposes, subsection 91(1.3) defines the terms "triggering event" and "aggregate participating percentage". For more information, see the commentary under those definitions in subsection 91(1.3).

In general terms, the situation targeted by subparagraph 91(1.1)(b)(ii) is where a triggering event would, but for the application of subsection 91(1.2), result in all or a portion of the particular affiliate's stub-period FAPI not being included in the taxpayer's income under subsection 91(1). Because subparagraph 91(1.1)(b)(ii) does not set out a hypothetical test – in that it does not test whether the taxpayer's aggregate participating percentage in respect of the particular affiliate for the particular affiliate's ordinary taxation year would have been different had the triggering event never occurred – any alternative transactions, which might have taken place (and affected the taxpayer's aggregate participating percentage) had the triggering event not occurred, are not relevant in applying the test in subparagraph 91(1.1)(b)(ii). In determining whether a triggering event meets the test in subparagraph 91(1.1)(b)(ii), notwithstanding that the taxpayer's aggregate participating percentage is measured at the end of the particular affiliate's ordinary taxation year, it is also not intended that intervening events – between the time of the triggering event and the end of the particular affiliate's ordinary taxation year – be taken into consideration. Rather, the intention is that a triggering event can reasonably be considered to result in a change in the taxpayer's aggregate participating percentage in respect of the particular affiliate if it would give rise to that result in itself without regard to any intervening or hypothetical alternative events that would also have resulted in that change.

Example

Assumptions

- Canco, a corporation resident in Canada, owns all of the shares of FA, a non-resident corporation.
- Canco and FA each have calendar taxation years.
- FA's only income in a particular taxation year is $10 million of FAPI, earned evenly throughout the year.
- Canco transfers 20 per cent of the shares of FA to Forco1 (a non-resident corporation that deals at arm's length with Canco) on June 30 of the particular taxation year. There were multiple alternative purchasers for the FA shares.
- On October 1 of the particular taxation year, Forco2 (another non-resident corporation that deals at arm's length with Canco) subscribes for preferred shares of FA with a fixed cumulative dividend entitlement of $10 million that is payable every December 31.

Analysis

*The sale by Canco of shares of FA to Forco1 on June 30 is a triggering event under paragraph (a) of the definition in subsection 91(1.3). The June 30 sale meets the condition in subparagraph 91(1.1)(b)(ii), as it can reasonably be considered to result in a change in Canco's aggregate participating percentage in respect of FA for FA's ordinary taxation year, specifically a reduction from 100 per cent to 80 per cent. In applying the test in that subparagraph in respect of the June 30 sale, it is irrelevant that an alternative transaction (*e.g.*, a disposition of the FA shares by Canco to another purchaser instead of to Forco1) could have equally reduced Canco's aggregate participating percentage in respect of FA for FA's ordinary taxation year. Nor is it relevant that a subsequent event (*i.e.*, Forco2's subscription for preferred shares in FA, with a cumulative dividend entitlement equal to FA's income for the particular taxation year) reduces Canco's aggregate participating percentage in respect of FA to nil.*

The issuance of preferred shares by FA to Forco2 on October 1 also satisfies paragraph (a) of the "triggering event" definition. In addition, the issuance satisfies subparagraph 91(1.1)(b)(ii), since it can reasonably be considered to reduce Canco's aggregate participating percentage in respect FA for FA's ordinary taxation year to nil.

As a result of these transactions, in respect of Canco,

- *Paragraph 91(1.2)(a) deems FA's particular taxation year to end immediately before the June 30 sale of FA shares, with the result that the $5 million of FAPI earned by FA before that time in the particular taxation year is included in computing Canco's income under subsection 91(1);*
- *Paragraph 91(1.2)(b) deems FA's next taxation year to begin immediately after the June 30 sale; and*

- *Paragraph 91(1.2)(a) deems that next taxation year of FA to end immediately before the issuance by FA of preferred shares to Forco2 on October 1, with the result that $2 million of the $2.5 million of FAPI earned by FA between June 30 and October 1 is included in Canco's income under subsection 91(1).*

If, in the above example, Forco2 had instead held the preferred shares of FA (with the same fixed cumulative dividend entitlement) throughout the particular taxation year, it would not be reasonable to consider that the transfer of FA shares by Canco to Forco1 resulted in a change in Canco's aggregate participating percentage in respect of FA for the particular taxation year because Canco's aggregate participating percentage would be nil regardless of whether the transfer occurred, since FA's income for the particular taxation year does not exceed the dividend payable on the preferred shares.

Paragraph 91(1.1)(c) provides that, if subparagraph 91(1.1)(b)(i) applies (*i.e.*, there has been an acquisition of control of the taxpayer immediately after the particular time), subsection 91(1.2) applies only if

- all or a portion of an amount described in paragraph 95(2)(f) accruing to the particular affiliate during the portion of its ordinary taxation year before the particular time is excluded in computing the income of another taxpayer because of paragraph 95(2)(f.1); and
- the reason paragraph 95(2)(f.1) applies is that the taxpayer is a "designated acquired corporation" (as defined in subsection 95(1)) of the other taxpayer.

In other words, paragraph 91(1.1)(c) is intended to ensure that the operative rule in subsection 91(1.2) applies only in respect of acquisitions of control that give rise to the application of the FAPI "carve-out" rule in paragraph 95(2)(f.1). The latter paragraph applies where, for example, a taxpayer is subject to an acquisition of control and, subsequently, is amalgamated with or wound up into the acquiring corporation such that the taxpayer is a "designated acquired corporation" (as defined in subsection 95(1)) of the amalgamated or acquiring corporation. Absent the application of subsection 91(1.2) in these circumstances, the income accruing to the particular affiliate prior to the acquisition of control (*i.e.*, during the "stub period") would generally not be included in the taxpayer's income under subsection 91(1), and paragraph 95(2)(f.1) effectively carves out that stub-period income in computing the particular affiliate's FAPI, for its ordinary taxation year, in respect of the amalgamated or acquiring corporation (*i.e.*, the "other taxpayer" referred to in paragraph 91(1.1)(c)). By applying subsection 91(1.2) in these circumstances, which deems the particular affiliate's taxation year to end at the particular time, the particular affiliate's stub-period FAPI is included in the income of the taxpayer for its taxation year that ends immediately before the acquisition of control.

The fact that subsection 91(1.2) may not apply in respect of an amalgamation of the taxpayer with the acquiring corporation following an acquisition of control, due to the amalgamation exception in subparagraph 91(1.1)(d)(ii), is not intended to preclude subsection 91(1.2) from applying in respect of the acquisition of control. Rather, it is intended that the acquisition of control and the amalgamation be tested separately under the conditions in subsection 91(1.1), on the basis that they are separate transactions or events that occur at separate times.

Paragraph 91(1.1)(d) sets out four exceptions. If any of these exceptions applies, a triggering event that otherwise satisfies the condition in paragraph 91(1.1)(b)(ii) will not lead to the application of subsection 91(1.2).

The first exception, in subparagraph 91(1.1)(d)(i), applies if the change referred to in subparagraph 91(1.1)(b)(i) (*i.e.*, the change, in the taxpayer's aggregate participating percentage in respect of the particular affiliate for the affiliate's ordinary taxation year, that can reasonably be considered to result from the triggering event)

- is a decrease; and
- is equal to the total increase – that can reasonably be considered to result from the triggering event – in the aggregate participating percentage of one or more other taxpayers in respect of the particular affiliate for its ordinary taxation year. For these purposes, the other taxpayers must be persons that are resident in Canada (other than a person that is – or a trust, any of the beneficiaries under which is – exempt from tax under Part I of the Act by reason of a statutory provision) and related to the taxpayer at the time of the triggering event (or, where the triggering event results from a winding-up of the taxpayer to which subsection 88(1) applies, immediately before the triggering event).

In general terms, this exception ensures that subsection 91(1.2) does not apply to certain intra-group transactions where a disposition or acquisition by one group member does not result in a decrease in the overall aggregate participating percentage of the group in respect of a foreign affiliate. Subparagraph 91(1.1)(d)(i) is premised on all of the stub-period FAPI of the particular affiliate that would, but for the triggering event, have been taxable to the taxpayer instead being taxable to one or more related taxpayers. For this reason, the exception is only available if the other taxpayers (or, if a taxpayer is a trust, all of its beneficiaries) are taxable under Part I of the Act.

The second exception, in subparagraph 91(1.1)(d)(ii), applies if the triggering event is on an amalgamation described in subsection 87(1). The reason for this exception is that such an amalgamation does not result in a decrease in the overall aggregate participating percentage of the group.

The third exception, in subparagraph 91(1.1)(d)(iii), is one of two *de minimis* exceptions. It applies if the triggering event is an "excluded acquisition or disposition" (defined in subsection 91(1.3)). In general terms, an excluded acquisition or disposition is one of an equity interest in a corporation, partnership or trust that meets the condition in subparagraph 91(1.1)(b)(i), but where the resulting change in the taxpayer's aggregate participating percentage in respect of the particular affiliate for its ordinary taxation year is less than one per cent (subject to an anti-avoidance rule in paragraph (b) of the definition "excluded acquisition or disposition"). For more information, see the commentary under the definition "excluded acquisition or disposition" in subsection 91(1.3).

The final exception from subsection 91(1.2) is in subparagraph 91(1.1)(d)(iv), which sets out a second *de minimis* exception. In general terms, this exception is available where the net decrease in the taxpayer's aggregate participating percentage in respect of the particular affiliate for the affiliate's ordinary taxation year, that can reasonably be considered to result from one or more

triggering events in the year, is five per cent or less. For purposes of determining this net decrease, increases and decreases in the taxpayer's aggregate participating percentage resulting from triggering events that meet the conditions in subparagraph 91(1.1)(d)(i) or (ii) are not taken into consideration. However, increases or decreases from triggering events that meet the condition in subparagraph 91(1.1)(d)(iii) (*i.e.*, excluded acquisitions or dispositions) are taken into consideration for these purposes.

The combined effect of subparagraphs 91(1.1)(d)(iii) and (iv) is that, as long as all of the triggering events in respect of a taxpayer that occur in a taxation year are excluded acquisitions or dispositions (or a combination of excluded acquisitions or dispositions and triggering events meeting the conditions in subparagraph 91(1.1)(d)(i) or (ii)), then the condition in paragraph 91(1.1)(d) will not be satisfied. If, however, there is a triggering event in respect of the taxpayer in a taxation year that does not meet any of the exceptions in subparagraphs 91(1.1)(d)(i) to (iii), then, in determining whether the five per cent *de minimis* threshold is exceeded (*i.e.*, whether the exception in subparagraph 91(1.1)(d)(iv) applies), changes in the taxpayer's aggregate participating percentage in respect of the particular foreign affiliate that result from excluded acquisitions or dispositions are taken into account.

If the five per cent *de minimis* threshold in subparagraph 91(1.1)(d)(iv) is exceeded in a taxation year, subsection 91(1.2) applies at the time immediately before each triggering event in that year, other than a triggering event that is an excluded acquisition or disposition or meets the conditions in subparagraph 91(1.1)(c)(i) or (ii).

Where the conditions in subsection 91(1.1) are satisfied, subsection 91(1.2) applies at the particular time, and provides the following deeming rules for the purposes of sections 91 and 92.

- The affiliate's taxation year that would otherwise have included the particular time is deemed to have ended at the time (referred to in section 91 as the "stub-period end time") that is immediately before the particular time. This deemed taxation year-end applies in respect of only the particular taxpayer and all connected persons and connected partnerships, in respect of the particular taxpayer.
- If the affiliate is, immediately after the particular time, a foreign affiliate of the particular taxpayer or of a connected person or connected partnership, in respect of the particular taxpayer, the affiliate's next taxation year after the stub-period end time is deemed, in respect of the particular taxpayer or the connected person or connected partnership, to begin immediately after the particular time.
- For the purposes of determining the affiliate's FAPI for its taxation year that is deemed to end at the stub-period end time, in respect of the particular taxpayer or a connected person or connected partnership, in respect of the particular taxpayer, all transactions or events that occur at the particular time are deemed to occur at the stub-period end time. This is to ensure that FAPI resulting from such transactions or events is attributed to the particular taxpayer, and relevant connected persons, for their taxation years that include the stub-period end time.

Subsection 91(1.3) contains a number of definitions that apply in that subsection, as well as subsections (1.1) and (1.2).

"**aggregate participating percentage**"

The "aggregate participating percentage", of a taxpayer in respect of a foreign affiliate of the taxpayer for a taxation year of the affiliate, is the total of all amounts, each of which is the participating percentage, in respect of the affiliate, of a share of a corporation that is owned by the taxpayer at the end of the affiliate's taxation year.

The amount of FAPI of a controlled foreign affiliate of a taxpayer that is included in the income of the taxpayer under subsection 91(1) at the end of a taxation year of the affiliate is based on the "participating percentage" (defined in subsection 95(1)), in respect of the affiliate, of each share owned by the taxpayer at the end of the taxation year.

The definition "aggregate participating percentage" aggregates the participating percentages, in respect of a foreign affiliate, of all shares owned by a taxpayer at the end of a taxation year of the affiliate. This makes it possible to determine, for the purposes of subparagraph 91(1.1)(b)(ii), whether, as a result of a triggering event, there has been a change in the taxpayer's interest in the affiliate that would be expected to affect the amount of the affiliate's FAPI that is included in the taxpayer's income under subsection 91(1).

"**connected person**"

A "connected person", in respect of a particular taxpayer, is a person that – at or immediately after the particular time at which subsection 91(1.2) applies in respect of a foreign affiliate of the particular taxpayer – is resident in Canada and meets the condition in paragraph (a) or paragraph (b) of this definition.

Paragraph (a) is met if, at or immediately after the particular time, the person does not deal at arm's length with the particular taxpayer.

Paragraph (b) is met if, at or immediately after the particular time,

- the person deals at arm's length with the particular taxpayer;
- the foreign affiliate is a foreign affiliate of the person at the particular time; and
- the aggregate participating percentage of the person in respect of the foreign affiliate for the affiliate's ordinary taxation year may reasonably be considered to have increased as a result of the triggering event that gave rise to the application of subsection 91(1.2).

If subsection 91(1.2) applies at a particular time in respect of a foreign affiliate of a particular taxpayer, then, for the purposes of sections 91 and 92, paragraph 91(1.2)(a) deems the affiliate's taxation year to have ended immediately before the particular time in respect of each connected person in respect of the particular taxpayer (as well as the particular taxpayer and each connected partnership).

Example

Assumptions

- Canco1 and Canco2, two corporations resident in Canada that deal at arm's length with each other, each own 50 per cent of the shares of a non-resident corporation that is a controlled foreign affiliate (CFA) of both Canco1 and Canco2.
- Halfway through a taxation year, Canco1 sells all of the shares of CFA owned by Canco1 to Canco2.
- CFA earns $100 of FAPI, which accrues evenly over the taxation year.

Analysis

The sale by Canco1 of shares of CFA to Canco2 is a triggering event that meets the conditions in subparagraph 91(1.1)(b)(i), causing subsection 91(1.2) to apply in respect of CFA at the "particular time" referred to in subsections 91(1.1) and (1.2), which is the time immediately before the disposition by Canco1 of the shares of CFA. As a result, paragraph 91(1.2)(a) deems CFA's taxation year that includes the particular time to have ended at the time immediately before the particular time (the "stub-period end time"), in respect of Canco1 and each connected person or connected partnership in respect of Canco1.

Canco2 deals at arm's length with Canco1 and Canco2's aggregate participating percentage in respect of CFA for its ordinary taxation year may reasonably be considered to have increased as a result of the sale of the shares. Canco2 is therefore a connected person in respect of Canco1, and thus the deemed year-end applies in respect of Canco2.

The result of this deemed year-end is that, under subsection 91(1), $25 of CFA's FAPI is included in computing Canco1's income for its taxation year that includes the stub-period end time ($100 x ½ year x 50% participating percentage). With regard to Canco2, $25 of CFA's FAPI is included in computing Canco2's income for its taxation year that includes the stub-period end time ($100 x ½ year x 50% participating percentage), and $50 of CFA's FAPI is included in computing Canco2's income for its taxation year that includes CFA's regular taxation year end ($50 x 100% participating percentage in respect of CFA at that time). Thus, a total of $100 is included, in respect of CFA's FAPI, in computing the income of Canco1 and Canco2, which matches the amount of CFA's FAPI.

In the absence of paragraph (b) of the "connected person" definition, there would be no deemed year end under subsection 91(1.2) in respect of Canco2 – and paragraph 95(2)(f.1) does not apply to limit the amount of CFA's FAPI in respect of Canco2 because CFA was already a foreign affiliate of Canco2 prior to its acquisition of the remaining CFA shares from Canco1 – with the result that CFA's full $100 of FAPI would be included under subsection 91(1) in computing Canco2's income for its taxation year that includes CFA's regular taxation year end (based on Canco2's 100% participating percentage in respect of CFA at that time). Thus, a total of $125 would have been included, in respect of CFA's FAPI, in computing the income of Canco1 and Canco2, even though CFA only earned $100 of FAPI.

"**connected partnership**"

A "connected partnership", in respect of a particular taxpayer, is a partnership if, at or immediately after the particular time at which subsection 91(1.2) applies in respect of a foreign affiliate of the particular taxpayer, the partnership meets the conditions in paragraph (a) or (b) of this definition.

Paragraph (a) is met if, at or immediately after the particular time, the particular taxpayer or a connected person in respect of the particular taxpayer is a member of the partnership. For these purposes, membership in a particular partnership is to be determined by looking through any partnerships through which the particular taxpayer or a connected person holds an interest in the particular partnership.

For more information, see the commentary under the definition "connected person".

If paragraph (a) does not apply, a partnership will be a connected partnership under paragraph (b) if

- the foreign affiliate of the particular taxpayer is a foreign affiliate of the partnership at the particular time; and
- the aggregate participating percentage of the partnership in respect of the particular foreign affiliate for the affiliate's ordinary taxation year may reasonably be considered to have increased as a result of the triggering event that gave rise to the application of subsection 91(1.2).

Paragraph (b) is intended to ensure that the deeming rules in subsection 91(1.2) apply in respect of a partnership that increases its aggregate participating percentage in a foreign affiliate of a particular taxpayer, where the latter deals at arm's length with the partnership.

"**excluded acquisition or disposition**"

An "excluded acquisition or disposition", in respect of a taxation year of a foreign affiliate of a taxpayer, is an acquisition or disposition of an equity interest in a corporation, partnership or trust that

- can reasonably be considered to result in a change in the aggregate participating percentage of the taxpayer in respect of the affiliate for the taxation year of the affiliate, and
- satisfies the conditions in paragraphs (a) and (b) of the definition.

Paragraph (a) requires that the change in aggregate participating percentage that can reasonably be considered to result from the acquisition or disposition must be less than one per cent. (For greater certainty, the required change is a less-than-one per cent increase or decrease in the aggregate participating percentage, as opposed to a change of less than one percentage point.)

Paragraph (b) requires that it cannot reasonably be considered that one of the main reasons the acquisition or disposition occurs as a separate acquisition or disposition from one or more other acquisitions or dispositions is to avoid the application of subsection 91(1.2). This condition is

intended to ensure that subsection 91(1.2) cannot be avoided by undertaking a "small" acquisition or disposition separately, rather than as part of another acquisition or disposition that occurs.

"**triggering event**"

A "triggering event" is

- an acquisition or disposition of an equity interest in a corporation, partnership or trust, a change in the terms or conditions of shares of a corporation or the rights as a member of a partnership or as a beneficiary under a trust, or
- a disposition of, or change in, a right referred to in paragraph 95(6)(a).

Absent either an acquisition of control (which satisfies the condition in subparagraph 91(1.1)(b)(i)) or a triggering event, the operative rule in subsection 91(1.2) does not apply. More particularly, a change in a taxpayer's interest in a foreign affiliate can only give rise to the application of subsection 91(1.2) if the change results from a triggering event (as provided in subparagraph 91(1.1)(b)(ii)).

The definition "triggering event" is broad, to ensure that a wide range of transactions are potentially within the scope of subparagraph 91(1.1)(b)(ii) and subsection 91(1.2). Very generally, an equity interest in a corporation, trust or partnership is intended to describe any right (other than a right as a typical creditor), whether absolute or contingent, to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, revenue or income of one of these entities. In addition, a triggering event includes not only acquisitions and dispositions of equity interests by the taxpayer, but also by other persons or partnerships (including on an issuance of shares, or trust or partnership units). The references to acquisitions or dispositions of equity interests in partnerships or trusts, and to changes in rights as a member of a partnership or a beneficiary under a trust, are intended to ensure, among other things, that subsection 91(1.2) cannot be avoided by reducing a taxpayer's interest in a partnership or trust that holds a direct or indirect interest in a foreign affiliate.

New subsections 91(1.4) and (1.5) provide elections that taxpayers can make to have subsection 91(1.2) apply in circumstances where it would otherwise not apply because the conditions in subsection 91(1.1) are not satisfied.

Subsection 91(1.4) provides that subsection 91(1.2) applies in respect of a particular affiliate at a particular time if the following conditions are met:

- The conditions in paragraph 91(1.1)(a) are met in respect of the particular affiliate at the particular time;
- Immediately after the particular time, there is a disposition of shares of the particular affiliate or another foreign affiliate of the taxpayer that had an equity percentage (as defined in subsection 95(4)) in the particular affiliate by
    - the taxpayer, or
    - a controlled foreign affiliate of the taxpayer; and

- The taxpayer and all specified corporations jointly elect by the relevant deadline. "Specified corporation" is defined for these purposes in subparagraphs 91(1.4)(c)(i) to (iii).

Example

Assumptions

- Canco, a corporation resident in Canada, owns all of the shares of FA1 and FA3, each of which are non-resident corporations. FA1 owns all of the shares of FA2.
- The adjusted cost base of Canco in the shares of FA1, and of FA1 in the shares of FA2, is nominal.
- FA1, FA2 and FA3 all have calendar taxation years.
- FA2's only income for a particular taxation year is $100 of FAPI, earned in the first half of the year.
- Halfway through the particular taxation year, FA1 sells the shares of FA2 to FA3 for $100. Canco subsequently sells the shares of FA1 to an arm's length party prior to the end of the particular taxation year.

Analysis

FA1 earns $50 of FAPI from its sale of the shares of FA2 to FA3 (representing the taxable portion of the $100 capital gain). Unless an election is filed under subsection 91(1.4), subsection 91(1.2) does not apply to deem FA1 to have a taxation year-end as a result of the sale because Canco's aggregate participating percentage in respect of FA2 for the particular taxation year of FA2 did not decrease as a result of the sale. In that case, when Canco subsequently sells the shares of FA1 to an arm's length party, subsection 91(1.2) then applies to deem FA1's taxation year to end at the "stub-period end time", which is the time immediately before the "particular time" referred to in subsections 91(1.1) and (1.2) (the "particular time" is immediately before the disposition by Canco of the shares of FA1). As a result, under subsection 91(1), FA1's $50 of FAPI is included in computing Canco's income for its taxation year that includes the stub-period end time. In addition, all of FA2's $100 of FAPI is included in computing Canco's income for its taxation year that includes FA2's taxation year end. Thus, a total of $150, in respect of FA2's FAPI, is included in computing Canco's income, even though FA2's underlying income is only $100.

*If Canco instead elects (jointly with all "specified corporations", as defined in subparagraphs 91(1.4)(c)(i) to (iii)) under subsection 91(1.4) to have subsection 91(1.2) apply in respect of FA1's sale of the shares of FA2 to FA3, then paragraph 91(1.2)(a) deems FA2's taxation year to end at the stub-period end time in respect of that sale (*i.e.*, the time immediately before the time immediately before the sale). This election allows all $100 of FA2's FAPI to be included in computing Canco's income for its taxation year that includes FA2's stub-period end time. For the purposes of computing FA2's taxable surplus, subsections 5907(8) and (8.1) of the*

Regulations deem FA2's taxation year to end, and the sale of FA2 shares by FA1 to occur, at the stub-period end time. Therefore, $100 is also included in FA2's taxable surplus which, by virtue of the application of subsections 93(1.1) and 93(1.11), eliminates the gain that FA1 would otherwise realize on the disposition of the shares of FA2. In addition, paragraph 92(1)(a) applies to add $100 to Canco's adjusted cost base of the shares of FA1, with the result that Canco does not realize a gain on its subsequent sale of the shares of FA1.

New subsection 91(1.5) provides that a particular taxpayer resident in Canada can elect to have subsection 91(1.2) apply at a particular time in respect of a particular foreign affiliate of the particular taxpayer if the following conditions are satisfied:

- Immediately after the particular time, there is an acquisition or disposition of shares of a foreign affiliate of another taxpayer (this could be either the particular affiliate or another affiliate) that results in a decrease to the surplus entitlement percentage of the other taxpayer in respect of the particular affiliate.
- As a result of this acquisition or disposition, subsection 91(1.2) applies to the other taxpayer resident in Canada in respect of the particular affiliate.
- The surplus entitlement percentage of the particular taxpayer in respect of the particular affiliate increases as a result of the acquisition or disposition.
- Subsection 91(1.2) does not apply, in the absence of subsection 91(1.5), to the particular taxpayer in respect of the acquisition or disposition.
- The particular affiliate is a foreign affiliate of the particular taxpayer at the particular time.

New subsection 91(1.5) is repealed for taxation years that begin on or after September 8, 2017. For those taxation years, subsection 91(1.2) applies automatically in the circumstances described in subsection 91(1.5) because paragraph (b) of the definition "connected person" in new subsection 91(1.3) incorporates such circumstances. As such, the election in subsection 91(1.5) is no longer needed.

If the particular time referred to in subsection 91(1.1) is before September 8, 2017 (the "pre-Announcement Date period"), the version of subsections 91(1.1) to (1.4) that was released in draft form on September 16, 2016 is to be used for the purpose of applying new subsections 91(1.1) to (1.4) unless:

- the taxpayer and all connected persons and connected partnerships in respect of the taxpayer jointly elect in writing; and
- the election is filed with the Minister by the later of the taxpayer's filing due date for its taxation year that includes September 8, 2017 and six months after Royal Assent.

If a taxpayer (and each connected person and connected partnership) files an election meeting these requirements, the version of new subsections 91(1.1) to (1.4) released on September 8, 2017 will apply in respect of the taxpayer for the pre-September 8, 2017 period but those subsections are to be read without reference to subparagraph 91(1.1)(b)(i) and paragraph

91(1.1)(c) in respect of any acquisition of control of the taxpayer that occurs before September 8, 2017.

Exception – hybrid entities

ITA
91(4.5)

Subsections 91(4.1) to (4.7), together with related rules in section 5907 of the Regulations, are intended to address tax schemes established by taxpayers with the intent of creating deductions for foreign accrual tax ("FAT") in respect of foreign tax the burden of which is not, in fact, borne by the taxpayer. These schemes generally seek to exploit asymmetries between the tax laws of Canada and those of a relevant foreign jurisdiction in the characterization of equity and debt instruments.

Subsection 91(4.1) denies FAT in respect of the foreign accrual property income ("FAPI") of a foreign affiliate of a taxpayer in certain circumstances that include an investment in either a partnership or a corporation that is characterized as an equity investment for the purposes of the Act but that is characterized as a debt instrument issued by that entity, or another entity, under the relevant foreign tax law. More specifically, subparagraph 91(4.1)(*a*)(i) provides that this FAT denial rule will apply where the taxpayer (or certain persons connected to the taxpayer, as set-out in the definition of "specified owner" in subsection 91(4.2)), is considered to own less than all of the shares of the foreign affiliate, or certain other connected corporations (as set-out in the definition of "pertinent person or partnership" in subsection 91(4.3)), under the relevant foreign tax law that are considered to be owned by the taxpayer (or other specified owner) under the Act.

Subsection 91(4.5) provides an exception for the purposes of subparagraph 91(4.1)(*a*)(i). It ensures that subsection 91(4.1) will not apply solely because an entity that is treated as a corporation under the Act, but that is treated as a fiscally transparent entity under the relevant foreign tax law (a "hybrid entity"), owns shares of a foreign corporation.

Subsection 91(4.5) is amended to provide, in effect, that the condition in subparagraph 91(4.1)(*a*)(i) is not considered to be met (and thus the FAT denial rule in subsection 91(4.1) does not apply) solely because either a specified owner in respect of a taxpayer, or a corporation that is a pertinent person or partnership in respect of a particular foreign affiliate, is a hybrid entity. Prior to this amendment, the exception from subparagraph 91(4.1)(*a*)(i) applied only where a specified owner in respect of the taxpayer was a hybrid entity. This amendment better aligns subsection 91(4.5) with its underlying policy intent.

Similar changes are made to subsection 5907(1.07) of the Regulations, which is a rule analogous to subsection 91(4.5).

This amendment applies in respect of the computation of FAT applicable to an amount included in computing a taxpayer's income under subsection 91(1), for a taxation year of the taxpayer that ends after October 24, 2012, in respect of a foreign affiliate of the taxpayer.

Clause 29

Non-Resident Trusts

ITA
94(3)(b)

Paragraph 94(3)(*b*) provides a number of rules for determining the recognition by Canada of foreign taxes paid by a trust that is deemed by paragraph 94(3)(*a*) to be resident in Canada for a particular taxation year. These rules also apply in determining the amount of foreign source income and foreign taxes that may be allocated to a beneficiary under subsections 104(22) to (22.3), and to an electing contributor under subsection 94(16).

Subparagraph 94(3)(*b*)(ii) sets out one of those rules. It provides that for the purposes of subsection 20(12) and section 126, the trust's income, and foreign taxes paid by it, for the particular taxation year are "pooled" to the country, if any, other than Canada in which the trust is resident for the particular taxation year.

Clause 94(3)(*b*)(ii)(A) is amended to clarify that the pooling of the trust's income to the other country for foreign tax computation purposes does not apply to the trust's income from sources in Canada, unless the income is in the form of dividends or interest. This is intended to ensure that the trust excludes from its foreign taxes pooled under the rule any foreign taxes paid on most Canadian-source income.

This amendment applies to taxation years that end after September 15, 2016.

Clause 30

Foreign Affiliate Definitions

ITA
95(1) – definition of "trust company"

The definition "trust company" in subsection 95(1) of the Act is relevant for the purposes of subparagraph 95(2)(l)(iv), paragraphs 95(2.1)(a) and (2.3)(a) and paragraph (b) of the definition "indebtedness" in subsection 95(2.5) of the Act. This definition provides that a trust company includes a corporation that is resident in Canada that is a "loan company" as defined in subsection 2(1) of the *Canadian Payments Association Act*.

The definition "trust company" is amended to change the reference "*Canadian Payments Association Act*" to "*Canadian Payments Act*" to reflect the new title of that statute.

This amendment is deemed to have come into force on October 24, 2001.

Income from sale of property

ITA
95(2)(a.1)

Paragraph 95(2)(a.1) includes in the income from a business other than an active business (and thus the foreign accrual property income (FAPI)) of a foreign affiliate of a taxpayer resident in Canada, the affiliate's income from the sale of property (including income derived from services as agent provided in relation to a purchase or sale of property) if certain conditions are met.

The portion of paragraph 95(2)(a.1) after subparagraph (ii) and before subparagraph (iii) includes a "safe harbour", which provides that paragraph 95(2)(a.1) does not apply where more than 90% of the affiliate's gross revenue from the sale of property is derived from sales to arm's length persons, other than certain sales that are specifically excluded. The specific exclusions are, first, for sales of property that is described in subparagraph 95(2)(a.1)(ii) and the cost of which to any person is a cost referred to in subparagraph 95(2)(a.1)(i), and, second, for sales of property to which paragraph 95(2)(a.1) does not apply because of subsection 95(2.31). This second exclusion was added in connection with the recent introduction of the exception in subsection 95(2.31), which provides that paragraph 95(2)(a.1) (and paragraph 95(2)(a.3)) does not apply to certain securities transactions between a Canadian-based bank and certain of its foreign affiliates that are carried out in the course of the bank's business of facilitating trades for arm's length customers.

The second exclusion is inconsistent with the original policy intent. Accordingly, the portion of paragraph 95(2)(a.1) after subparagraph (ii) and before subparagraph (iii) is amended to better align with the policy intent. As a result of the amendment, for the purpose of determining whether an affiliate meets the 90% safe harbour in paragraph 95(2)(a.1), any of the affiliate's revenues from securities transactions that qualify for the exception in subsection 95(2.31) are to be excluded in determining the affiliate's gross revenue from the sale of property (i.e., the denominator), in addition to being excluded in determining the affiliate's revenues derived from sales to arm's length persons (i.e., the numerator).

The amendment to paragraph 95(2)(a.1) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after October 2012.

Specified Canadian risks

ITA
95(2)(a.23)

Paragraph 95(2)(a.23) defines the term "specified Canadian risks", for the purposes of paragraphs 95(2)(a.2) and (a.21).

Consequential on the addition of new paragraph 95(2)(a.24), which uses this term, paragraph 95(2)(a.23) is amended to add a reference to paragraph 95(2)(a.24).

This amendment applies to taxation years that begin after March 21, 2017.

Deemed specified Canadian risks

ITA
95(2)(a.24)

Paragraph 95(2)(a.2) includes in the income from a business other than an active business, and therefore the foreign accrual property income, of a foreign affiliate of a taxpayer resident in Canada, the income of the affiliate from the insurance of "specified Canadian risks" (defined in paragraph 95(2)(a.23)), including from the reinsurance of such risks.

New paragraph 95(2)(a.24) deems risks that would not otherwise be specified Canadian risks to be specified Canadian risks for the purposes of paragraph 95(2)(a.2) in certain circumstances. Such a risk is deemed by subparagraph 95(2)(a.24)(i) to be a specified Canadian risk of a particular foreign affiliate if

- as a part of a transaction or series of transactions, the particular affiliate insured or reinsured the risk, and
- it can reasonably be concluded that one of the purposes of the transaction or series of transactions was to avoid the application of any of paragraphs 95(2)(a.2) to (a.22).

Subparagraph 95(2)(a.24)(ii) is analogous to paragraph 95(2)(a.22) and applies where one or more agreements or arrangements, in respect of a risk that is deemed by subparagraph 95(2)(a.24)(i) to be a specified Canadian risk, is entered into by the particular affiliate, or by a foreign affiliate of another taxpayer if any of the following does not deal at arm's length with the particular affiliate:

- the other taxpayer;
- the affiliate of the other taxpayer; or
- a partnership of which that other taxpayer or its affiliate is a member.

If these conditions are satisfied, then

- activities performed in connection with those agreements or arrangements are deemed to be a separate business, other than an active business, carried on by the particular affiliate or other affiliate, as the case may be, and
- any income of the particular affiliate or other affiliate, as the case may be, from the business (including income that pertains to or is incident to the business) is deemed to be income from a business other than an active business.

This amendment applies to taxation years that begin after March 21, 2017.

Currency to be used for foreign affiliate

ITA
95(2)(f.13)

Paragraph 95(2)(f.13) applies where the calculating currency of a foreign affiliate of a taxpayer is a currency other than Canadian currency. The paragraph currently provides that the foreign affiliate shall determine the amount included in computing its foreign accrual property income that is attributable to its capital gain or taxable capital gain, from the disposition of an excluded property, in Canadian currency by converting the amount of the capital gain, or taxable capital gain, otherwise determined under subparagraph 95(2)(f.12)(i) using its calculating currency for the taxation year into Canadian currency using the rate of exchange quoted by the Bank of Canada at noon on the day on which the disposition was made.

As of March 1, 2017, the Bank of Canada no longer publishes two exchange rates daily (noon and closing), but instead publishes a single rate per currency pair each day at 16:30 eastern time. It also reduced the number of currencies for which it provides rates of exchange. Consequential to these changes, two amendments are made to paragraph 95(2)(f.13).

First, paragraph 95(2)(f.13) is amended to remove the reference to the rate of exchange quoted by the Bank of Canada at noon on the day on which the disposition was made. As a result, a foreign affiliate's capital gain or taxable capital gain determined in its calculating currency is to be converted to Canadian currency using the single exchange rate for those currencies quoted by the Bank of Canada on the day on which the disposition was made.

Second, the paragraph is amended to allow the use of another rate of exchange that is acceptable to the Minister. It is intended that a rate other than that published by the Bank of Canada may be used only where the Bank of Canada does not publish a rate of exchange for the relevant currency.

These amendments apply as of March 1, 2017.

Currency to be used by foreign affiliate

ITA
95(2)(f.15)

Paragraph 95(2)(f.15) provides a "reading rule" for the application of subsection 39(2). This reading rule requires that, in respect of a debt obligation that is owing by a foreign affiliate (or a partnership of which it is a member) and is referred to in paragraph 95(2)(i)(i) or (ii), the foreign affiliate (or partnership) must determine the foreign exchange gains and losses contemplated by subsection 39(2) in its calculating currency.

Paragraph 95(2)(f.15) is amended to extend its application to the determination, in applying subsection 39(2), of foreign exchanges gains and losses in respect of an agreement described in subparagraph 95(2)(i)(iii) (i.e., an agreement entered into to reduce currency risk with respect to a debt referred to in subparagraph 95(2)(i)(i) or (ii)) entered into by a foreign affiliate of a taxpayer, or a partnership of which the foreign affiliate is a member.

This amendment applies to taxation years of a foreign affiliate that begin after October 2, 2007.

Upstream loans – Transitional set-off of foreign exchange capital gains and capital losses

ITA
95(2)(g.04)

Paragraph 95(2)(g.04) is directly related to subsection 39(2.1), which is a temporary measure that sets off, in certain circumstances, foreign exchange gains or losses of a taxpayer on the repayment of a debt obligation owing to a foreign affiliate of the taxpayer against the related losses or gains of the foreign affiliate from the repayment. These provisions are intended to provide relief to taxpayers that repay "upstream loans" in order to avoid the application of new subsection 90(6). The result of the application of paragraph 95(2)(g.04) is that the subject gains and losses are reduced.

If a taxpayer files a valid election under new subsection 39(2.3), neither subsection 39(2.1) nor paragraph 95(2)(g.04) apply in respect of the repayment of an upstream loan.

Paragraph 95(2)(g.04) is amended in two ways, each of which expands the scope of its application and parallels the amendments to subsection 39(2.1).

First, paragraph 95(2)(g.04) is modified to apply in cases where the foreign exchange capital gains or capital losses of the creditor foreign affiliate resulting from the repayment of an upstream loan are not equal to the borrowing party's foreign exchange capital losses or capital gains from the repayment. Prior to this amendment, a set-off was available only where these amounts were equal, and the effect of the rule was to deem the creditor foreign affiliate's foreign exchange loss to be nil. Because the rule can now apply where the amount of the creditor's foreign exchange gain or loss exceeds that of the borrowing party's loss or gain, a formula is added to paragraph 95(2)(g.04) for determining the amount by which the creditor's gain or loss is reduced.

Second, paragraph 95(2)(g.04) is modified to apply in situations where the debtor under an upstream loan is not the taxpayer of which the creditor foreign affiliate is a foreign affiliate, but rather another member of the taxpayer's corporate group (e.g., a wholly-owned subsidiary of the Canadian taxpayer) of which the creditor foreign affiliate is not a foreign affiliate. Prior to this amendment, the set-off was available only where the debtor was the taxpayer itself. Specifically, the rule is amended to require that the creditor under the upstream loan be a foreign affiliate of a qualifying entity (within the meaning assigned by subsection 39(2.2)).

For more information, see the comments under subsection 39(2.1).

The amendments to paragraph 95(2)(g.04) apply to a foreign exchange gain or loss of a foreign affiliate on the repayment of the portion of a debt obligation outstanding on August 19, 2011 where that repayment occurs on or before August 19, 2016. This is consistent with the amendments to subsection 39(2.1).

Clause 31

Agreement or election of partnership members

ITA
96(3)

Subsection 96(3) of the Act provides rules that apply if a member of a partnership makes an election under certain provisions of the Act for a purpose that is relevant to the computation of the member's income from the partnership. In such a case, the election will be valid only if it is made on behalf of all the members of the partnership and the member has authority to act for the partnership.

Subsection 96(3) is amended to apply for the purposes of an election made under new subsection 10.1(1). For more information, see the commentary on new subsection 10.1(1).

This amendment applies to taxation years that begin after March 21, 2017.

Clause 32

Rules if election by partners

ITA
97(2)

Subsection 97(2) of the Act sets out rules which allow a taxpayer to dispose of certain types of property on a tax-deferred basis to a Canadian partnership of which the taxpayer is a member immediately after the time of disposition. This subsection is amended to provide that, if new subsection 10.1(6) applies to the taxpayer, property that is an eligible derivative (as defined in new subsection 10.1(5)) of the taxpayer is excluded from subsection 97(2).

This amendment parallels the introduction of new subsection 85(1.12) and the amendment to the preamble to subsection 85(2). For more information, see the commentary on new subsections 10.1(6) and 85(1.12) and the definition "eligible derivative" in new subsection 10.1(4).

This amendment applies to taxation years that begin after March 21, 2017.

Clause 33

Depreciable property — leasehold interests and options

ITA
98(7)

New subsection 98(7) provides that, for the purposes of paragraphs (3)(c) and (5)(c), a leasehold interest in a depreciable property and an option to acquire a depreciable property are depreciable properties. This amendment ensures that the cost base of such properties cannot be "bumped" under the related rules that apply when a partnership ceases to exist.

This amendment applies in respect of partnerships that cease to exist on or after September 16, 2016.

Clause 34

Transfer of an interest in partnership to tax exempt

ITA
100(1)

Subsection 100(1) of the Act provides that a taxpayer's taxable capital gain for a taxation year from the disposition of an interest in a partnership to a person or partnership described in paragraphs 100(1.1)(a) to (d) – in general, tax-exempt entities and non-resident persons, along with partnerships and trusts that have such members or beneficiaries – is one-half of the portion of the capital gain from the disposition that can reasonably be attributed to increases in value of capital property other than depreciable property plus the whole of the remaining portion of the gain.

Paragraph 100(1)(a) is amended to clarify the wording of the provision by placing the phrase "other than depreciable property" within brackets.

This amendment applies in respect of dispositions made after August 13, 2012.

Clause 35

Deemed disposition by trust

ITA
104(4)

Subsections 104(4) to (5.2) set out what is generally referred to as the "21-year deemed realization rule" for trusts.

Subsection 104(4) is amended to remove the reference to excluded property.

For more detail, see the commentary on the definition "excluded property" in subsection 108(1).

This amendment applies to taxation years that begin after 2016.

Trust transfers

ITA
104(5.8)

Subsection 104(5.8) sets outs a rule to prevent the avoidance of the "21-year deemed realization rule" through the use of trust transfers.

Subsection 104(5.8) is amended to remove the reference to excluded property.

For more detail, see the commentary on the definition "excluded property" in subsection 108(1).

This amendment applies to taxation years that begin after 2016.

Clause 36

Distributions from a trust

ITA
107(4.1)

Subsection 107(2) of the Act allows certain trusts to distribute property to a capital beneficiary under the trust on a tax-deferred (i.e., rollover) basis. Subsection 107(4.1) prevents subsection 107(2) from applying to a distribution of trust property to a beneficiary under the trust where, generally, the trust attribution rule in subsection 75(2) was at any time applicable in respect of property of the trust.

Subsection 107(4.1) is amended to provide that the subsection does not apply to a distribution of excluded property made by a trust.

For more detail, see the commentary on the definition "excluded property" in subsection 108(1).

This amendment applies to taxation years that begin after 2016.

Clause 37

Definitions

Section 108 of the Act sets out certain definitions and rules that apply for purposes of sections 104 to 108 (i.e., subdivision k of division B of the Act), which deal with the taxation of trusts and their beneficiaries.

ITA
108(1)

"eligible taxable capital gains"

Subsection 104(21.2) of the Act sets out the rules for establishing those net taxable capital gains of a personal trust or a trust referred to in subsection 7(2) that, for the purposes of section 110.6, can be attributed to the beneficiaries of the trust and to specific types of properties disposed of by the trust. This attribution permits the beneficiary to claim the lifetime capital gains exemption under section 110.6 for dispositions by the trust of qualified farm property, qualified fishing property or a share of a qualified small business corporation. The attributable amount is determined by reference to the eligible taxable capital gains of the trust.

The amendment to the definition of "eligible taxable capital gains" is strictly technical. The deletion of the reference to only a "personal trust" clarifies its application to a trust referred to in subsection 7(2) because subsection 110.6(16) deems such a trust to be a "personal trust" only for certain purposes in section 110.6.

This amendment comes into force on Royal Assent.

ITA
108(1)

“excluded property”

The definition “excluded property” currently means a share of a non-resident owned investment corporation (“NRO”). The former tax rules for NROs are no longer operative and the definition excluded property is replaced with a new definition.

The new definition applies in the context of subsection 107(4.1). The new definition provides that excluded property of a trust means property that the trust owned at, and distributed after, the end of 2016 if,

- in the trust's first taxation year that begins after 2016 it is not a trust described in subparagraph (c.1)(iii.1) of the definition "principal residence" in section 54, and
- the property would be eligible to be designated by the trust as its principal residence for its taxation year in which the distribution occurs if that subparagraph did not apply to the trust for that year.

This definition applies in respect of subsection 107(4.1), which is amended so that it does not apply to a distribution of such excluded property. These amendments are intended to ensure that a personal trust and the beneficiary to whom it distributes property are not precluded from treating the distributed property as having been owned by the beneficiary continuously since the trust acquired it under subsection 40(7) of the Act when the attribution rule in subsection 75(2) may have applied in respect of the trust. Subsection 75(2) generally applies to certain trust property where the property was received by the trust from a person and can revert to the person (or pass to other persons determined by that person).

For cases where the effect of the amendment is to restore the application of the rollover in subsection 107(2) to a distribution by a trust of property (because subsection 107(4.1) does not apply), a trust not wanting the application of subsection 40(7) may make an election under subsection 107(2.001) in respect of the distribution, so that subsection 107(2) does not, and subsection 107(2.1) does, apply to the distribution. Under subsection 107(2.1), the trust is deemed to have disposed of the distributed property for the property’s fair market value and the beneficiary is deemed to have acquired the property for the same amount. Where subsection 107(2.1) applies to the distribution, the trust may be eligible to apply subsection 40(6.1) in computing any gain arising from the disposition of the property on the distribution.

Subsection 107(2.002) does not apply in respect of the distribution of such a property since subsection 107(2.002) applies when a non-resident trust makes a distribution, after 1999, of a property (other than taxable Canadian property or business property connected with a Canadian permanent establishment) to a beneficiary of the trust in satisfaction of the beneficiary’s capital interest in the trust.

Subsection 107(2.01) also does not apply to the distribution if the trust is not described in subparagraph (c.1)(iii.1) for the year of distribution. Subsection 107(2.01) allows a personal trust to elect to be treated as if it had disposed of, and reacquired, a principal residence at its fair market value immediately before distributing the property to one of its beneficiaries under subsection 107(2).

For more information see the commentary on subsections 40(6.1) and 107(4.1).

This amendment applies to taxation years that begin after 2016.

Trust not disqualified

ITA
108(4)

Subsection 108(4) of the Act provides that the payment of estate, income or similar taxes will not alone disqualify a trust from qualifying, for certain purposes, as an *alter ego* trust, spousal or common-law partner trust, joint spousal or common-law partner trust, or a trust for the exclusive benefit of the settlor during the settlor's lifetime.

Subsection 108(4) is amended so that a trust also will not cease to qualify as one of the trusts listed above only because a child, spouse or common-law partner, or former spouse or common-law partner of the individual – whose death determines a day for the trust under subsection 104(4) – ordinarily inhabits a housing unit that is property (or is in respect of a leasehold interest or share of a cooperative housing corporation) owned by the trust.

This amendment applies to taxation years that begin after 2016.

Clause 38

Stock option deduction in situations of death

ITA
110(1)(d)

Paragraph 110(1)(d) of the Act provides for a deduction in computing taxable income if certain conditions are met. The deduction is equal to 50% of the benefit deemed by subsection 7(1) to have been received by a taxpayer in respect of a security under an employee stock option agreement.

Pursuant to subparagraph 110(1)(d)(i), the first condition for entitlement to the deduction is that the security must be acquired under the agreement by the taxpayer or a person not dealing at arm’s length with the taxpayer in circumstances described in paragraph 7(1)(c). Paragraph 110(1)(d) is amended to permit a deduction in computing taxable income of a deceased taxpayer who is deemed by subsection 7(1)(e) to have received a benefit in respect of a security because, immediately before death, the taxpayer owned a right to acquire the security under an employee stock option agreement. Under new clause 110(1)(d)(i)(B), the deduction is available in these circumstances if (among other conditions) the security is acquired under the agreement within the first taxation year of the graduated rate estate of the taxpayer by:

- the graduated rate estate of the taxpayer,
- a person who is a beneficiary (as defined in subsection 108(1)) under the graduated rate estate of the taxpayer, or

- a person in whom the rights of the taxpayer under the agreement have vested as a result of the taxpayer's death.

Pursuant to subparagraph 110(1)(d)(i.1), the second condition is that the security underlying the option must be either a prescribed share (as defined in section 6204 of the *Income Tax Regulations*) or a unit of a mutual fund trust at the time of its sale or issue, or would have been a prescribed share or unit of a mutual fund trust if it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement. New clauses 110(1)(d)(i.1)(B.1) and (E) ensure that, in the case of a benefit deemed by paragraph 7(1)(e) to have been received by a deceased taxpayer, this condition is met in order for the deduction to be available.

This amendment applies in respect of acquisitions of securities and transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010. For taxation years ending before 2016, the reference to graduated rate estate in clause 110(1)(d)(i)(B) is to be read as a reference to "estate".

ITA
110(1.1)

Subsection 110(1.1) of the Act allows a taxpayer who did not acquire a security under an employee stock option agreement (as required under subparagraph 110(1)(d)(i)) to claim the 50% deduction under paragraph 110(1)(d) if the taxpayer's employer makes an election that neither the employer, nor a person with whom the employer does not deal at arm's length, will deduct any amount in respect of a payment to or for the benefit of the taxpayer in respect of the disposition (a "cash out") of the taxpayer's rights under the agreement.

Subsection 110(1.1) is amended to take into account situations where a taxpayer is deceased and the taxpayer's terminal return is handled by the taxpayer's graduated rate estate (or, for taxation years before 2016, the taxpayer's estate). More specifically:

- paragraph 110(1.1)(c) is amended to require the employer to provide evidence in writing of the election to the graduated rate estate (or, for taxation years ending before 2016, the estate) of the deceased taxpayer; and
- paragraph 110(1.1)(d) is amended to permit the graduated rate estate (or, for taxation years ending before 2016, the estate) of the deceased taxpayer to file evidence of the election with the Minister of National Revenue with the deceased taxpayer's return of income.

This amendment applies in respect of acquisitions of securities and transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010.

Clause 39

Ecological gifts

ITA
110.1(1)(d)

Section 110.1 of the Act provides rules for calculating the deduction, in computing the taxable income of a corporation, in respect of gifts made by the corporation to registered charities and other qualified donees. Paragraph 110.1(1)(d) provides for the deduction, in computing a corporation's taxable income, of the eligible amount of an ecological gift made by the corporation.

An ecological gift is a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is important to the preservation of Canada's environmental heritage. The gift must be made to certain specified donees.

Several amendments are being made to paragraph 110.1(1)(d) and each of the amendments applies in respect of gifts made after March 21, 2017.

Paragraph 110.1(1)(d) is amended to apply to gifts of "personal servitudes" under the *Civil Code of Quebec*, where the personal servitude applies to the ecologically sensitive land and has a term of not less than 100 years.

Clauses 110.1(1)(d)(iii)(B) and (C) of the Act provide for a deduction, in computing a corporation's taxable income, of the eligible amount of an ecological gift made by the corporation to a municipality in Canada or to a municipal or public body performing a function of government in Canada.

Clauses 110.1(1)(d)(iii)(B) and (C) are amended to stipulate that where it is proposed that an ecological gift be made by a corporation to a municipality or to a municipal or public body performing a function of government in Canada, the making of the gift to the municipality or to the municipal or public body performing a function of government in Canada must be approved by the Minister of the Environment (or her designate) in respect of each such gift.

Clause 110.1(1)(d)(iii)(D) provides for a deduction, in computing a corporation's taxable income, of the eligible amount of an ecological gift made by the corporation to a registered charity, one of the main purposes of which is, in the opinion of the Minister of Environment, the conservation and protection of Canada's environmental heritage. That registered charity must be approved by that Minister or her designate in respect of each such gift.

Clause 110.1(1)(d)(iii)(D) is amended to exclude gifts to private foundations from qualifying for the deduction.

Ecological gifts

ITA
110.1(5)

Subsection 110.1(5) of the Act provides that the fair market value of a gift of ecologically sensitive land (or a covenant, easement or servitude in respect of ecologically sensitive land) is deemed to be the amount determined by the Minister of the Environment.

Consequential on the amendments to paragraph 110.1(1)(d) and paragraph (a) of the definition "total ecological gifts" in subsection 118.1(1) paragraph 110.1(5)(b) is amended to extend the application of subsection 110.1(5) to "personal servitudes" under the *Civil Code of Quebec*. For more information, see the commentary on paragraph 110.1(1)(d) and the definition "total ecological gifts" in subsection 118.1(1).

This amendment applies in respect of gifts made after March 21, 2017.

Clause 40

Definitions

ITA
111(8)

"exchange rate"

The definition "exchange rate" is relevant for the purposes of subsections 40(10) and (11) and subsection 111(12), regarding capital gains and losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. The "exchange rate", at any time in respect of a foreign currency, is currently defined as the rate of exchange between that currency and Canadian currency quoted by the Bank of Canada at noon on the day that includes that time (or, if that day is not a business day, on the day before) or a rate of exchange acceptable to the Minister.

Beginning on March 1, 2017, the Bank of Canada no longer publishes two exchange rates daily (noon and closing), but instead publishes a single rate per currency pair each day at 16:30 eastern time. Consequential to this change, the definition "exchange rate" is amended to remove the reference to the rate of exchange quoted by the Bank of Canada at noon on the relevant day, and to instead refer to the single exchange rate for the currency quoted by the Bank of Canada on the relevant day.

This amendment applies as of March 1, 2017.

Clause 41

Interest in a partnership – cost reduction

ITA
112(11) to (13)

New subsections 112(11) to (13) together with the amendment to clause 53(2)(c)(i)(C) are intended to ensure that taxpayers do not circumvent the dividend stop-loss rules in subsections 112(3) to (7) by holding shares through a partnership, instead of holding the shares directly. These rules are intended to deny the inappropriate loss created in certain circumstances through the fluctuation of the cost to the taxpayer of an interest in a partnership arising from the shares held or disposed of by the partnership.

New subsections 112(11) to (13) apply for the purposes of computing the cost to a taxpayer of an interest in a partnership that is property other than capital property of the taxpayer.

Under new subsection 112(11), the cost to a taxpayer of an interest in a partnership that is property other than capital property of the taxpayer is reduced by an amount equal to the share of the taxpayer's loss (referred to as the "partnership loss" in subsections (11) and (12)) from the disposition of a share of a corporation by the partnership (or another partnership of which the partnership is a direct or indirect member), if the share is disposed of during a fiscal period of the partnership or a prior fiscal period. The partnership loss is to be determined without reference to subsections 112(3.1), (4) and (5.2).

New subsections 112(12) and (13) provide application rules for the purposes of new subsection 112(11).

Under new subsection 112(12), if the taxpayer disposes of an interest in a partnership, the taxpayer's share of a partnership loss for the purpose of subsection 112(11) is to be computed as if:

- the fiscal period of any partnership of which the taxpayer is a direct or indirect member ended immediately before the time that is immediately before the taxpayer disposed of the partnership interest,
- any partnership of which the taxpayer is a direct or indirect member disposed of any share of a corporation that was property of the partnership at the time the taxpayer disposed of a partnership interest,
- the relevant partnership(s) disposed of those shares immediately before the end of their fiscal periods for proceeds equal to the fair market value of the shares when the taxpayer disposed of the partnership interest, and
- each member of any partnership of which the taxpayer is a direct or indirect member were allocated their specified proportion of any loss realized by the partnerships, which loss is to be computed without reference to subsections 112(3.1), (4) and (5.2).

New subsection 112(13) applies to determine the cost of a partnership interest that a taxpayer acquires from another taxpayer if new subsection (11) applied to reduce the cost of the partnership interest to the other taxpayer. In such a case, the total of all amounts each of which is

an amount deducted from the cost of the partnership interest to the other taxpayer is added to the cost of the partnership interest to the taxpayer (other than an amount to which subsection 112(3.1) would apply).

New subsections 112(11) to (13) are deemed to have come into force on September 16, 2016.

Clause 42

Pension Credit

ITA
118(3)

Subsection 118(3) provides for a non-refundable credit for individuals who are in receipt of eligible pension income (as defined in subsection 118(7)). The credit is determined by the formula A x B:

- Variable A is the appropriate percentage for the year (15% for 2016).
- Variable B is the lesser of $2,000 and the eligible pension income of the individual for the year.

Variable B is amended such that amounts received by the individual on account of a retirement income security benefit (RISB amount) payable to the individual under Part 2 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* will be eligible for the non-refundable credit. Specifically, the credit will be calculated by reference to up to $2,000 of the individual's combined eligible pension income and RISB amounts for the year, multiplied by the appropriate percentage for the year.

This amendment applies to the 2015 and subsequent taxation years.

Clause 43

Definitions - "total ecological gifts"

ITA
118.1(1)

Subsection 118.1(1) provides a definition of "total ecological gifts". This definition applies for the purpose of the charitable donation tax credit, based on the eligible amount of a gift, which is available to individuals under subsection 118.1(3).

An ecological gift is a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real servitude) that is certified by the Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is important to the preservation of Canada's environmental heritage. The gift must be made to certain specified donees.

Paragraph (a) of the definition is amended to include gifts of "personal servitudes" under the *Civil Code of Quebec*, where the personal servitude applies to the ecologically sensitive land and has a term of not less than 100 years.

Subparagraph (b)(i) of the definition in subsection 118.1(1) is amended to stipulate that where it is proposed that an ecological gift be made by an individual to a municipality in Canada or to a municipal or public body performing a function of government in Canada, the making of the gift to the municipality or to the municipal or public body performing a function of government in Canada must be approved by the Minister of the Environment (or her designate) in respect of each such gift.

Subparagraph (b)(ii) of the definition in subsection 118.1(1) is amended to exclude donations to private foundations.

The amendments to the definition "total ecological gifts" apply in respect of gifts made after March 21, 2017.

Financial Institution Definition

ITA
118.1(20)

Subsection 118.1(20) of the Act defines a "financial institution" for the purpose of the "non-qualifying security" definition in subsection 118.1(18). For this purpose, "financial institution" is defined as being a member of the Canadian Payments Association or a credit union that is a shareholder or member of a central for the purposes of the *Canadian Payments Association Act*.

Subsection 118.1 is amended to change the reference "*Canadian Payments Association Act*" to "*Canadian Payments Act*" to reflect the new title of that statute.

This amendment is deemed to have come into force on October 24, 2001.

Clause 44

Medical expense credit

ITA
118.2(2)

Subsection 118.2(2) sets out the expenses that may be included in the computation of an individual's medical expense credit.

Therapy

ITA
118.2(2)(l.9)

Paragraph 118.2(2)(l.9) of the Act provides that an expense is eligible for the medical expense credit if it is for remuneration paid for therapy administered to an individual with a severe mental

or physical impairment who is eligible for the disability tax credit. The therapy must be prescribed by, and administered under the general supervision of listed medical practitioners.

Paragraph 118.2(2)(l.9) is amended to add nurse practitioners to the list of medical practitioners who are able to prescribe and supervise therapy for the purposes of this paragraph.

This amendment applies to expenses incurred on or after September 8, 2017.

Design of therapy plan

ITA
118.2(2)(l.92)

Paragraph 118.2(2)(l.92) of the Act provides that an expense is eligible for the medical expense credit if it is for remuneration paid for the design of an individualized therapy plan. Paragraph 118.2(2)(l.92) is amended to add nurse practitioners to the list of medical practitioners who can prescribe a therapy plan and under whose general supervision such a plan can be administered.

This amendment applies to expenses incurred on or after September 8, 2017.

Medical Expense Credit -- Marihuana

ITA
118.2(2)(u)

Existing paragraph 118.2(2)(u), which provides the medical expense tax credit for medical marihuana under the *Medical Marihuana Access Regulations*, is repealed consequential to the repeal of those regulations. References to the new *Marihuana for Medical Purposes Regulations* are contained in new paragraph 118.2(2)(v).

For more information, see the comments under new paragraph 118.2(2)(v).

This amendment applies on Royal Assent.

ITA
118.2(2)(v)

New paragraph 118.2(2)(v) of the Act effectively replaces existing paragraph 118.2(2)(u) in allowing amounts paid for medical marihuana as an eligible expense under the medical expense tax credit. To be eligible under the medical expense tax credit, medical marihuana must be purchased on behalf of a patient who is authorized to possess marihuana for medical purposes under the *Marihuana for Medical Purposes Regulations* or section 56 of the *Controlled Drugs and Substances Act*. The medical marihuana must be purchased from

- a licensed producer (as defined in subsection 1(1) of the *Marihuana for Medical Purposes Regulations*), in accordance with a medical document (as defined in subsection 1(1) of the *Marihuana for Medical Purposes Regulations*),

- a health care practitioner (as defined in subsection 1(1) of the *Marihuana for Medical Purposes Regulations*) in the course of treatment for a medical condition,
- a hospital, under subsection 65(2.1) of the *Narcotics Control Regulations*, or
- an individual who possesses an exemption for cultivation or production under section 56 of the *Controlled Drugs and Substances Act*.

New paragraph 118.2(2)(v) is deemed to have come into force on June 7, 2013.

ITA
118.2(2)(v)

Amended paragraph 118.2(2)(u) of the Act replaces existing paragraph 118.2(2)(u) and new paragraph (v) in allowing amounts paid for medical marihuana as an eligible expense under the medical expense tax credit. To be eligible under the medical expense tax credit, medical marihuana must be purchased on behalf of a patient who is authorized to possess marihuana, marihuana plants or seeds, cannabis or cannabis oil for their own medical use under the *Access to Cannabis for Medical Purposes Regulations* or section 56 of the *Controlled Drugs and Substances Act*.

This amendment is deemed to have come into force on August 24, 2016.

Clause 45

Students eligible for the disability tax credit

ITA
118.6(3)(b)

Subsection 118.6(3) of the Act applies for the purpose of calculating amounts deductible under subsections 118.6(2) and (2.1). Subsection 118.6(3) extends full-time student eligibility for the education tax credit to certain part-time students, where the student is eligible for the disability tax credit or cannot be enrolled on a full-time basis because of the student's mental or physical impairment.

Paragraph 118.6(3)(b) is amended to permit nurse practitioners to certify that an individual has in the year a mental or physical impairment the effects of which on the individual are such that the individual cannot reasonably be expected to be enrolled as a full-time student while so impaired

This amendment applies to certifications made on or after September 8, 2017.

Clause 46

Tax Payable by Trust

ITA
122(1)(c)

Section 122 sets out certain rules that apply in determining the tax payable by a trust under Part I of the Act. Paragraph 122(1)(c) provides for a "recovery" of tax in a taxation year of a trust that elected in an earlier taxation year to be a qualified disability trust. The recovery tax is in addition to the 33% tax under paragraph 122(1)(a) on the trust's taxable income for the year.

The recovery tax is the amount determined by the formula A – B. In general terms, variable A of the formula computes the total of all amounts each of which is the tax the trust would have paid under Part I for an earlier taxation year if the trust had not been a qualified disability trust for the earlier taxation year and it made payable (i.e., flowed out) in the earlier taxation year to an electing beneficiary under the trust for the earlier year the amount of its taxable income for the earlier year that was subsequently distributed to that beneficiary (i.e., as a capital distribution). Variable B of the formula computes the actual tax paid by the trust on its taxable income for each of those earlier taxation years. The difference between these two amounts is the amount of the tax recovered for the year in which paragraph 122(1)(c) applies. The amount recovered is, in effect, the income tax for the earlier year on the trust's taxable income for the earlier year that is not distributed to an individual who was an "electing beneficiary" of the trust for the earlier year.

The formula in paragraph 122(1)(c) for the recovery tax is amended to be A – (B – C). Elements A and B of the formula are not changed. New element C is the total of the amounts determined, in computing the amount for A for the year the recovery tax is payable, under clause (ii)(B) of A for an earlier year of the trust. That subclause describes (for the purposes of determining the amount under A) the portion of the trust's federal income tax (on taxable income) for the earlier year that is reasonably attributable to the reduction under clause (ii)(A) of A in taxable income attributable to payments made to an electing beneficiary. The effect of C of the formula is to ensure that, to the extent that credit is given in computing element A of the formula for federal income taxes paid in respect of an electing beneficiary's share of the trust's taxable income for an earlier year, credit for that amount is not also provided for under element B of the formula.

This amendment applies to taxation years that end on or after September 16, 2016.

Clause 47

Refundable medical expense supplement

ITA
122.51(2)(b)(i)

Section 122.51 provides a refundable medical expense supplement equal to the lesser of $1,000 (indexed after 2006) and 25% of the total of allowable expenses claimed under the disability supports deduction and the medical expense tax credit by an eligible individual for the year. The supplement is reduced by 5% of "adjusted income" in excess of an indexed threshold.

The 25% factor is set out in subparagraph (b)(i) of the description of A in subsection 122.51(2), as a function of certain amounts creditable at 15%, the "appropriate percentage" for the 2008 and subsequent taxation years.

The 25% factor is set out in the fraction "25/C" in the formula in the description of A. However, the reference to 25 should be read as a reference to 25%. The formula is adjusted to provide the correct mathematical result.

This amendment applies to the 2005 and subsequent taxation years.

Clause 48

Specified cooperative income

ITA
125(7)

Subsection 125(7) of the Act contains definitions that are relevant to the small business deduction.

"specified cooperative income"

In general terms, income from an active business carried on in Canada by a Canadian-controlled private corporation is eligible for the small business deduction under subsection 125(1) of the Act, subject to limitations for certain types of income including "specified corporate income", as defined in subsection 125(7). The new definition "specified cooperative income" is introduced so that certain income arising in connection with sales to farming or fishing cooperatives is excluded from "specified corporate income" with the consequence that such income remains eligible for the small business deduction.

To qualify as "specified cooperative income" of a corporation (referred to as the "selling corporation"), the income must be from the sale of the farming products or fishing catches of the corporation's farming or fishing business. These sales must also be to a qualifying "purchasing corporation".

A purchasing corporation will qualify under subparagraph (b)(i) if it is a cooperative corporation (as defined in subsection 136(2), but extended to include fishing businesses) with which the selling corporation deals at arm's length. A purchasing corporation can also qualify under subparagraph (b)(ii) where such a cooperative corporation holds a direct or indirect interest in it.

To qualify under subparagraph (b)(ii), the selling corporation – or one of its shareholders or a person who does not deal at arm's length with the selling corporation or one of its shareholders – must hold a direct or indirect interest in a cooperative corporation (as defined in subsection 136(2), but extended to include fishing businesses). That cooperative corporation must then hold a direct or indirect interest in the purchasing corporation. The last condition is that the selling corporation's income from the sale of farming products or fishing catches would not otherwise be specified corporate income but for the fact that the selling corporation – or one of its

shareholders or a person who does not deal at arm's length with the selling corporation or one of its shareholders – holds a direct or indirect interest in the cooperative corporation.

Amounts included in a corporation's income under subsection 135(7) (i.e., patronage dividends paid by a cooperative out its profits to its members) would not be income from the sale of the farming products or fishing catches of the corporation and would therefore not qualify as specified cooperative income. This is in keeping with the principle that a single business, including a cooperative business, is entitled to one business limit only.

For more information on what constitutes farming products or fishing catches, see the definitions of "farming" and "fishing" in subsection 248(1).

This amendment applies to taxation years that begin after March 21, 2016.

"specified corporate income"

The definition "specified corporate income" is relevant in determining the portion of a Canadian-controlled private corporation's income from an active business carried on in Canada that is eligible for the small business deduction under subsection 125(1) of the Act.

In general terms, the portion of a Canadian-controlled private corporation's income from an active business from the provision of services or property to a private corporation is not eligible for the small business deduction if the corporation or one of its shareholders (or a person who does not deal at arm's length with the corporation or one of its shareholders) holds a direct or indirect interest in the corporation, unless the private corporation assigns any portion of its own business limit to the corporation.

The definition "specified corporate income" is amended to provide that income of a corporation that is "specified cooperative income" is not included in the corporation's specified corporate income. For more information, see the comments under the new definition "specified cooperative income".

This amendment applies to taxation years that begin after March 21, 2016.

Clause 49

Dispositions ignored

ITA
126(4.4)(a)

Subsection 126(4.4) of the Act directs that certain dispositions and acquisitions of property be ignored for the purposes of the foreign tax credit limitation in subsections 126(4.1) and (4.2) and the definition of "economic profit" in subsection 126(7). As a consequence of the introduction of section 138.2 (a new rule that allows insurers to effect tax-deferred mergers of segregated funds), a reference to subsection 138.2(4) in paragraph 126(4.4)(a) is introduced so that "dispositions" that are qualifying transfers are also excluded from the application of subsection 126(4.1) and (4.2) and the definition of "economic profit" in subsection 126(7).

This amendment applies to taxation years that begin after 2017.

Clause 50

Definitions

ITA
127(9)

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the investment tax credits (ITCs) of a taxpayer.

“pre-production mining expenditure”

The definition pre-production mining expenditure in subsection 127(9) describes the type of exploration expenses that are eligible for the 10% ITC (specified percentage) rate and are included in paragraph (a.3) of the definition “investment tax credit”.

The definition “pre-production mining expenditure” in subsection 127(9) of the English version of the Act is amended to correct a typographical error by adding “or” at the end of subparagraph (a)(i). This error occurred when the provision was amended effective on March 21, 2013.

This amendment is deemed to have come into force on March 21, 2013.

“specified percentage”

The definition “specified percentage” in subsection 127(9) sets out the relevant rates at which investment tax credits (ITCs) are earned in different circumstances.

Budget 2012 reduced the general ITC rate for qualified scientific research & experimental development (SR&ED) expenditures to 15% from 20%. The 15% rate is fully phased in for taxation years that begin after 2014.

Subparagraph (f.1)(i) of the definition is amended to reduce the ITC rate to 15% for any repayment of any government assistance, non-government assistance or contract payments (assistance) received by a taxpayer in a taxation year beginning after 2014.

This amendment applies to repayments of assistance made after September 16, 2016.

Clause 51

Dividends paid to bankrupt controlling corporation

ITA
129(1.1)(b)

Subsection 129(1) entitles corporations to claim a partial refund for a taxation year on taxable dividends paid in the year. Paragraph 129(1.1)(b) provides that dividends paid to a shareholder

that was a bankrupt at any time during the taxation year of the corporation do not qualify for the dividend refund.

Paragraph 129(1.1)(b) is amended to remove an expired reference to the definition "bankrupt" in subsection 128(3), which was repealed by 1998, c. 19. "Bankrupt" is now defined in subsection 248(1).

Clause 52

Section 132.2 of the Act provides rules to facilitate the merger of two mutual fund trusts, or a mutual fund trust and a mutual fund corporation, on a tax-deferred basis. Unitholders or shareholders in turn are permitted a tax-deferred exchange of their shares or units of the terminating fund (*i.e.*, the transferor) for units of the continuing fund (*i.e.*, the transferee). Such a merger is referred to as a "qualifying exchange". A qualifying exchange provides for the funds to be tax-efficiently reorganized so as to achieve economies of scale and avoid the duplication of expenses. However, these rules do not provide for the reorganization of a mutual fund corporation into multiple mutual fund trusts. This is problematic for a mutual fund corporation that is organized as a multi-class "switch" corporation. A switch corporation typically offers different types of asset exposure in different investment funds, and generally each fund is structured as a separate class of shares within the same mutual fund corporation.

Several changes to section 132.2 are introduced to allow the reorganization of a mutual fund corporation into multiple mutual fund trusts. This will allow a switch corporation to merge on a tax-deferred basis with multiple mutual fund trusts under certain conditions. In general terms, the definition of "qualifying exchange" in section 132.2 is amended to include the reorganization of a mutual fund corporation into multiple mutual fund trusts and references to "the transferee" in the section are replaced by references to "a transferee" to reflect the intention that a mutual fund corporation could merge on a tax-deferred basis into more than one mutual fund trusts.

Technical changes are also introduced to clarify and to facilitate the use of these merger rules.

The definition of qualifying exchange is amended to clarify that a mutual fund corporation that holds units of mutual fund trusts that will be the transferees will be able to meet the definition of, and to undertake, a tax-deferred qualifying exchange.

Subparagraph 132.2(3)(l)(iii) is introduced so that capital gains dividends can be made payable by a transferor corporation up to 60 days after the qualifying exchange, provided the dividend is made payable and paid to taxpayers that held shares of a class of shares that is recognized as an investment fund before the end of that period. This will permit fund managers to take additional time to determine the amount of any capital gains dividends to be paid, and to whom such dividends may be paid.

Another amendment is introduced that, for the purpose of computing the "capital gain redemptions" amount for the transferor or transferee, only share or unit redemptions occurring before the "transfer time" – in other words, occurring prior to the merger and not undertaken in the course of effecting the merger – may be taken into account. As the purpose of this computation, in connection with the capital gains refund, is to recognize the extent of redemptions that may be subject to capital gains tax at the shareholder or unitholder level, it is

appropriate that redemptions that could not be subject to capital gains tax, as shareholders and unitholders receive a rollover, are not taken into account.

These amendments generally apply in respect of qualifying exchanges that occur on or after March 22, 2017.

Definitions re qualifying exchange of mutual funds

ITA
132.2(1)

The definition of "qualifying exchange" contains a series of conditions required to be satisfied for a transfer of property to be considered as a qualifying exchange. The preamble and paragraphs (a) and (b) of the definition of "qualifying exchange" are amended to allow the reorganization of a mutual fund corporation into multiple mutual fund trusts, and the current structure of the definition is restructured into new paragraphs (a), (b) and (c).

In addition, conditions are introduced in new paragraph (d) and need to be satisfied only when properties are transferred from a transferor to more than one transferee (*i.e.,* from a switch corporation to mutual fund trusts). When this is the case, these conditions need to be satisfied in order for the exchange to be considered as a qualifying exchange. These conditions are:

- All shares of each class of shares that is recognized under securities legislation as or as part of an investment fund of the transferor (*i.e.,* the switch corporation) are disposed of to the transferor within 60 days after the transfer time; and
- The units received in consideration for a particular share of a class of shares, that is recognized under securities legislation as or as part of an investment fund, of the transferor (*i.e.,* the switch corporation) are units of the transferee (*i.e.* a mutual fund trust) to which was transferred all of substantially all of the properties that were allocated to that investment fund immediately before the transfer time.

New paragraph (a) of the definition also clarifies that a mutual fund corporation that holds units of mutual fund trusts that will be the "transferees" may qualify as a tax-deferred qualifying exchange.

Existing paragraph (c) of the definition, which required the transferor and the transferee or transferees, as the case may be, to jointly elect by filing a prescribed form with the Minister of National Revenue on or before the election's due date, has been moved to paragraph (e).

General

ITA
132.2(3)

In order to allow a mutual fund corporation to merge on a tax-deferred basis into multiple mutual trusts, the following changes are introduced:

- references to “the transferee” in subsection 132.2(3) are replaced by references to “a transferee”;
- the reference to “one or both of the funds” in subparagraph 132.2(3)(g)(vi) is replaced by “the transferor or the transferee”;
- the reference to “either of the funds” in paragraph 132.2(3)(j) is replaced by “any of the funds”; and
- paragraph 132.2(3)(i), which provides the amount that should be added to the amount determined under the description of A in the definition of refundable capital gains tax on hand in subsection 132(4) in respect of the transferee, is amended to prorate the amount that should be attributed to each transferee.

ITA
132.2(3)(a.1)

New paragraph 132.2(3)(a.1) of the Act is added to address situations involving a transferor that transfers to a transferee a unit of that transferee in exchange for a new unit of that transferee. In such case, the transferor is deemed to have disposed of the unit and to have received a new unit of the transferee at the transfer time.

ITA
132.2(3)(h)

Paragraph 132.2(3)(h) of the Act ensures that the merger of two mutual fund trusts, or a mutual fund trust and a mutual fund corporation, will not cause shares or units of the transferor fund to cease to be qualified investments for trusts governed by RRSPs and certain other registered plans.

Paragraph 132.2(3)(h) is amended to replace the reference to subsection 205(1) of the Act by a reference to subsection 146.4(1), consequential on the repeal of section 205 and moving the definition “qualified investment” that previously appeared in that section for RDSP purposes to subsection 146.4(1).

This amendment comes into force on March 23, 2017.

ITA
132.2(3)(l)(iii)

A mutual fund corporation that is a transferor undergoing a qualifying exchange is deemed to have a taxation year end at the acquisition time, defined in subsection 132.2(2) of the Act as a time following the time following the transfer time. Paragraph 132.2(3)(n) provides that the transferor is not a mutual fund corporation in taxation years beginning after the transfer time.

New subparagraph 132.2(3)(l)(iii) is added to address situations where the transferor wishes to declare and pay a capital gains dividend following the acquisition time but within sixty days of

the transfer time. Generally, mutual fund corporations may pay a capital gains dividend up to sixty days following the end of the corporation's taxation year, provided the corporation continues to qualify as a mutual fund corporation throughout that following year. A capital gains dividend paid in that sixty day period is taken into account in computing the mutual fund corporation's capital gains refund in respect of that year. This new rule permits a capital gains dividend to be made payable and paid within a period ending 60 days after the transfer time by deeming the dividend in certain circumstances to have become payable immediately before the year-end triggered by the qualifying exchange, at a time when the transferor is still a mutual fund corporation. It is anticipated that in the case of a switch corporation with multiple investment funds merging into multiple mutual fund trusts, this rule will permit the corporation additional time to determine the amount of capital gains dividends to be paid to shareholders of the investment funds that are becoming unitholders of the transferee mutual fund trusts.

ITA
132.2(3)(m)(iii)

Subparagraph 132.2(3)(m)(iii) is added to apply if the shares of the transferor fund are redeemed prior to the year end triggered following a qualifying exchange, throughout which the transferor and transferee funds are a mutual fund trust or mutual fund corporation. The new rule provides that, for the purpose of computing the "capital gain redemptions" amount for that year for the transferor or transferee, only share or unit redemptions occurring before the "transfer time may be taken into account. As the purpose of this computation, in connection with the capital gains refund, is to recognize the extent of redemptions that may be subject to capital gains tax at the shareholder or unitholder level this amendment ensures that redemptions that could not be subject to capital gains tax, as shareholders and unitholders receive a rollover on redemptions arising in the course of the qualifying exchange, are not taken into account.

Qualifying exchange – non-depreciable property

ITA
132.2(4)

In order to allow a mutual fund corporation to merge on a tax-deferred basis into multiple mutual trusts, the reference to "the funds" in subsection 132.2(4) of the Act is replaced by "the transferor and transferee".

In addition, new paragraph 132.2(4)(c) is introduced to clarify that when a transferor transfers to a transferee a unit of that transferee, paragraphs 132.2(4)(a) and (b) do not apply to the transferee to determine the cost of the unit transferred.

Depreciable property

ITA
132.2(5)

In order to allow a mutual fund corporation to merge on a tax-deferred basis into multiple mutual fund trusts, the reference to “the funds” in subsection 132.2(5) of the Act is replaced by “the transferor and transferee”.

Amendment or Revocation of Election

ITA
132.2(7)

The reference to the election described in paragraph (c) of the definition “qualifying exchange” in subsection 132.2(1) of the Act is now in paragraph (e) of the same definition. Consequently, the reference is updated to paragraph (e).

Clause 53

Income — designated foreign insurance business

ITA
138(2.1)

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

Paragraph 138(2)(a), in particular, provides that, if a life insurer resident in Canada carries on business in Canada and in a country other than Canada in a taxation year, its income or loss for the year from carrying on an insurance business is the amount of its income or loss for the taxation year from carrying on the insurance business in Canada. As such, the income from a Canadian-resident life insurer’s business carried on outside Canada is generally not taxable in Canada.

New subsection 138(2.1) is intended to ensure that income from the insurance of specified Canadian risks (which, as provided in subsection 138(12), has the same meaning as in paragraph 95(2)(a.23)) does not escape taxation in Canada in cases where the specified Canadian risks are insured (or reinsured) as part of a life insurer’s business carried on outside Canada. It applies in respect of a life insurer resident in Canada if the life insurer has a “designated foreign insurance business” in a taxation year – which is, in general terms, a foreign insurance business where the insurance of specified Canadian risks comprises more than a *de minimis* proportion of the business. For more information, see the new definition “designated foreign insurance business” in subsection 138(12).

If new subsection 138(2.1) applies in respect of a life insurer for a taxation year, paragraph 138(2.1)(a) provides that, for the purposes of computing the life insurer’s income or loss from carrying on an insurance business in Canada for that taxation year, the life insurer’s insurance business carried on in Canada is deemed to include the insurance of the specified Canadian risks that are insured as part of the life insurer’s designated foreign insurance business. The intention

is that the life insurer's income from the specified Canadian risks be included in computing its income from carrying on an insurance business in Canada, and that the insurance or reinsurance of the specified Canadian risks is in all other respects treated as though it had occurred as part of the life insurer's Canadian insurance business.

Paragraph 138(2.1)(b) applies in respect of a taxation year of a life insurer resident in Canada in which the life insurer has a designated foreign insurance business, if that business was not a designated foreign insurance business of the life insurer in the immediately preceding taxation year. It is similar to paragraph 138(11.91)(d) (a rule that applies for the purposes of computing a non-resident insurer's income where the insurer commences to carry on an insurance business in Canada or ceases to be exempt from tax under Part I). If paragraph 138(2.1)(b) applies, it treats the life insurer as having claimed, under a number of enumerated provisions, the maximum reserves in respect of the specified Canadian risks insured or reinsured by it as part of its designated foreign insurance business, for the immediately preceding taxation year. Such reserves are included in determining the life insurer's income and Canadian investment fund for the taxation year in respect of which paragraph 138(2.1)(b) applies.

Paragraph 138(2.1)(c) deems the life insurer to have

- carried on the designated foreign insurance business in Canada in the taxation year immediately preceding a taxation year in respect of which subsection 138(2.1) applies, and
- to have included in income the amount of negative policy reserves that would have been prescribed in respect of the life insurer for the purposes of paragraphs 12(1)(e.1) and 138(4)(b) (and the regulations thereunder), for the immediately preceding taxation year, in respect of the insurance policies in respect of the specified Canadian risks.

This amendment applies to taxation years that begin after March 21, 2017.

Insurance swaps

ITA
138(2.2)

New subsection 138(2.2) of the Act effectively subjects a Canadian-resident life insurer's foreign insurance businesses to an anti-avoidance rule (in paragraph 95(2)(a.21)) that was previously limited to foreign affiliates of Canadian taxpayers. The rule is intended to ensure that a life insurer cannot avoid Canadian taxation of its income from the insurance of specified Canadian risks through certain arrangements whereby the specified Canadian risks are, in general terms, "swapped" for foreign risks.

For the purposes of section 138, new subsection 138(2.2) deems risks that would otherwise not be specified Canadian risks to be specified Canadian risks if

- the risks are insured by a life insurer resident in Canada as part of an insurance business carried on in a country other than Canada, and

- the risks would be deemed to be specified Canadian risks because of paragraph 95(2)(a.21) if the life insurer were a foreign affiliate of a taxpayer.

If a risk is deemed, under subsection 138(2.2), to be a specified Canadian risk, this result is relevant in determining whether the life insurer has a designated foreign insurance business in a taxation year; if so, then the deeming rules in subsection 138(2.1) would apply in respect of the risk. Notably, for the purposes of computing the life insurer's income or loss from carrying on an insurance business in Canada, the life insurer's insurance business carried on in Canada would be deemed to include the insurance of the specified Canadian risk. For more information, see the commentary under subsection 138(2.1).

This amendment applies to taxation years that begin after March 21, 2017.

Insurance swaps

ITA
138(2.3) and (2.4)

New subsection 138(2.3) of the Act provides the conditions of application for new subsection 138(2.4), which is a complementary rule to the anti-avoidance rule in subsection 138(2.2). Subsections 138(2.3) and (2.4) are analogous to paragraph 95(2)(a.22), a rule that applies in respect of certain "insurance swap" arrangements of foreign affiliates of Canadian taxpayers. Subsection 138(2.4) is intended to ensure that any income derived from agreements or arrangements, in respect of risks of a Canadian-resident life insurer that are deemed by the anti-avoidance rule in subsection 138(2.2) to be specified Canadian risks, does not escape Canadian taxation.

Subsection 138(2.3) provides that subsection 138(2.4) applies only in cases where

- subsection 138(2.2) applies to deem one or more risks insured by a life insurer resident in Canada to be specified Canadian risks; and
- one or more agreements or arrangements in respect of those risks have been entered into by the life insurer, or by one of the other persons or partnerships enumerated in subparagraphs 138(2.3)(b)(ii) to (v) (referred to in subsection 138(2.4) as an "agreeing party").

If subsection 138(2.4) applies in respect of one or more agreements or arrangements in respect of a risk that is deemed by subsection 138(2.2) to be a specified Canadian risk, then the following two consequences are provided:

- To the extent that activities performed in connection with the agreements or arrangements can reasonably be considered to be performed for the purpose of obtaining the result described in subparagraph 95(2)(a.21)(ii), those activities are deemed to be either part of a Canadian-resident life insurer's insurance business carried on in Canada, or a separate business, other than an active business, carried on by a foreign affiliate of a taxpayer (depending on the identity of the agreeing party).

- Any income from those activities (including income that pertains to or is incident to those activities) is deemed to be either income from the life insurer's insurance business carried on in Canada, or income from the business, other than an active business, carried on by the foreign affiliate of a taxpayer (depending on the identify of the agreeing party).

The reference in paragraph 138(2.4)(a) to the result described in subparagraph 95(2)(a.21)(ii) is to be interpreted as referring to a state of affairs in which a life insurer's risk of loss or opportunity for gain or profit in respect of the risks that subsection 138(2.2) deems to be specified Canadian risks, in combination with the agreeing party's risk of loss or opportunity for gain in respect of the relevant agreements or arrangements, can reasonably be considered to be determined, in whole or in part, by reference to one or more criteria (described in clauses 95(2)(a.21)(ii)(A) to (C)) in respect of risks insured by another person or partnership.

This amendment applies to taxation years that begin after March 21, 2017.

Ceding of Canadian risks

ITA
138(2.5)

New subsection 138(2.5) of the Act provides that a Canadian-resident life insurer's income in respect of the ceding of specified Canadian risks in its insurance business carried on in a country other than Canada is, in certain circumstances, included in computing the life insurer's income or loss from its insurance business carried on in Canada. Subsection 138(2.5) applies in circumstances where, if the life insurer were a foreign affiliate of a taxpayer, its income in respect of the ceding of the specified Canadian risks would be included in computing its income from a business, other than an active business, because of subparagraph 95(2)(a.2)(iii) (unless that income has already been included in computing the life insurer's income or loss from its Canadian insurance business because of subsection 138(2.1), (2.2) or (2.4)). For more information, see the commentary under subparagraph 95(2)(a.2)(iii).

This amendment applies to taxation years that begin after March 21, 2017.

Anti-avoidance

ITA
138(2.6)

New subsection 138(2.6) of the Act is an anti-avoidance rule that is analogous to the anti-avoidance rule in paragraph 95(2)(a.24), which applies in respect of foreign affiliates of Canadian taxpayers.

For the purposes of section 138, paragraph 138(2.6)(a) deems a risk that would not otherwise be a specified Canadian risk to be a specified Canadian risk that was insured as part of an insurance business carried on in Canada by a particular Canadian-resident life insurer, if it can reasonably be concluded that one of the purposes of the transaction or series of transactions as part of which the life insurer insured the risk was to avoid

- having a designated foreign insurance business, or
- the application, in respect of the risk, of any of subsections 138(2.1) to (2.5), which are intended to ensure that a Canadian-resident life insurer's income from the insurance or reinsurance of specified Canadian risks is subject to Canadian tax.

Paragraph 138(2.6)(b) applies if a risk is deemed by paragraph 138(2.6)(a) to be a specified Canadian risk, and one or more agreements or arrangements in respect of the risk have been entered into by any of the persons or partnerships described in subparagraphs 138(2.3)(b)(i) to (v). Where these conditions are met, paragraph 138(2.6)(b) provides the following consequences:

- Activities performed in connection with the agreements or arrangements are deemed to be either part of a Canadian-resident life insurer's insurance business carried on in Canada, or a separate business, other than an active business, carried on by a foreign affiliate of a taxpayer (depending on the identity of the agreeing party).
- Any income from those activities (including income that pertains to or is incident to those activities) is deemed to be either income from the life insurer's insurance business carried on in Canada, or income from the business, other than an active business, carried on by the foreign affiliate (depending on the identify of the agreeing party).

Paragraph 138(2.6)(b) is analogous to subsection 138(2.4), except that the application of the former, unlike that of the latter, is not conditioned on the activities performed in connection with the relevant agreements or arrangements being performed for the purpose of obtaining the result described in subparagraph 95(2)(a.21)(ii).

This amendment applies to taxation years that begin after March 21, 2017.

Computation of income of a non-resident insurer

ITA
138(11.91)

Subsection 138(11.91) provides rules for the computation of a non-resident insurer's income where the insurer commences to carry on an insurance business in Canada or ceases to be exempt from tax under Part I.

Paragraph 138(11.91)(d) is amended to provide that it applies for the purposes of determining amounts to be included pursuant to paragraph 12(1)(d.1).

This amendment applies to taxation years that begin after March 21, 2017.

Definitions

ITA
138(12)

Subsection 138(12) contains definitions that are relevant for the purpose of computing an insurer's income from carrying on an insurance business in Canada.

"designated foreign insurance business"

The new definition "designated foreign insurance business" is relevant for determining whether new subsection 138(2.1) applies to a life insurer resident in Canada.

A designated foreign insurance business, of a Canadian-resident life insurer in a taxation year, means an insurance business that is carried on by the life insurer in a country other than Canada in the year, unless a "safe harbour" test is met. The safe harbour applies, and the specified Canadian risks are considered to constitute a *de minimis* proportion of the insured risks within the business carried on in a country other than Canada, if more than 90% of the gross premium revenue from the business for the year from the insurance of risks (net of reinsurance ceded) is in respect of the insurance of risks (other than specified Canadian risks) of persons with whom the life insurer deals at arm's length.

This definition, including the safe harbour test, is to be applied separately for each business carried on by a life insurer in a country other than Canada. If a life insurer has multiple businesses in a given country, then the definition is to be applied separately in respect of each such business. However, in applying the definition, a life insurer's operations in a given country are to be treated as a separate business from its operations in any other country.

This amendment applies to taxation years that begin after March 21, 2017.

"insurance"

The definition "insurance" is added to provide, for greater certainty, that the insurance of a risk includes the reinsurance of the risk.

This amendment applies to taxation years that begin after March 21, 2017.

"specified Canadian risk"

The new definition "specified Canadian risk" is added and has the same meaning as in the definition in paragraph 95(2)(a.23). This term is used in new subsections 138(2.1) to (2.3), (2.5) and (2.6), and in the new definition "designated foreign insurance business" in subsection 138(12).

This amendment applies to taxation years that begin after March 21, 2017.

Clause 54

Section 138.1 of the Act provides rules for the taxation of segregated funds established by insurance companies.

Rules relating to segregated funds

ITA
138.1(1)(a)

Paragraph 138.1(1)(a) deems a trust to exist and is referred in this section as the “related segregated fund trust”.

As a consequence of the introduction of the merger rules for segregated funds, paragraph 138.1(1)(a) is amended so that this trust is also deemed to exist for the purpose of new section 138.2 of the Act. For more information, see the commentary under section 138.2.

This amendment applies to taxation years that begin after 2017.

Rules relating to segregated funds

ITA
138.1(1)(f)

Paragraph 138.1(1)(f) deems the income of a related segregated fund trust to be an amount that has become payable in the year to the beneficiaries of the related segregated fund trust for the purposes of subsections 104(6), (13) and (24). This ensures that the income of the related segregated fund trust may be deducted in computing its income each year. The beneficiaries are required to include in their income, as became payable to them in the year, such portion of the amount that but for the deduction would have been income to the related segregated fund trust.

Generally, trusts may deduct in computing taxable income non-capital losses available for carry forward or carry back from previous or subsequent years. However, as the related segregated fund trust’s income becomes payable each year, there is no opportunity for such trust to utilize these losses.

Paragraph 138.1(1)(f) is amended to deem the taxable income of a related segregated fund trust to be an amount that has become payable in the year, so that available non-capital loss carryforwards of the deemed related segregated fund trust may be deducted by the trust against the remaining amount of its income in excess of its taxable income.

This amendment applies to taxation years that begin after 2017.

Transition – non capital loss

ITA
138.1(2.1)

New subsection 138(2.1) of the Act provides that for the purpose of determining the taxable income of a segregated fund in a taxation year that begins after 2017, the non-capital losses of the related segregated fund trust that arise in taxation years that begin before 2018 are deemed to be nil. As a result, a segregated fund will not be able to deduct non-capital losses that arose for taxation years that begin before 2018 in computing its income (and determining the amount that becomes payable to beneficiaries) for taxation years that begin after 2017. For more information, see the commentary under paragraph 138.1(1)(f).

Clause 55

Segregated funds – merger rules

ITA
138.2

Segregated funds are life insurance policies that have many of the characteristics of mutual fund trusts. However, unlike mutual fund trusts, the Act does not permit segregated funds to merge on a tax-deferred basis. New section 138.2 is introduced to allow insurers to effect tax-deferred mergers of segregated funds in a manner generally similar to that permitted for mutual funds under section 132.2.

New section 138.2 defines a "qualifying transfer". On a qualifying transfer, the property held in respect of one segregated fund is transferred to another segregated fund on a rollover basis and the policyholders of the first segregated fund exchange their interests in the first fund for interests in the other fund also on a rollover basis. As a result, the funds may be tax-efficiently reorganized so as to achieve economies of scale and avoid the duplication of expenses. New section 138.2 applies to qualifying transfers that are carried out after 2017.

In general terms the section is organized as follow:

- subsection 138.2(1) sets out the necessary conditions for a merger of segregated funds to be considered a qualifying transfer;
- subsection 138.2(2) sets out rules that will apply if a qualifying transfer has occurred;
- subsections 138.2(3) and (4) set out the tax treatment of gains and losses in respect of properties held by the funds (*i.e.*, the transferor and the transferee) at the time of the transfer;
- subsection 138.2(5) provides that, notwithstanding subsections 138.1(3) or (4), the amount of capital losses resulting from the disposition of property by a merging related segregated fund trust, to the extent they exceed the fund's capital gains (including those deemed to be realized under subsections 138.2(3) or (4)) are attributable to the fund and not to the beneficiaries; and

- subsection 138.2(6) establishes the due date for the election required to treat a segregated fund merger as a qualifying exchange.

Qualifying transfer of funds

ITA
138.2(1)

New subsection 138.2(1) of the Act sets out the conditions under which a qualifying transfer could occur. The conditions are:

- All property of the segregated fund trust (the "first fund" or the transferor) becomes property of another segregated fund trust (the "second fund" or the transferee) at the transfer time;
- Every beneficiary (*i.e.*, person that had an interest) in the first fund has:
    - received an interest in the second fund,
    - ceased to be a beneficiary in the first fund, and
    - received no other consideration for their interest;
- The trustee of both funds is a resident of Canada; and
- The funds' trustee has filed an election in prescribed form with the Minister of National Revenue on or before the due date set out in subsection 138.2(6).

General

ITA
138.2(2)

New subsection 138.2(2) provides rules that will apply to a related segregated fund trust (the "first fund" or the transferor) and another related segregated fund trust (the "second fund" or the transferee) if a qualifying transfer has occurred.

The last taxation year of both funds that began before the transfer time is deemed to have ended at the transfer time and the next taxation year of the second fund is deemed to have begun immediately after the transfer time.

Non capital losses, net capital losses, restricted farm losses, farm losses or limited partnership losses of both funds for taxation years that begin before the transfer time can not be deducted in computing the taxable income of either fund for taxation years that begin after the transfer time.

Each beneficiary of the first fund is deemed to have disposed of his or her interest in that fund at the time of the transfer for proceeds of disposition, and to have acquired an interest in the second fund at a cost, equal to his or her cost of the interest in the first fund immediately before the transfer time.

Acquisition fees in respect of the policyholder's interest in the first fund are deemed to be in respect of the second fund.

Specific rules that adjust the cost of related segregated fund trust property in the event of a withdrawal or disposition of a policyholder's interest in the related segregated fund trust (subsections 138.1 (4) and (5)) do not apply in respect any disposition of an interest in the first fund arising on the qualifying transfer. Subsections 138.1(4) and (5) are intended to avoid double tax when a policyholder withdraws or otherwise disposes of an interest in the related segregated fund trust and property is sold by the segregated fund trust to fund proceeds paid to the policyholder as consideration. If the segregated fund merger is carried out as a qualifying transfer, capital gains would not be realized at the fund or the policyholder level, with the result that there is no risk of double tax in these circumstances. Accordingly, the rules in subsections 138.1(4) and (5) are not required.

Transferor – capital gains and losses

ITA
138.2(3)

New subsection 138.2(3) of the Act sets out the tax treatment of gains and losses on properties held by the transferor related segregated fund trust immediately before the transfer time, as well as the cost of such property to the transferee related segregated fund trust.

Properties of the transferor are deemed to have been disposed immediately before the transfer time and to have been acquired by the transferee at the transfer time for an amount equal to the lesser of (i) the fair market value immediately before the transfer time and (ii) the greater of the cost of the property to the transferor immediately before the transfer time and the amount that is designated in the election filed in respect of the qualifying transfer.

This provision permits the transferor to realize capital gains on property, if available, to the extent of any capital losses arising on the deemed disposition of other property of the transferor.

Transferee – capital gains and losses

ITA
138.2(4)

New subsection 138.2(4) of the Act sets out the tax treatment of gains and losses of properties held by the transferee related segregated fund trust at the time of the transfer.

Properties of the transferee are deemed to have been disposed of immediately before the transfer time and to have been reacquired by the transferee for an amount equal to the lesser of (i) the fair market value immediately before the transfer time and (ii) the greater of the cost of the property to the transferee immediately before the transfer time and the amount that is designated in the election filed in respect of the qualifying transfer.

This provision permits the transferee to realize capital gains on its property, if available, to the extent of any capital losses arising on the deemed disposition of other property of the transferee.

Loss limitation

ITA
138.2(5)

New subsection 138.2(5) of the Act sets out that, notwithstanding subsections 138.1(3) and (4), the amount of capital losses resulting from the disposition of fund properties that exceed the fund's capital gains (including those realized pursuant to subsections 138.2(3) or (4)) are attributable to the fund and not to the beneficiaries. This provision will limit the ability of a transferor or transferee related segregated fund trust to provide to policyholders accrued but previously unrealized capital losses on property held by the related segregated fund trust.

Due date

ITA
138.2(6)

New subsection 138.2(6) of the Act establishes the due date for the election to treat a transfer as a qualifying transfer, as required under paragraph 138.2(1)(d). The due date is the later of the day that is six months after the day that includes the transfer time and a day that the Minister of National Revenue may specify.

Clause 56

Definition of "retirement savings plan"

ITA
146(1)

The definition "retirement savings plan" is described for the purposes of section 146. Clause (*b*)(iii)(B) of the definition is amended to change the reference "*Canadian Payments Association Act*" to "*Canadian Payments Act*" to reflect the new title of that statute.

This amendment is deemed to have come into force on October 24, 2001.

Application of section 212 to payments made out of Saskatchewan Pension Plan

ITA
146(21.2)

Subsection 146(21.2) of the Act applies for various purposes of the Act and *Income Tax Regulations* to deem an individual's account under a specified pension plan (i.e., the Saskatchewan Pension Plan) to be a registered retirement savings plan under which the individual is the annuitant.

Subsection 146(21.2) is amended to add references to paragraphs 212(1)(j.i) and (m). As a result, the deeming rule will apply to exclude from non-resident withholding tax the portion of a retiring

allowance or a payment out of a deferred profit sharing plan that is transferred to a specified pension plan.

This amendment is deemed to have come into force on January 1, 2010, except that in its application before December 14, 2012, it is to be read without reference to paragraph 147.5(21)(c).

Clause 57

Registered Education Savings Plans

ITA
146.1

Budget 2017 announced that the anti-avoidance rules and special taxes of Part XI.01 of the Act are being extended to apply to RESPs. Consequential amendments are being made to the rules in section 146.1 of the Act that apply to RESPs.

For more information, see the commentary on Part XI.01.

Definitions

ITA
146.1(1)

Subsection 146.1(1) defines a number of terms that apply for the purposes of the rules in section 146.1 that apply to registered education savings plans (RESPs).

These amendments come into force on March 23, 2017.

education savings plan

An "education savings plan" is defined as a contract between an individual who is the subscriber and a person or organization who is the promoter. This definition is amended to remove the reference to an “organization”.

promoter

Subsection 146.1(1) is amended to introduce a new definition "promoter", which refers to a person described as a promoter in the definition “education savings plan”. As a consequence of the extension of the rules in Part XI.01 of the Act to RESPs, the term “promoter” is important for several purposes under those rules.

RESP revocable

ITA
146.1(2.1)

Subsection 146.1(2.1) of the Act contains rules that prevent an RESP trust from acquiring or holding a non-qualified investment, carrying on a business or borrowing money. If any of these events occur, the RESP is revocable and, under subsections 146.1(12.1) to (13), its registration may be revoked by the Minister of National Revenue.

Paragraphs 146.1(2.1)(a) and (b) are repealed as a consequence of the rules under Part XI.01 of the Act being extended to apply to RESPs. The consequences of holding a non-qualified investment under an RESP are now set out under Part XI.01.

The repeal applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Trust not taxable

ITA
146.1(5)

Subsection 146.1(5) of the Act generally provides that no income tax is payable by a trust governed by an RESP.

Consequential on the repeal of paragraphs 146.1(2.1)(a) and (b), and on the rules of Part XI.01 of the Act being extended to apply to RESPs, subsection 146.1(5) is amended to add an exception to the general rule of no income tax being payable by an RESP trust. Specifically, subsection (5) is amended such that Part I tax applies to any income or gain earned by the trust that is attributable to holding any property that is not a “qualified investment" (as defined in subsection 146.1(1)).

Part I tax is payable by the trust on the amount that would be its income for the relevant taxation year if it had no income or losses other than from the non-qualified investments that it held in the year, and no capital gains or capital losses other than from the disposition of its non-qualified investments. For this purpose:

- "income" includes dividends described by section 83 of the Act;
- the trust's taxable capital gain or allowable capital loss from the disposition of a property is equal to the full amount of the capital gain or capital loss from the disposition; and
- the trust's income in respect of a non-qualified investment is to be calculated without reference to subsection 104(6) of the Act.

The amendment applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Educational assistance payments

ITA
146.1(7)

Subsection 146.1(7) of the Act generally requires that educational assistance payments made from an RESP to an individual in a taxation year are included in the individual's income for the taxation year.

Subsection 146.1(7) is amended such that an "excluded amount" may be taken into account in computing the amount of educational assistance payments that must be included in the individual's taxable income for a taxation year. For more information, see the commentary on subsection 146.1(7.2).

This amendment comes into force on March 23, 2017.

Other income inclusions

ITA
146.1(7.1)

Paragraph 146.1(7.1)(a) of the Act provides that accumulated income payments (other than amounts transferred to an RDSP under the conditions set out in subsection 146.1(1.2)) received under an RESP by a taxpayer in a taxation year must be included in computing the taxpayer's income for the year.

Paragraph 146.1(7.1)(a) is amended such that an "excluded amount" may also be taken into account in computing the amount of accumulated income payments included in the recipient's taxable income for a taxation year. For more information, see the commentary on subsection 146.1(7.2).

This amendment comes into force on March 23, 2017.

Excluded amount

ITA
146.1(7.2)

Subsection 146.1(7.2) of the Act is amended to expand what constitutes an excluded amount for the purposes of determining the taxable portion of educational assistance payments (EAP) and accumulated income payments (AIP) under an RESP. To prevent double taxation, where an advantage tax had been paid in respect of an amount of RESP income (*e.g.*, an advantage attributable to a prohibited investment) and where the amount is subsequently part of an EAP or AIP, the amount will be an "excluded amount" under subsection (7.2) for the purposes of subsections (7) and (7.1).

This amendment is consequential on Part XI.01 of the Act being extended to apply to RESPs. For further information, see the commentary on Part XI.01.

This amendment comes into force on March 23, 2017.

Example

Alexandre is the subscriber of an RESP where Frédéric and Jérémie are beneficiaries. In 2018, the RESP acquires a prohibited investment that has a fair market value of $30,000. The RESP disposes of the prohibited investment in 2021. The income earned on the prohibited investment is an "advantage" as defined in subsection 207.01(1) for which the subscriber is liable to pay a 100% tax under section 207.05.

The income and the tax payable for the years that the RESP held the investment are $1,200 for 2018, $1,400 for 2019, $1,600 for 2020 and $1,800 for 2021, for a total of $6,000.

Frédéric receives EAPs of $2,000 in 2022, $2,000 in 2023 and $1,500 in 2024. Jérémie receives EAPs of $2,000 in 2024 and $2,000 in 2025.

The "excluded amount" will reduce the taxable portion of EAPs as follows:

- *Before 2022, the Balance of the "excluded amount" is $6,000*
- *In 2022, Frédéric's $2000 EAP will be reduced by $2,000 of the "excluded amount", bringing his taxable EAP for the year to 0$. The balance of excluded amount will be $4,000.*
- *In 2023, Frédéric's $2000 EAP will be reduced by $2,000 of the "excluded amount", bringing his taxable EAP for the year to $0. The balance of excluded amount will be $2,000.*
- *In 2024, Frédéric's $1500 EAP will be reduced by $1,500 of the "excluded amount", bringing his taxable EAP for the year to$ 0. The balance of excluded amount will be $500.*
- *In 2024, Jérémie's $2,000 EAP will be reduced by $500 of "excluded amount", bringing his taxable EAP for the year to $1,500. The balance of excluded amount will be $0.*
- *In 2025, the balance of the "excluded amount" is $0, as such, there is no reduction of Jérémie's EAP. Accordingly, his taxable EAP will be $2,000.*

In this example, the excluded amount had a declining balance (to nil) over three years. Assuming no other tax is paid under section 207.05 for the plan (beyond the $6,000 described above), the EAPs paid to the beneficiaries after 2024, and AIPs (if any) to Alexandre, will be fully included in taxable income and not be reduced by an excluded amount.

Clause 58

Registered Disability Savings Plans

ITA
146.4

Budget 2017 announced that the anti-avoidance rules and special taxes of Part XI.01 of the Act are being extended to apply to RDSPs. Consequential amendments are being made to the rules in section 146.4 of the Act that apply to RDSPs.

Paragraph 146.4(4)(i) generally prohibits payments from an RDSP that are not disability assistance payments to a beneficiary and so, Part XI.01 cannot be paid using funds in the RDSP.

For more information, see the commentary on Part XI.01.

Definitions

ITA
146.4(1)

Subsection 146.4(1) of the Act defines a number of terms that apply for the purposes of the rules in section 146.4 that apply to registered disability savings plans (RDSPs).

These amendments (except for the definition “specified year”) come into force on March 23, 2017.

contribution

The definition "contribution" is relevant for the purposes of several provisions in section 146.4 and Part XI of the Act. Consequential on the repeal of Part XI of the Act and the Part XI.01 anti-avoidance rules being extended to apply to RDSPs, paragraph (d) of the definition "contribution" is amended to remove the reference to subsection 205(1).

disability savings plan

A "disability savings plan" of a beneficiary is an arrangement between a trust company (referred to as the issuer of the disability savings plan) and one or more entities listed in subparagraph (a)(ii). Subparagraph (a)(i) of the definition is amended to reflect the new definition “issuer” in subsection 146.4(1).

issuer

A new definition “issuer” is added to subsection 146.4(1). The definition refers to a person described as an issuer in the definition “disability savings plan”. As a consequence of the extension of the rules in Part XI.01 of the Act to RDSPs, the term “issuer” is important for several purposes under those rules.

qualified investment

A new definition “qualified investment” is added to subsection 146.4(1). Consequential on the repeal of Part XI of the Act, the definition “qualified investment” that previously appeared in subsection 205(1) of the Act is moved to subsection 146.4(1) of the Act. The definition is relevant for several provisions in section 146.4 and Part XI.01 of the Act.

specified maximum amount

This definition is relevant for the purposes of subparagraph 146.4(4)(n)(i), which imposes the maximum annual limit on the amount of disability assistance payments that can be made from an RDSP when the plan is a primarily government-assisted plan.

Consequential on the repeal of Part XI of the Act, the descriptions of A and B in the definition “specified maximum amount” are amended to refer to the new definition “qualified investment” in subsection 146.4(1) that replaced the definition that previously appeared in subsection 205(1) of the Act.

specified year

Paragraph 146.4(4)(l) and subparagraph 146.4(4)(n)(i) of the Act limit the amount of disability assistance payments that can be paid from a registered disability savings plan (RDSP), unless the year in which the payments are made is a “specified year”.

The definition “specified year” in subsection 146.4(1) is amended to permit nurse practitioners to certify that the beneficiary's state of health is such that, in the professional opinion of the nurse practitioner, the beneficiary is not likely to survive more than five years.

This amendment applies to certifications made on or after September 8, 2017.

Specified disability savings plan

ITA
146.4(1.1)

Where certain conditions are met, subsection 146.4(1.1) of the Act permits an RDSP beneficiary with a shortened life expectancy to make withdrawals without requiring the repayment of the assistance holdback amount.

Subsection 146.4(1.1) is amended to permit nurse practitioners to certify in writing that the RDSP beneficiary is, in the nurse practitioner’s professional opinion, unlikely to survive more than five years.

This amendment applies to certifications made on or after September 8, 2017.

RDSP Transfers

ITA
146.4

Subsection 146.4(4) of the Act sets out the conditions that a disability savings plan must meet in order to be registered.

In particular, paragraph 146.4(4)(f) requires that the plan prohibit contributions from being made in a year in respect of which its beneficiary is no longer a “DTC-eligible individual” (as defined in subsection 146.4(1)). It also requires that the plan prohibit contributions after the death of the beneficiary.

Generally, the plan must also be wound up by the end of the calendar year following the first calendar year throughout which the beneficiary has no severe and prolonged impairments with the effects described in paragraph 118.3(1)(a.1) (i.e., the beneficiary is no longer DTC-eligible). An election under subsection 146.4(4.1) may be made in certain circumstances to keep a registered disability savings plan (RDSP) in respect of a DTC-ineligible beneficiary open for up to five years.

Consistent with the elective rule in subsection 146.4(4.1) and the rules in section 60.02 providing for the tax-deferred transfer of amounts from a deceased individual’s registered retirement savings plan, registered retirement income fund, registered pension plan, pooled registered pension plan or specified pension plan (i.e., the Saskatchewan Pension Plan) to the RDSP of a financially dependent infirm child or grandchild, paragraph 146.4(4)(f)(i) is amended to permit a transfer of similar amounts to the RDSP of a DTC-ineligible financially dependent infirm child or grandchild in respect of whom there is a valid election under subsection 146.4(4.1) at the time of the transfer.

This amendment applies to the 2014 and subsequent taxation years.

Plan conditions

ITA
146.4(4)(l)

Paragraph 146.4(4)(l) of the Act limits the amount of disability assistance payments that can be paid from an RDSP.

Consequential on the repeal of Part XI of the Act, the descriptions of A and D in the formula in paragraph 146.4(4)(l) are amended to refer to the new definition “qualified investment” in subsection 146.4(l) that replaced the definition that previously appeared in subsection 205(1) of the Act.

These amendments come into force on March 23, 2017.

Trust not taxable

ITA
146.4(5)

Paragraph 146.4(5)(b) of the Act provides that an RDSP trust is taxable on income from carrying on a business or income earned on non-qualified investments.

Consequential on the repeal of Part XI of the Act, paragraph 146.4(5)(b) is amended to remove the reference to subsection 205(1) of the Act and to add a reference to the definition “qualified investment” that has been added to subsection 146.4(1).

This amendment comes into force on March 23, 2017.

Non-taxable portion of disability assistance payments

ITA
146.4(7)

Subsection 146.4(7) of the Act sets out a formula to determine the non-taxable portion of a disability assistance payment (DAP) for the purpose of subsection 146.4(6). In general terms, the proportion of a DAP that is non-taxable is the same as the proportion that the total contributions made to the RDSP (other than transfers made to plan in accordance with subsection 146.4(8)) is to the total value of the plan's assets.

A new variable D is added to the formula, to add to the non-taxable portion of the DAP an amount in respect of which an advantage tax has been paid under subsection 207.05 of the Act, unless (i) the advantage tax is waived, cancelled or refunded, or (ii) the amount has been included in the non-taxable portion of a DAP.

This amendment comes into force on March 23, 2017.

Example

Laurianne is the holder of an RDSP where William is the beneficiary. In 2018, the RDSP acquires a prohibited investment that has a fair market value of $30,000. The RDSP disposes of the prohibited investment in 2021. The income earned on the prohibited investment is an “advantage” as defined in subsection 207.01(1) for which the holder is liable to pay a 100% tax under section 207.05.

The income and the tax payable for the years that the RDSP held the investment are $1,200 for 2018, $1,400 for 2019, $1,600 for 2020 and $1,800 for 2021, for a total of $6,000.

William receives disability assistance payments (DAP) of $10,000 each year from 2022 to 2024.

Assume that, after applying the formula A x B/C, the taxable portion of the DAPs before applying formula D is $5,000, then:

- *For the DAP in 2022, the non-taxable portion will include a variable D equal to $5,000;*

- *For the DAP in 2023, the non-taxable portion will include a variable D equal to $1,000; and*
- *For the DAP in 2024 and subsequent years, the non-taxable portion will include a variable D equal to nil.*

Obligations of issuer

ITA
146.4(13)

Subsection 146.4(13) of the Act imposes obligations on the issuer of an RDSP to minimize the possibility that a plan holder may become liable to pay tax under Part XI of the Act in connection with the Plan. Paragraph 146.4(13)(d) is repealed, consequential on the repeal of Part XI of the Act and on Part XI.01 being extended to apply to RDSPs. For more information, see the commentary on subsection 207.01(5).

This amendment comes into force on March 23, 2017.

Clause 59

Excess transfers to SPP and PRPP

ITA
147.3(13.1)(a)(i)

Subsection 147.3(13.1) of the Act provides relief from double taxation where amounts are transferred from a registered pension plan (RPP) to a registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) in excess of the amounts permissible by subsections 147.3(1) and (4) to (7) by providing for a deduction.

Subparagraph 147(13.1)(a)(i) is amended to add a reference to clause 56(1)(a)(i)(C) and paragraph 56(1)(z.3) to clarify that the deduction is available where amounts are transferred from an RPP to a specified pension plan (SPP) or pooled registered pension plan (PRPP).

This amendment is deemed to have come into force on January 1, 2010 except that in its application before December 14, 2012, it is to be read without reference to paragraph 56(1)(z.3).

Clause 60

Joint and several liability in respect of amounts received from a PRPP

ITA
147.5(12)

Subsection 147.5(12) of the Act deems an individual's account under a pooled registered pension plan (PRPP) to be a registered retirement savings plan (RRSP) under which the individual is the annuitant for the purposes of a number of provisions of the Act and the *Income Tax Regulations*.

Subsection 147.5(12) of the English version of the Act is amended to appropriately refer to one of these provisions (i.e., subsection 147.1(18)).

This amendment is deemed to have come into force on December 14, 2012.

Contribution deemed not paid

ITA
147.5(32.1)

New subsection 147.5(32.1) of the Act provides that a refund of a contribution made to a PRPP by a taxpayer as a result of a reasonable error or a refund to avoid the revocation of the PRPP, which amount is not deducted as a PRPP contribution for the taxation year in which the refund is made or for any preceding taxation year, is deemed not to have been a contribution made by the taxpayer to the PRPP. As a result, such an amount will not be a contribution for the purposes of the deeming rule in subsection 147.5(11) and provisions listed therein. This is relevant in particular for the purposes of subsections 146(5) and (5.1) and Part X.I, as these provisions apply because of subsection (11) in respect of contributions made to the PRPP (i.e., generally deductible contributions and the tax on over-contributions).

This amendment is deemed to have come into force on December 14, 2012.

Clause 61

Life Insurance Policies

ITA
148

Section 148 of the Act sets out rules for determining the income tax consequences of the disposition of an interest in a life insurance policy. Subsection 148(1) generally requires that an amount be included in a policyholder's income for a taxation year in respect of a disposition of an interest in a life insurance policy. The amount to be included is the amount by which the proceeds of the disposition of the interest that the policyholder (or a beneficiary or assignee) is entitled to receive in the year exceeds the adjusted cost basis to the policyholder of the interest immediately before the disposition.

Deemed Proceeds of Disposition

ITA
148(2)

Subsection 148(2) of the Act deems there to have been, in certain circumstances, a disposition of an interest in a life insurance policy for the purposes of subsections 148(1) and 20(20) and the definition "adjusted cost basis" in subsection 148(9).

Paragraph 148(2)(e) applies to a policy, issued after 2016 that is an exempt policy, to impose a deemed disposition of part of a policyholder's interest under the policy for proceeds equal to an

excess amount. The paragraph applies if a benefit on death (as defined in subsection 1401(3) of the *Income Tax Regulations*) under a coverage (as defined in subsection 1401(3) of the *Income Tax Regulations*) under the policy is paid at a particular time, the payment results in the termination of the coverage but not the policy, and the amount of the fund value benefit (as defined in subsection 1401(3) of the *Income Tax Regulations*) paid at that time in respect of the coverage exceeds the maximum fund value benefit – determined on the policy anniversary that is on or that first follows the date of death of an individual whose life is insured under the coverage – that would be payable under the policy if no other coverage were offered (as determined under subclause (A)(I) of variable B of the formula in subparagraph 306(4)(a)(iii) of the *Income Tax Regulations*).

Paragraph 148(2)(e) is amended so that the term coverage used in that paragraph carries the meaning assigned by paragraph (a) of the definition "coverage" in section 310 of the *Income Tax Regulations*. The paragraph is also amended to modify how the excess amount (i.e., the excess that is the deemed proceeds amount determined under the paragraph where it applies) is computed. The excess will continue to be computed by reference to the maximum fund value benefit that would be payable under the policy if no other coverage were offered (as determined under subclause (A)(I) of variable B of the formula in subparagraph 306(4)(a)(iii) of the *Income Tax Regulations*). However, the determination of that maximum will be on:

- in the case where there is no policy anniversary before the date of death of the individual whose life is insured under the coverage, on the policy anniversary that is on or that first follows that date; and
- in any other case, on the last policy anniversary before the date of death.

For information on related amendments, see the commentary on the description of variable O of the formula in the definition "adjusted cost basis" in subsection 148(9).

This amendment comes into force on Royal Assent.

Repayment of Policy Loan on Partial Surrender

ITA
148(4.01)

Subsection 148(4.01) of the Act applies for the purposes of paragraph 60(s) and the definition "adjusted cost basis" in subsection 148(9). Subsection 148(4.01) deems a particular amount that reduces – as a result of a partial surrender of a taxpayer's interest in a life insurance policy issued after 2016 – the amount payable by the taxpayer in respect of a policy loan in respect of the policy to be a repayment, made at a particular time that is immediately before the time of the partial surrender, in respect of the policy loan. The particular amount is deemed to be a repayment in respect of a policy loan only if it is not otherwise considered to be a repayment of the policy loan and does not reduce the proceeds of disposition of the partial surrender (i.e., it is not an amount payable in respect of a policy loan applied to pay a premium under the policy).

Subsection 148(4.01) is amended to correct a cross-reference by replacing the cross-reference to the definition "adjusted cost basis" with a reference to the definition "proceeds of the

disposition". It is also amended to clarify that the cross-reference in the formula is to paragraph (a) of the definition "proceeds of the disposition".

Definitions

ITA
148(9)

Subsection 148(9) of the Act contains a number of definitions that apply for the purposes of sections 12.2 and 148.

"adjusted cost basis"

The adjusted cost basis (ACB) of a taxpayer's interest in a life insurance policy is relevant to determining the amount of any income inclusion in respect of the interest under the accrual taxation rules in section 12.2 of the Act and the amount of any income inclusion that may, under subsection 148(1) or (1.1), result from a disposition of the interest or a part of the interest. If the policyholder is a private corporation, the interest's ACB is also relevant to determining the proceeds of the life insurance policy received by the corporation in consequence of the death of an insured under the policy that may be added to the corporation's capital dividend account. In general terms, the ACB of a taxpayer's interest in a policy (other than an annuity contract) is the total of the premiums paid by the taxpayer under the policy less the net costs of pure insurance in respect of the interest (i.e., the costs of the protection element of the interest) and certain other adjustments to reflect previous dispositions of the interest. For further information on "net cost of pure insurance", see the commentary on section 308 of the *Income Tax Regulations*.

Variable E (which is expressed as the excess of E.1 over E.2) of the ACB formula provides for an ACB increase on the repayment of the portion of a policy loan used immediately after the loan to pay a premium under the policy to the extent that the portion has not reduced the proceeds of disposition of a partial surrender of the interest. Variable E.1 is amended to clarify that an existing cross reference in the formula is to paragraph (a) of the definition "proceeds of the disposition".

Variable O of the formula reduces the ACB of a taxpayer's interest in a policy under which more than one coverage is provided, if a benefit on death under a coverage under the policy is paid and the payment terminates the coverage (but not the policy). The reduction in the ACB is intended to represent the portion of the ACB of the interest that corresponds to the share of the savings in the policy associated with the payment and any fund value benefit paid on termination. Savings for this purpose is determined by reference to a number of amounts determined under subsection 1401(3) of the *Income Tax Regulations* and having regard to savings as measured for purposes of the exemption test. For policies that are deemed to be issued at a particular time after 2016 because of subsection 148(11), the ACB reduction applies only to a benefit on death paid at or after the particular time.

Variable O of the ACB formula is amended in two respects. First, an amendment clarifies that the ACB reduction under O does not apply to the payment of an endowment benefit. This is because the payment of an endowment benefit is a disposition for tax purposes, it is intended that the ACB of the policy be reduced in this case under variable H of the ACB formula. The second

amendment, which is made to O and a number of its constituent elements, being variables Q through U of the ACB formula, is consequential on the amendment to paragraph 148(2)(e). These amendments stipulate which concept of the term coverage is to be used in those elements of the formula, reflecting the amendment to paragraph 148(2)(e) to adopt the meaning of coverage assigned by paragraph (a) of the definition "coverage" in section 310 of the *Income Tax Regulations*.

These amendments come into force on Royal Assent.

Loss of Grandfathering

ITA
148(11)

Subsection 148(11) of the Act applies in determining whether certain life insurance policies issued before 2017, and not otherwise subject to the rules for policies issued after 2016, are to be treated as having been issued at a particular time after 2016 for certain purposes under the tax rules. Paragraph 1401(5)(b) of the *Income Tax Regulations* provides a similar rule for purposes of applying the new rules for purposes of Part XII.3 of the Act.

Subsection 148(11) is amended consequential to new subsection 306(10) of the *Income Tax Regulations* to provide that it does not apply for the purpose of that subsection.

Subsection 148(11) is also amended to clarify that paragraph 148(11)(a) applies only where term insurance in a policy is converted to a permanent policy within the policy.

This amendment comes into force on Royal Assent.

Clause 62

Assessment and reassessment

ITA
152(4)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may at any time assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. The normal reassessment period for a year is for corporations (other than Canadian-controlled private corporations) and mutual fund trusts, in general, four years from the date of the initial notice of assessment. For other taxpayers, it is, in general, three years from the date of the initial notice of assessment. Subsection 152(4) includes exceptions that apply in certain circumstances.

New paragraph 152(4)(b.3) is added to permit the assessment of a taxpayer for a taxation year outside of the normal reassessment period for the year, if the taxpayer does not report in the taxpayer's return of income under Part I of the Act for the year a disposition in the year by the taxpayer of real or immovable property. The paragraph also applies in the case where the taxpayer owned the property indirectly through a partnership, the partnership disposes of the property and the partnership did not report the disposition in the partnership return required by

section 229 of the *Income Tax Regulations*. Finally, the paragraph also applies in the case where a taxpayer does not file a return of income under Part I of the Act for the year, but is assessed tax under Part I by operation of subsection 152(7). However, if the disposition is by a corporation or partnership, the paragraph only applies if the property is capital property of the corporation or partnership.

In the case where the taxpayer (or partnership of which the taxpayer is a member) does file a return for a taxation year that does not report the disposition and the taxpayer subsequently amends the taxpayer's return of income for the year (i.e., by filing an adjustment request in prescribed form, or in a manner otherwise permitted) to report the disposition, paragraph (b.3) applies to an assessment in respect of the disposition only if the assessment is made within three years after the date that the amendment is filed. This three-year limit does not preclude an assessment, in respect of the disposition, from being made after the normal reassessment period for a taxation year under another exception to the normal reassessment period limit, such as under paragraph 152(4)(a).

In the case where the disposition is not reported by the taxpayer or partnership in the relevant return and an assessment is made in respect of the disposition, the three-year limit does not apply.

This amendment applies to taxation years that end after October 2, 2016.

Limits on extended period assessments and reassessments

ITA
152(4.01)

Subsection 152(4.01) of the Act limits the matters in respect of which the Minister of National Revenue can assess when an assessment to which paragraph 152(4)(a), (b), (b.1) or (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year.

Subsection 152(4.01) is amended to add a reference to new paragraph 152(4)(b.3), which allows for the assessment of a taxpayer for a taxation year outside of the normal reassessment period for the year, if the taxpayer or a partnership of which the taxpayer is a member does not report a disposition in the year by the taxpayer or partnership, as the case may be, of real property.

As such, the assessment of a liability for a taxation year, authorized to be made after the normal reassessment period by new paragraph 152(4)(b.3), is limited by new paragraph 152(4.01)(c) to that which can reasonably be regarded as relating to the unreported or previously unreported disposition.

This amendment applies to taxation years that end after October 2, 2016.

Clause 63

Where Part I tax not payable by corporation (bankrupt)

ITA
181.1(3)(b)

Paragraph 181.1(3)(b) provides that a corporation that was a bankrupt at the end of a taxation year is not subject to tax under Part I.3 for that year.

Paragraph 181.1(3)(b) is amended to remove an expired reference to the definition “bankrupt” in subsection 128(3), which was repealed by 1998, c. 19. “Bankrupt” is now defined in subsection 248(1).

Clause 64

Tax on taxable dividends received by private corporation – exempt corporations

ITA
186.1(a)

Paragraph 186.1(a) provides that a corporation that was a bankrupt at any time in a taxation year is exempt from tax under Part IV for that year.

Paragraph 186.1(a) is amended to remove an expired reference to the definition “bankrupt” in subsection 128(3), which was repealed by 1998, c. 19. “Bankrupt” is now defined in subsection 248(1).

Clause 65

Undeducted RRSP premiums

ITA
204.2(1.2)

Subsection 204.2(1.2) of the Act provides rules for determining the amount of an individual’s undeducted RRSP premiums at any time. This amount is used in computing the individual’s cumulative excess amount in respect of RRSPs under subsection 204.2(1.1).

Paragraph (a) of the description of J in subsection 204.2(1.2) is amended to subtract from an individual’s undeducted RRSP premiums amounts that are withdrawn from the individual’s specified pension plan in the year and before the time of the determination and that are included in computing the individual’s income for the year.

This amendment is deemed to have come into force on January 1, 2010 except that in its application before December 14, 2012, it is to be read without reference to a pooled registered pension plan.

Clause 66

Taxes in respect of registered disability savings plans

ITA
Part XI

Part XI of the Act generally imposes taxes on the holder of an RDSP in connection with various transactions (*e.g.*, acquisition of non-qualified investments) within the RDSP. Part XI is being repealed consequential on amendments to include RDSPs among the registered plans that are subject to taxes under Part XI.01 of the Act for holding non-qualified investments or prohibited investments.

The repeal applies to transactions and events occurring, income earned, capital gains accruing and investments acquired, after March 22, 2017.

Clause 67

Taxes in respect of registered plans

ITA
Part XI.01

Consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to Part XI.01 of the Act, the heading for Part XI.01 is being amended to generally refer to "Taxes in respect of registered plans". The heading previously referred only to RRIFs, RRSPs and TFSAs.

Clause 68

Taxes in respect of registered plans

ITA
Part XI.01

Part XI.01 of the Act contains anti-avoidance rules applicable to Tax-Free Savings Accounts, Registered Retirement Savings Plans and Registered Retirement Income Funds to help ensure that such registered plans do not provide excessive tax advantages unrelated to their respective basic objectives. To improve the consistency of the tax rules that apply to investments held by registered plans, Budget 2017 announced that the anti-avoidance rules of Part XI.01 would be extended to apply to Registered Education Savings Plans and Registered Disability Savings Plans.

Definitions

ITA
207.01(1)

Subsection 207.01(1) of the Act provides definitions for the purposes of Part XI.01. It incorporates by reference the definitions in subsection 146(1) (other than the definition "benefit"), 146.2(1) and 146.3(1).

The opening words in subsection 207.01(1) are amended to also incorporate by reference the definitions in subsections 146.1(1) and 146.4(1). This amendment is consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to taxes under this Part for holding non-qualified investments or prohibited investments.

This amendment applies to transactions and events occurring, income earned, capital gains accruing and investments acquired after March 22, 2017.

advantage

Amounts described in the definition of advantage in subsection 207.01(1) are subject to a special tax under section 207.05. The definition of advantage is amended in three respects to reflect the inclusion of RDSPs and RESPs under the Part XI.0I rules.

Paragraph (a) of the definition “advantage” is amended by:

- adding a reference to a beneficiary in subparagraph (a)(iii), to allow a beneficiary of an RDSP or of an RESP to receive an interest in the registered plan without triggering the section 207.05 tax;
- adding a reference to “promoter” (alongside issuer and carrier) in subparagraph (a)(iv), to exempt payments or allocations from an RESP promoter from being an advantage; and
- by adding a new exception under subparagraph (iv.1) in relation to an amount paid under or because of the *Canada Disability Savings Act*, the *Canada Education Savings Act* or paid under a designated provincial program.

Second, consequential on the addition of RDSP and RESP to the definition “registered plan”, subparagraph (c)(ii) is amended to replace the reference to “RRIF or RRSP” with a reference to “registered plan that is not a TFSA”.

Finally, paragraph (d) is amended to refer to the new definition “registered plan strip” in subsection 207.01(1). For more information, see the commentary on the definition “registered plan strip” in subsection 207.01(1).

These amendments apply to transactions and events occurring, income earned, capital gains accruing and investments acquired after March 22, 2017.

controlling individual

The definition “controlling individual” provides a common term for the holder of a TFSA or the annuitant of a RRIF and an RRSP for the purpose of the application of Part XI.01 of the Act. This definition is amended so that the common term also includes or the holder of an RDSP and the subscriber of an RESP, consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to Part XI.01.

This amendment applies to transactions and events occurring, income earned, capital gains accruing and investments acquired after March 22, 2017.

registered plan

This definition provides a common term for the plans that are subject to Part XI.01 of the Act, namely RRIFs, RRSPs and TFSAs. This definition is amended to add RDSPs and RESPs.

This amendment applies to transactions and events occurring, income earned, capital gains accruing and investments acquired after March 22, 2017.

registered plan strip

Consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to Part XI.01 of the Act, a new definition “registered plan strip” replaces the definition “RRSP strip” and will apply to RDSPs, RESPs, RRIFs and RRSPs (and not to TFSAs).

A “registered plan strip” is generally a transaction or event that, contrary to the intent of the rules in the Act pertaining to registered plans, seeks to remove or devalue registered plan assets without an income inclusion for the annuitant. The new definition contains a longer list of transactions or events that are not considered to be a strip, to reflect certain events or transactions that are specific to RESPs and RDSPs. A registered plan strip is included as paragraph (d) of the definition “advantage” under subsection 207.01(1) and is subject to tax on advantages under section 207.05.

This amendment applies to transactions and events occurring, income earned, capital gains accruing and investments acquired, after March 22, 2017.

RRSP strip

An “RRSP strip” is generally a transaction that, contrary to the intent of the RRSP and RRIF rules, seeks to remove or devalue RRSP or RRIF assets without an income inclusion for the annuitant. Consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to Part XI.01 and the introduction of the new definition “registered plan strip”, the definition “RRSP strip” is repealed.

This repeal applies to transactions and events occurring, income earned, capital gains accruing and investments acquired, after March 22, 2017.

swap transaction

A “swap transaction” is generally a transfer of property between a controlling individual of a registered plan (or a person with whom the controlling individual does not deal at arm’s length) and a registered plan of the individual, with certain exceptions.

Consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to taxes under Part XI.01, the exceptions in paragraphs (b) and (d) are expanded. Paragraph (b) is amended to add certain amounts paid into an RDSP or RESP that are not considered to be a contribution to the plan, such as amount paid under the *Canada Education Savings Act* or *Canada Disability Savings Act*. Paragraph (d) is amended to allow swap transactions between two plans of the controlling individual that are either both RDSPs or both RESPs.

These amendments apply after 2021 in relation to a swap transaction undertaken to remove a property from an RDSP or RESP, and after 2027 in the case of a swap transaction to remove a transitional prohibited property, if it is reasonable to conclude that tax would be payable under Part XI.01 of the Act if the property were retained in the RDSP or RESP. In any other case, they apply after June 2017.

transitional prohibited property

This definition describes property held by an individual’s RRIF or RRSP at a particular time if the property was also held by a RRIF or an RRSP of the individual on March 22, 2011 and was a prohibited investment for that RRIF or RRSP on March, 23, 2011.

This definition is amended to also describe property that was held by the RDSP or RESP of an individual on March 22, 2017 and that was a prohibited investment for that RDSP or RESP on March, 23, 2017. The amendment is consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to taxes under Part XI.01.

This amendment applies to transactions and events occurring, income earned, capital gains accruing and investments acquired after March 22, 2017.

Obligations of issuer

ITA
207.01(5)

Subsection 207.01(5) of the Act requires that the issuer or carrier of a TFSA, RRIF or RRSP that governs a trust exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the trust holds a non-qualified investment.

Consequential on Part XI.01 of the Act being extended to apply to RDSPs and RESPs, subsection 207.01(5) is amended to add a reference to a “promoter” (of an RESP). Issuers of RDSPs will be included under subsection (5) by virtue of the existing reference to “issuer” and by the amendment to the definition “registered plan” in subsection (1).

Adjusted cost base

ITA
207.01(7)

Subsection 207.01(7) of the Act deems the cost of a transitional prohibited property (as defined in subsection 207.01(1)) for a trust governed by a RRIF or RRSP to be equal to its fair market value on March 22, 2011.

Consequential on Part XI.01 of the Act being extended to apply to RDSPs and RESPs, subsection 207.01(7) is amended to deem the cost of a transitional prohibited property held by a RDSP or RESP to be equal to its fair market value on March 22, 2017. No changes are made to this subsection in respect of transitional prohibited property held by RRIFs and RRSPs.

This amendment comes into force on March 23, 2017.

Prohibited investment status

ITA
207.01(8) and (9)

Subsections 207.01(8) and (9) of the Act allow the controlling individual of an RRSP or RRIF to make an election in certain circumstances in respect of property held by the RRSP or RRIF that would, in the absence of such an election, cease to be a prohibited investment at a particular time and therefore be subject to a deemed disposition in accordance with subsection 207.01(6) and subject to a section 207.05 advantage tax on the capital gain.

Consequential on Part XI.01 being extended to apply to RDSPs and RESPs:

- Each of paragraph 207.01(8)(a) and subsection 207.01(9) is amended to replace a reference to “RRIF or RRSP” by a reference to “registered plan (other than a TFSA)”; and
- Paragraph 207.01(8)(c) is amended to specify that an election under 207.05(4) is required only in the case of a property held by a RRIF or RRSP.

Even though an election need not be filed in respect of a property held by an RDSP or RESP, such property must otherwise meet the conditions in paragraphs 207.01(8)(a), (b) and (d) in order to be afforded the transitional relief provided by subsections 207.01(8) and (9) of the Act.

This amendment comes into force on March 23, 2017.

Exchange of property

ITA
207.01(12) and (13)

Subsections 207.01(12) and (13) of the Act extend the transitional relief from the prohibited investment and advantage rules that are afforded to transitional prohibited property held by a trust governed by an individual's RRIF or RRSP to non-cash property acquired by the trust in the

course of certain permitted reorganization or exchange transactions (to which any of section 51, subsection 85(1) and sections 85.1, 86 and 87 apply).

Consequential on Part XI.01 being extended to apply to RDSPs and RESPs:

- Each of paragraphs 207.1(12)(a) and 207.01(13)(b) is amended to replace a reference to "RRIF or RRSP" with a reference to "registered plan (other than a TFSA)";
- Paragraph 207.01(12)(d) is amended to specify that an election under 207.05(4) is required only in the case of a property held by a RRIF or RRSP; and
- Paragraph 207.01(13)(a) is amended such that, apart from presumptive dates that apply to a property held by a RRIF or RRSP, subsection (13) applies to a property held by an RDSP or RESP on March 22, 2017 that became a prohibited investment on March 23, 2017.

Whereas an election need not be filed in respect of a property held by an RDSP or RESP, such property must otherwise all meet all of the conditions in subsection 207.01(12) in order to be afforded the transitional relief provided by subsections 207.01(12) and (13) of the Act.

This amendment comes into force on March 23, 2017.

Clause 69

Both prohibited and non-qualified investment

ITA
207.04(3)

Subsection 207.04(3) of the Act applies if a property would otherwise be, at the same time, both a non-qualified investment and a prohibited investment. In those circumstances, the property is deemed not to be a non-qualified investment such that the property is a prohibited investment for purposes of the taxing provision in Part XI.01.

Subsection 207.04(3) is amended to expand its application to properties held by RDSPs and RESPs, by adding references to subsections 146.1(5) and 146.4(5). As a result of this amendment, Part XI.01 tax (*i.e.*, a 100 per cent tax on advantages) will apply to income earned on non-qualified investments held in RDSPs and RESPs rather than the Part I tax that would otherwise apply.

This amendment comes into force on March 23, 2017.

Apportionment of refund

ITA
207.04(5)

New subsection 207.04(5) of the Act provides that, where two or more persons are entitled to a refund under subsection 207.04(4) in respect of a particular property, the refund must be shared and may not exceed the amount that would be refundable if only one person were entitled to the

refund. If the persons cannot agree on portions to be claimed by each, the Minister of National Revenue may fix the portions.

This amendment comes into force on March 23, 2017.

Liability for tax

ITA
207.04(6)

Subsection 207.04(6) of the Act provides that at the time that a tax is imposed under subsection 207.04(1) in respect of an RDSP or RESP, each holder of the RDSP or each subscriber of the RESP is jointly and severally, or solidarily, liable to pay the tax. This new subsection is consequential on amendments to include RDSPs and RESPs among the registered plans that are subject to taxes under Part XI.01 of the Act for holding non-qualified investments or prohibited investments.

This amendment comes into force on March 23, 2017.

Clause 70

Amount of tax payable

ITA
207.05(2)

Subsection 207.05(2) of the Act determines the amount of tax payable in respect of different types of advantages. Subsection 207.05(2) requires that the amount of tax payable in relation to an "RRSP strip" is the amount of the strip.

Consequential on Part XI.01 of the Act being extended to apply to RDSPs and RESPs, subsection 207.05(2) is amended to replace its reference to “RRSP strip” (a repealed definition) with a reference to the new definition “registered plan strip”.

This amendment comes into force on March 23, 2017.

Liability for tax

ITA
207.05(3)

Subsection 207.05(3) of the Act generally imposes the liability for the advantage tax under section 207.05 on the controlling individual of a registered plan. However, if the advantage is extended by the issuer or a carrier of a registered plan, or by a person not dealing at arm's length with the issuer or the carrier, then the issuer or the carrier is liable to pay the tax.

Consequential on Part XI.01 of the Act being extended to apply to RDSPs and RESPs, and because those plans could have multiple holders or subscribers, subsection 207.05(3) of the Act is amended to:

- require that each controlling individual (each holder of an RDSP and each subscriber of an RESP) is joint and severally, or solidarily, liable to pay the tax; and
- to add "promoter" (of an RESP) alongside carrier and issuer, to require that the promoter is liable to pay the tax when the advantage is extended by the promoter or a person not operating at arm's length from the promoter.

This amendment comes into force on March 23, 2017.

Clause 71

Multiple holders or subscribers

ITA
207.07(1.1)

New subsection 207.07(1.1) of the Act provides two rules that apply where two or more holders of a RDSP or two or more subscribers of an RESP are jointly liable with each other to pay a tax under Part X1.01. Paragraph (a) provides that a payment by any of the holders or subscribers on account of the joint liability reduces the joint liability to the extent of the payment. Paragraph (b) provides that if the required return is filed by one of the RDSP holders, or one of the RESP subscribers, only that return need be filed in respect of the joint liability.

This amendment comes into force on March 23, 2017.

Clause 72

Tax payable by trust under RESP

ITA
207.1(3)

Under subsection 207.1(3) of the Act, a trust governed by an RESP is required to pay a 1% penalty tax on the fair market value of all property held by the trust at the end of each month that is not a qualified investment.

Part XI is repealed consequential on amendments to include RESPs among the registered plans that are subject to taxes under Part XI.01 of the Act for holding non-qualified investments or prohibited investments.

The repeal applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Clause 73

Tax payable by recipient of an ecological gift

ITA
207.31

Section 207.31 imposes a tax on charities, Canadian municipalities and municipal or public bodies performing a function of government in Canada, if, without the approval of the Minister of the Environment, they dispose of or change the use of property given to them as an ecological gift. For more information, see the commentary on subsection 110.1(5) and 118.1(1).

Section 207.31 is amended to confirm that the tax applies regardless of how the entity acquired the property and to clarify that the Minister of the Environment (or a person designated by that Minister) is responsible for determining whether a change in the use of a property has occurred.

Clause 74

Non-resident withholding tax – Pension benefits

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

Section 212 of the Act imposes a tax, commonly referred to as a "non-resident withholding tax", on certain payments made by residents of Canada to non-residents. Paragraph 212(1)(h) includes superannuation or pension benefits paid to non-residents as payments subject to the withholding tax. Paragraph 212(1)(h) lists, in subparagraphs (iii) to (iv.1), a number of exclusions from the application of the withholding tax.

Existing subparagraph 212(1)(h)(iii.1) exempts from withholding tax a payment that is transferred directly to a registered pension plan, registered retirement savings plan or registered retirement income fund for the benefit of the non-resident person if the transfer is made pursuant to an authorization in prescribed form.

Subparagraph (iii.1) is amended to add a reference to a “specified pension plan” (i.e., the Saskatchewan Pension Plan), which will extend the exemption from the non-resident withholding tax to payments transferred to such plans pursuant to an authorization in prescribed form.

This amendment is deemed to have come into force on January 1, 2010 except that in its application before December 14, 2012, it is to be read without reference to a pooled registered pension plan.

Clause 75

Foreign affiliate dumping – conditions for application

ITA
212.3(1)

Subsection 212.3(1) of the Act provides the conditions for the application of subsection 212.3(2), the main operative rule for the foreign affiliate dumping rules.

Subsection 212.3(1) is amended in two ways. First, paragraph 212.3(1)(a) is amended to ensure that, provided the conditions in paragraphs 212.3(1)(b) and (c) are also satisfied, subsection 212.3(2) applies to an investment by a corporation resident in Canada (a "CRIC") in a non-resident corporation that is not a foreign affiliate of the CRIC but is a foreign affiliate of another corporation resident in Canada that does not deal at arm's length with the CRIC. This amendment is in line with the policy of the foreign affiliate dumping rules.

Second, consequential on the first amendment, paragraph 212.3(1)(b) is amended so that the conditions in that paragraph are satisfied in either of two cases. Where the subject corporation is a foreign affiliate of the CRIC, the conditions will be satisfied if the CRIC is, or becomes as part of a transaction or event or a series that includes the making of the investment, controlled by a non-resident (and the other requirements of paragraph 212.3(1)(b) are also met). Where the subject corporation is not a foreign affiliate of the CRIC but is a foreign affiliate of another corporation resident in Canada that does not deal at arm's length with the CRIC (referred to in paragraph 212.3(1)(b) as an "other Canadian corporation") – that is, where paragraph 212.3(1)(a) is satisfied in respect of an investment because of its subparagraph (ii) and not its subparagraph (i) – the conditions in paragraph 212.3(1)(b) will be satisfied if either the CRIC or an other Canadian corporation is, or becomes as part of a transaction or event or a series that includes the making of the investment, controlled by a non-resident (and the other requirements of paragraph 212.3(1)(b) are also met).

These amendments apply in respect of transactions and events that occur on or after September 16, 2016. They also apply, in certain circumstances, in respect of the portion of a particular amount owing to a CRIC by, or debt obligation of, a subject corporation that became owing prior to September 16, 2016 and remains outstanding on January 1, 2017.

Election to not reduce deemed dividend

ITA
212.3(7.1)

New subsection 212.3(7.1) allows taxpayers to elect out of the application of the paid-up capital (PUC) offset rules in subsection 212.3(7), in respect of certain transactions occurring between March 28, 2012 and August 16, 2013.

As a result of amendments to the PUC offset rules announced on August 16, 2013, where the conditions for the application of the rules are satisfied, they apply automatically (without the need for taxpayers to file an election) to offset the PUC in respect of relevant shares against the dividend deemed under paragraph 212.3(2)(a). These amendments were made to apply

retroactively, in respect of transactions or events that occurred after March 28, 2012. Prior to these amendments, the PUC offset rules applied only on an elective basis.

New subsection 212.3(7.1) restores the option for taxpayers to decide not to have the PUC offset rules apply to reduce the amount of a deemed dividend under paragraph 212.3(2)(a) in respect of certain investments. More specifically, it allows a corporation resident in Canada (a "CRIC") to elect out of the PUC offset rules in subsection 212.3(7), provided the following conditions are met:

- the investment was made after March 28, 2012 and before August 16, 2013; and
- at the investment time, each share of the CRIC, and each qualifying substitute corporation in respect of the CRIC, that was not owned by the parent was owned by persons or partnerships with which the parent did not deal at arm's length.

The CRIC must file the election with the Minister before 2017.

New subsection 212.3(7.1) is deemed to have come into force on March 29, 2012.

Clause 76

Designations and allocations

ITA
220(3.21)

Subsections 220(3.2) to (3.7) of the Act allow for the late filing, amendment and revocation of certain elections made by taxpayers. Subsection 220(3.21) extends those rules to certain designations, by treating the designations as though they were elections for the purposes of those rules.

New paragraph 220(3.21)(a.1) provides that the designation provided for under the definition "principal residence" in section 54 is also treated as though it were an election for the purposes of those rules.

This amendment applies to taxation years that end after October 2, 2016.

Clause 77

Character Conversion

ITA
248(1) "derivative forward agreement"

Paragraph (b) of the definition "derivative forward agreement" deals with agreements to purchase a capital property. Paragraph (c) of the definition deals with agreements to sell a capital property. In order for a purchase to be a derivative forward agreement, the economic return on the agreement must have a derivative component. If the agreement is a derivative forward agreement, this return will be included (or potentially deducted if there is a loss) in computing the taxpayer's income under paragraph 12(1)(z.7) (or paragraph 20(1)(xx)).

For the purpose of determining whether the economic return of an agreement has a derivative component, the return must be attributable, in whole or in part, to an underlying interest that is not described in subparagraph (b)(i) or (ii), in the case of a purchase agreement, or clause (c)(i)(A) or (B), in the case of a sale agreement.

New subparagraph (b)(iii) and clause (c)(i)(C) are added to provide additional underlying interests that will not be considered to be a derivative component for the purposes of the definition "derivative forward agreement".

Subparagraph (b)(iii) provides that an underlying interest that relates to a purchase of currency will not be considered to be a derivative component, if it can reasonably be considered that the purchase is agreed to by the taxpayer in order to reduce its risk of fluctuations in the value of the currency in which a purchase or sale by the taxpayer of a capital property is denominated, in which an obligation that is a capital property of the taxpayer is denominated or from which a capital property of the taxpayer derives its value.

Clause (c)(i)(C) provides that an underlying interest that relates to a sale of currency will not be considered to be a derivative component, if it can reasonably be considered that the sale is agreed to by the taxpayer in order to reduce its risk of fluctuations in the value of the currency in which a purchase or sale by the taxpayer of a capital property is denominated, in which an obligation that is a capital property of the taxpayer is denominated or from which a capital property of the taxpayer derives its value.

Subparagraph (b)(iii) and clause (c)(i)(C) are deemed to have come into force on March 21, 2013.

Clause 78

Where ss. (9) ceases to apply

ITA
249.1(9.1)

Section 249.1 defines "fiscal period" for the purposes of the Act.

In general, paragraph (1)(c) provides that partnerships that are members of a tiered-partnership structure are required to have a common fiscal period ending on December 31. However, this treatment does not apply to a partnership for which a multi-tiered alignment election has been made pursuant to subsection (9), with the entitlement to make such an election having expired.

New subsection 249.1(9.1) allows partnerships in a tiered-partnership structure (to which a multi-tiered alignment election applies) to retain their common non-calendar fiscal period in certain cases not currently permitted if certain conditions are met. New paragraph (9.1)(a) provides that subsection (9) ceases to apply for the purpose of paragraph 249(1)(c) if another (the new) partnership becomes a member of the tiered-partnership structure, or any of the aligned multi-tier partnerships becomes a member of another (the new) partnership, unless the conditions in paragraphs (i) and (ii) apply. In general terms, these conditions require that the fiscal period of a new partnership to the structure end on the same day as the aligned multi-tiered partnerships and each partner of the multi-tier partnership structure that is not a partnership be a member of

the aligned structure at the end of the preceding calendar year and immediately before the new partnership becomes part of the multi-tiered structure.

New paragraph (9.1)(b) provides in general a continuity rule that ensures that the original multi-tier alignment election remains operative despite the multi-tier structure having a new partnership to which the exception in subparagraphs (a)(i) and (ii) applies.

This amendment applies to fiscal periods of partnerships ending after March 2014.

Clause 79

Factual control - interpretation

ITA
256(5.11)

New subsection 256(5.11) reverses the effect of a 2016 decision of the Federal Court of Appeal (*McGillivray Restaurant Ltd. v. The Queen*), in which the court held that the factors that may be used to determine if a person has factual (*de facto*) control are limited to a legally enforceable right and ability to effect a change in the board of directors, or its powers, or to exercise influence over the shareholder or shareholders who have that right and ability.

Subsection 256(5.11) provides that, for the purposes of the Act, the determination as to whether a taxpayer has *de facto* control of a corporation shall:

- Take into consideration all factors that are relevant in the circumstances; and
- Not be limited to, and the relevant factors to be considered in making the determination need not include, whether the taxpayer has a legally enforceable right or ability to effect a change in the board of directors of the corporation, or the board's powers, or to exercise influence over the shareholder or shareholders who have that right or ability.

This measure will apply in respect of taxation years that begin after March 21, 2017.

Reverse takeover of trust or partnership by a loss corporation

ITA
256(7)

Subsection 256(7) of the Act provides rules for determining whether control of a corporation is deemed to be (or not to be) acquired for the purposes of the Act.

Existing paragraphs 256(7)(c) and (c.1) of the Act deem an acquisition of control of an acquiring corporation, and corporations controlled by it, in the case of certain "reverse takeovers". A reverse takeover typically involves the acquiring corporation having realized, but unused, losses (or other tax attributes) available for carryover. An acquiring corporation acquires ownership of an income-generating "target" entity (e.g., another corporation or a publicly-traded trust or partnership, such as a real estate investment trust (REIT) or specified investment flow-through entity (SIFT)). That income can be paid or allocated to the acquiring corporation and sheltered by the corporation's unused losses or other tax attributes. Paragraphs 256(7)(c) and (c.1) seek to

prevent this result in circumstances where the acquiring corporation and the target entity are, in general terms, not part of a related or affiliated group prior to the relevant transactions.

New paragraph 256(7)(c.2) extends the “reverse takeover” rules in paragraphs 256(7)(c) and (c.1) to apply to similar transactions, entered into on or after September 16, 2016, between a corporation and an ordinary trust or partnership (i.e., without regard to whether the target entity is a REIT or a SIFT trust or SIFT partnership). Subject to the exceptions in subparagraphs 256(7)(c.2)(i), (ii) and (iii), new paragraph 256(7)(c.2) provides for control of a corporation (and of corporations controlled by it) to be deemed to have been acquired if, as part of a series of transactions or events, two or more persons acquire shares at a particular time (the acquisition time) in the corporation (the acquiring corporation) in exchange for interests in a trust or partnership (the target entity). For this purpose, an exchange includes a redemption, surrender or distribution of an interest.

Consistent with the general scheme of the acquisition of control regime in subsection 256(7) of the Act, a deemed acquisition of control of a corporation will not occur under paragraph 256(7)(c.2) if, in respect of the exchange, there is appropriate continuity of ownership of the corporation. Subparagraphs 256(7)(c.2)(i) and (ii) provide for this result.

Subparagraph 256(7)(c.2)(i) applies to a corporation (and to each corporation controlled by it immediately before the acquisition time) if more than 50% (measured by value) of the shares of the corporation were owned immediately before the particular time by a person (including a partnership) who was affiliated with the target entity immediately before the particular time. Subparagraph 256(7)(c.2)(ii) applies to a corporation (and to each corporation controlled by it immediately before the acquisition time) if, were a hypothetical person to have acquired all the securities (carrying the extended meaning provided by subsection 122.1(1)) of the acquiring corporation that were actually acquired at or before the acquisition time and as part of the series, that hypothetical person would not have more than 50% of the shares (measured by value), and would not have control, of the acquiring corporation.

Subparagraph 256(7)(c.2)(iii) provides a third exception under which a deemed acquisition of control of a corporation will not occur under paragraph 256(7)(c.2). That subparagraph applies to a corporation if, as part of the series, either paragraph 256(7)(c.1) or (c.2) has already applied to deem an acquisition of control of the acquiring corporation.

This amendment applies to transactions undertaken on or after September 16, 2016. However, the amendment does not apply, subject to certain exceptions, to transactions undertaken on or after that date if the parties to the transactions were obligated, pursuant to an agreement in writing entered into before that date, to complete the transactions.

Clause 80

Definitions

ITA
259(5)

Section 259 of the Act provides, for specified provisions of the Act, a look-through rule that applies where a registered plan trust acquires units of a qualified trust. Subsection 259(5) of the Act provides various definition for the purposes of section 259.

Consequential on the repeal of Part XI of the Act and the extension of Part XI.01 of the Act to apply to RDSPs, the definition “designated provisions” in subsection 259(5) of the Act is amended to remove a reference to “Part XI” and to add a reference to “Part XI.01”.

This amendment comes into force on March 23, 2017.

Clause 81

Functional currency tax reporting – Definitions

ITA
261(1)

“relevant spot rate”

The relevant spot rate for a particular day is to be used, in the manner described elsewhere in section 261, in converting amounts from a particular currency to another currency. The meaning of “relevant spot rate” depends on whether either of the currencies is the Canadian dollar.

Beginning on March 1, 2017, the Bank of Canada no longer publishes two exchange rates daily (noon and closing), but instead publishes a single rate per currency pair each day at 16:30 eastern time. Consequential to this change, the definition “relevant spot rate” is amended to remove the references to the rates of exchange quoted by the Bank of Canada at noon on the relevant day, and to instead refer to the single exchange rate for the currencies quoted by the Bank of Canada on the relevant day.

The definition is also amended to clarify that, if there is no such exchange rate quoted by the Bank of Canada for the particular day, the relevant spot rate is the exchange rate quoted on the closest preceding day for which such a rate is quoted, but only if the Bank of Canada ordinarily quotes such a rate.

This amendment applies as of March 1, 2017.

Functional currency tax reporting

ITA
261(5)(h)(ii)

Subsection 261(5) provides a number of rules for taxpayers that have elected under the functional currency tax reporting regime. Subparagraph 261(5)(h)(ii) provide a "reading rule" for paragraph 95(2)(f.13), in respect of foreign affiliates of a functional currency tax reporter.

As of March 1, 2017, the Bank of Canada no longer publishes two exchange rates daily (noon and closing), but instead publishes a single rate per currency pair each day at 16:30 eastern time. Consequential to this change, and the related amendment to paragraph 95(2)(f.13), subparagraph 261(5)(h)(ii) is amended by deleting the reference to the exchange rate quoted by the Bank of Canada "at noon". As a result, that subparagraph instead refers to "the rate of exchange quoted by the Bank of Canada on".

This amendment applies as of March 1, 2017.

Clause 82

AMT & Limited Partnership Losses

Economic Action Plan 2013 Act, No. 2 (re ITA 127.52(1))

Subsection 127.52(1) of the Act defines the "adjusted taxable income" of an individual for the purpose of determining the individual's minimum tax liability under Division E.1 of Part I of the Act. An individual's "adjusted taxable income" for a taxation year is the amount that would be the individual's taxable income for that year if the assumptions set out in paragraphs 127.52(1)(b) to (j) were made.

Prior to amendments implemented in *Economic Action Plan 2013 Act, No. 2*, the deduction of limited partnership losses was generally denied for alternative minimum tax purposes to the extent the taxpayer did not also realize taxable capital gains from the limited partnership in the same taxation year. Furthermore, the carryforward of those denied limited partnership losses to offset income for alternative minimum tax purposes in a future year was not permitted.

Amendments in Economic Action Plan 2013, No. 2 to paragraphs 127.52(1)(c.1) and (i) provided that an individual's limited partnership loss for the purpose of calculating the alternative minimum tax was restricted only if the individual's interest in the partnership is an interest for which an identification number is required to be, or has been, obtained under section 237.1. These amendments generally applied to the 2012 and subsequent taxation years, unless the taxpayer had filed an election, in which case they also applied to the 2006 to 2011 taxation years.

This amendment further extends the application of the amendments in *Economic Action Plan 2013, No. 2* to the taxpayer's 2003 to 2011 taxation years where the taxpayer has filed the election in writing with the Minister of National Revenue before March 12, 2014.

Clause 83

Qualified investment

Income Tax Regulations (ITR)
221(2)

Subsection 221(2) of the *Income Tax Regulations* (the Regulations) requires certain types of corporations and trusts to file an information return whenever the corporation or trust claims that its shares or units are a qualified investment for certain registered plans.

Subsection 221(2) is amended to replace the reference to section 205 of the Act with a reference to section 146.4, consequential on the repeal of section 205 and moving the definition "qualified investment" that previously appeared in that section for RDSP purposes to section 146.4.

This amendment comes into force on March 23, 2017.

Clause 84

RDSP or RESP information return

ITR
222

New section 222 of the Regulations applies if, at any time, an RDSP trust or an RESP trust acquires or disposes of a property that is not a qualified investment, or if a property held by the trust becomes or ceases to be a qualified investment. The issuer of the RDSP or the promoter of the RESP must so notify the holder of the RDSP or subscriber of the RESP in prescribed form and manner on or before the last day of February of the following year. This notification requirement is intended to ensure that the holder or subscriber is provided with sufficient information to comply with their tax obligations under Part XI.01 of the Act in connection with the non-qualified investment.

This amendment comes into force on March 23, 2017.

Clause 85

Exempt Policies

ITR
306

Under the income tax rules, income earned in an exempt policy is not taxed on an accrual basis at the policyholder level. Instead, it is subject to a 15% minimum tax (the Investment Income Tax) that is levied on the insurer. In contrast, income earned in a non-exempt policy is taxed as interest income and on an accrual basis at the policyholder level.

Section 306 of the Regulations contains rules for determining whether a life insurance policy is an exempt policy or not. A test (the exemption test) is applied each year to determine whether a policy is an exempt policy. The exemption test measures the extent to which a life insurance

policy is protection-oriented (i.e., an exempt policy) or savings-oriented (i.e., a non-exempt policy). A life insurance policy is an exempt policy if the savings accumulating in the policy do not exceed the savings in its associated benchmark policies (the exemption test policies or ETPs).

ITR
306(3) to (5)

Subsections 306(3) to (5) contain rules in respect of ETPs. The rules apply differently based on whether the life insurance policy, in respect of which the ETP is a benchmark policy, is issued before 2017 or after 2016.

Subsections 306(3) to (5) contain special rules where a life insurance policy's issue date is before 2017, but it subsequently loses its grandfathering at a particular time after 2016, such that subsection 148(11) of the Act treats the life insurance policy as having been issued at the particular time. The special rules that apply in this case modify the application of subsections 306(3) to (5).

Subsections 306(3) to (5) are amended to remove the references to the special rules that apply where subsection 148(11) has applied to treat a life insurance policy as having been issued at a particular time. The special rules that apply in this case are now found in new subsection 306(10).

For more information, see the commentary on subsection 306(10).

ITR
306(6) and (7)

Subsections 306(6) and (7) contain an anti-avoidance rule that limits the ability to increase the savings in a policy several years after its issuance in circumstances in which savings were not contributed in earlier years of the policy.

Subsection 306(6) sets out the conditions for the rule to apply. Paragraph 306(6)(a) and (b) provide that the rule applies if the accumulating fund of (*i.e.*, the savings in) a life insurance policy on its 10th or any subsequent policy anniversary exceed 250% of its savings on its third preceding policy anniversary. Where the rule applies, then under subsection 306(7) the policy is in effect treated as being re-issued, by having the issuance dates of each ETP associated with the policy re-dated to the later of that third preceding policy anniversary and the date on which the relevant ETPs were issued.

Paragraph 306(6)(b) is amended to address the special case where a life insurance policy's issue date is before 2017, but it subsequently loses its grandfathering at a particular time after 2016, such that subsection 148(11) of the Act treats the life insurance policy as having been issued at the particular time. In this case, in applying the anti-avoidance rule, where the policy's third preceding policy anniversary occurs at a time before the particular time determined under subsection 148(11), then the measurement of the policy's accumulating fund on that third

preceding policy anniversary is to made on the assumption that the policy was issued after 2016, such that the rules for determining the accumulating fund of a policy issued after 2016 apply.

Subparagraph 306(7)(a)(i) is amended to add a cross-reference to new subsection 306(10) of the Regulations. This ensures that where the ETPs associated with a policy are re-dated under the rule, ETPs issued under either subsection 306(3) or (10) are subject to the rule. This amendment, which is consequential on the introduction of subsection 306(10), applies where subsection 148(11) has applied to treat a life insurance policy as having been issued at a particular time.

ITR
306(10)

Subsection 148(11) of the Act applies in determining whether certain life insurance policies issued before 2017, and not otherwise subject to the rules for policies issued after 2016, are to be treated as having been issued at a particular time after 2016 for certain purposes under the tax rules. Where subsection 148(11) applies to treat a policy as having been issued at a particular time (i.e., the policy's grandfathered status is lost), in determining at and after the particular time whether the policy is an exempt policy, the tax rules that apply to policies issued after 2016 apply. In particular, in determining at and after the particular time the death benefit of ETPs associated with the policy, the rules that apply to policies issued after 2016 apply. However, certain historical attributes that the tax rules assign to the policy are intended to preserved in order for exempt policy status to be determined after the loss of grandfathering. These attributes include: the issue dates of the ETPs issued in respect of the policy, the issue dates of any coverage under the policy and the policy's anniversary date for exemption testing.

Subsection 306(10) of the Regulations is replaced. New subsection 306(10) provides the special rules that apply, in respect of ETPs issued before a particular time determined under subsection 148(11), at and after a particular time determined under subsection 148(11). Consequential on new subsection 306(10), subsections 306(3) to (5) are amended to remove references to these special rules. New subsection 306(10) also accounts for the possibility of a multiple life policy issued before 2017 losing its grandfathered status by ensuring that at and after the loss of grandfathering all of the previously issued ETPs are treated as being issued on a coverage basis while preserving the issue dates of ETPs issued before loss of grandfathering.

In general terms, subsection 306(10) provides the following rules that apply to a life insurance policy in respect of which a particular time is determined under subsection 148(11) of the Act. The rules apply in applying sections 306 (other than subsection 306(9) and (10)) and 307 at and after the particular time.

- Under subparagraph 306(10)(a)(i), a separate ETP is deemed to be issued – in respect of each coverage under the policy issued before the particular time – on the date of issue of the life insurance policy. This preserves the historical issue date of the policy's initial ETP and provides for an ETP to be issued on that date in respect of each policy coverage issued as of the date. In addition, under subparagraph 306(10)(a)(ii), in cases where the policy had one or more additional ETPs issued before the particular time (i.e., issued under subparagraph 306(3)(a)(ii)), a separate ETP would be deemed to have been issued in respect of each coverage issued before the particular time on each policy anniversary

that ends before the particular time if the benefit on death under the policy increases by more than 8% from the time of the immediately preceding policy anniversary and the increase can be reasonably attributed to the coverage.

- Under paragraph 306(10)(b), subsection 306(3) is deemed not to apply to deem an ETP to be issued in respect of the policy, or in respect of a coverage under the policy, at any time before the particular time. This is because paragraph 306(10)(a) will have applied to determine the ETPs issued before the particular time for purposes of applying sections 306 and 307 at and after the particular time in respect of the policy.
- Under paragraph 306(10)(c), the rules in subsections 306(4) and (5) that apply to determine the death benefit of ETPs issued under 306(3)(b)(i) also apply, subject to paragraph 306(10)(e), to determine the death benefit of ETPs the date of issuance of which is determined under subparagraph 306(10)(a)(i).
- Under paragraph 306(10)(d), the death benefit of ETPs the date of issuance of which is determined under subparagraph 306(10)(a)(ii) is to be determined using a modified version of subparagraph 306(4)(a)(iv). Specifically, that modified 306(4)(a)(iv) would apply in respect of each such ETP issued in respect of the coverage to allocate to the coverage a reasonable portion of the amount that would be determined, at the time immediately before the particular time, under subparagraph 306(4)(a)(ii), if the exemption test policy were issued in respect of the policy on the same date as the date determined for it because of a failure of the policy level 8% test, that can be reasonably allocated to the coverage in the circumstances. An amount would not be considered reasonable for this purpose if the total of the amounts determined for A and B in subparagraph 306(4)(a)(iii) is less than the amount determined for C in that subparagraph in respect of the ETP the date of issuance of which is determined under subparagraph 306(10)(a)(i) in respect of the coverage.
- Under paragraph 306(10)(e), paragraph 306(5)(b) will apply only where a reduction referred to in paragraph 306(5)(b) occurs at or after the particular time. This ensures that only for a reduction in a policy death benefit that occurs at or after a loss of grandfathering will there be a resulting reduction in the death benefit of an ETP the date of issuance of which is determined under subparagraph 306(10)(a)(ii).

Clause 86

Banks Allocation

ITR
404

Section 404 of the Regulations prescribes rules for determining the amount of a bank's "taxable income earned in a province" for the purposes of the 10% federal tax abatement.

The provisions in regulation 404 are amended, along with the introduction of new section 404.1 of the Regulations, to conform certain wording in this regulation to current drafting conventions. These changes are not intended to have any substantive effect.

These amendments are deemed to have come into force on September 16, 2016.

Clause 87

Federal Credit Union Allocation

ITR
404.1

New section 404.1 of the Regulations prescribes rules for determining the amount of a federal credit union's "taxable income earned in a province" for the purposes of the 10% federal tax abatement.

The rules for determining the taxable income earned by a federal credit union in a province mirror the special rules in section 404 for determining the taxable income earned by a bank in a province.

New subsection 404.1(1) provides that the portion of the taxable income earned by a federal credit union in a taxation year that is to be allocated to a province in which the credit union has a permanent establishment in the year is to be based on two factors: salaries and wages and the amount of loans and deposits. New paragraphs 404.1(1)(a) and (b) provide the specific proportions to be used in the calculation of the taxable income earned in a province by a federal credit union.

New subsection 404.1(2) provides that, for the purposes of subsection 404.1(1), the amount of loans for the year in respect of the federal credit union will be the total of 1/12 of the amount of loans outstanding at the close of business on the last day of each month in the year.

New subsection 404.1(3) provides that, for the purposes of subsection 404.1(1), the amount of deposits for a taxation year in respect of the federal credit union will be the total of 1/12 of the amount on deposit with the federal credit union at the close of business on the last day of each month in the year.

New subsection 404.1(4) provides that, for the purposes of subsections 404.1(2) and (3), loans and deposits do not include bonds, stocks, debentures, items in transit and deposits in favour of Her Majesty in right of Canada.

These amendments are deemed to have come into force on September 16, 2016.

Clause 88

Divided Businesses

ITR
412

Section 412 of the Regulations provides rules for calculating the "taxable income earned in a province by a corporation" other than a specialized corporation described in sections 403 to 411 of the Regulations, that has more than one type of business that could be described in any of sections 403 to 411 of the Regulations (the "divided businesses rule").

Section 412 of the Regulations is amended consequential on the introduction of new section 404.1. The preamble to section 412 adds a reference to section 404.1 (which provides rules for the determination of taxable income earned in a province by a federal credit union).

These amendments are deemed to have come into force on September 16, 2016**.**

Clause 89

ITR
600

Section 600 of the Regulations prescribes provisions of the Act for the purposes of obtaining permission to amend, revoke or extend the time to file an election, for which ministerial discretion may be exercised under paragraphs 220(3.2)(a) and (b) of the Act.

Paragraph 600(b) is amended to add a reference to subsection 91(1.4). For further information, see the commentary on subsections 91(1.1) to (1.4).

This amendment comes into force on July 12, 2013.

Clause 90

International organizations and agencies

ITR
806 and 806.1

Section 806 of the Regulations prescribes international organizations and agencies for the purposes of former clause 212(1)(b)(ii)(B) of the Act. Section 806 is repealed, consequential on the repeal of former clause 212(1)(b)(ii)(B) by S.C. 2007, c. 35, applicable after 2007.

Section 806.1 of the Regulations prescribes international agencies for the purposes of former subparagraph 212(1)(b)(x) of the Act, which exempted interest payments to prescribed agencies from withholding tax under Part XIII of the Act. Former subparagraph 212(1)(b)(x) was replaced by paragraph (c) of the definition “fully exempt interest” in subsection 212(3) of the Act by S.C. 2007, c. 35, applicable after 2007.

Section 806.1 is amended to replace the cross reference to subparagraph 212(1)(b)(x) with a cross reference to paragraph (*c*) of the definition “fully exempt interest” in subsection 212(3). Section 806.1 is also renumbered to be section 806.

These amendments apply on Royal Assent.

Clause 91

Capital cost allowance – interpretation

ITR
1104

Section 1104 of the Regulations sets out various definitions and interpretation rules that apply for the purpose of determining the capital cost allowance (CCA) rate for a taxation year in respect of a depreciable property of a taxpayer.

Section 1104 is amended consequential on the amendments made to subparagraph (d)(vii) of Class 43.1 to expand eligibility for classes 43.1 (30% rate) and 43.2 (50% rate) to include geothermal equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity.

Classes 43.1 and 43.2 – energy conservation property

ITR
1104(17)(a)

Subsection 1104(17) of the Regulations requires environmental compliance in respect of certain properties before those properties can be included in class 43.1 or 43.2 in Schedule II to the Regulations.

Subsection 1104(17) prevents the inclusion of the capital cost of certain property in Class 43.1 or 43.2 if the property is not in compliance with environmental laws, by-laws and regulations at the time the property becomes available for use. The subsection applies to property that would otherwise be included in Class 43.1 or 43.2. Property is not in compliance if, at the time the property becomes available for use by the taxpayer, the taxpayer has not satisfied the requirements of all environmental laws, by-laws and regulations of Canada, a province or a municipality in Canada, or of a municipal or public body performing a function of government in Canada, applicable in respect of the property.

If a property is not included in Class 43.1 or 43.2 because of subsection 1104(17), the property may remain included in the CCA class that would otherwise apply to that property.

Paragraph 1104(17)(a) is amended to add a reference to subparagraph (d)(vii) of Class 43.1 to Schedule II, which ensures that the requirement for environmental compliance also applies to property described in that subparagraph. This amendment is consequential on amendments to subparagraph (d)(vii) of Class 43.1 to expand eligibility for classes 43.1 (30% rate) and 43.2 (50% rate) to include geothermal equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity.

This amendment applies to property acquired after March 21, 2017 that has not been used or acquired for use before March 22, 2017.

Clause 92

Canadian renewable and conservation expense

ITR
1219

Section 1219 of the Regulations defines “Canadian renewable and conservation expense” (CRCE) for the purposes of subsection 66.1(6) of the Act. CRCE is included in calculating a taxpayer's “Canadian exploration expense” pool, as defined by subsection 66.1(6), and is eligible to be renounced under a flow-through share agreement. If the majority of the tangible property in a project is eligible for inclusion in Class 43.1 or 43.2, certain intangible project start-up expenses (for example, engineering and design work and feasibility studies) are treated as CRCE. These expenses may be deducted in full in the year incurred, carried forward indefinitely for use in future years, or transferred to investors using flow-through shares.

In general terms, subsection 1219(1) provides that CRCE is an expense incurred (for certain listed purposes) by a taxpayer in respect of a project for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in the project would be included in Class 43.1 or 43.2, or would be so included but for subsection 1219(1). Subsection 1219(2) excludes certain listed amounts from being CRCE under subsection 1219(1).

ITR
1219(1)(f)

Paragraph 1219(1)(f) of the Regulations provides that CRCE may include an expense incurred for the drilling or completion of certain wells. However, paragraph 1219(1)(f) ensures that CRCE does not include an expense in respect of a well that is, or can reasonably be expected to be, used for the installation of underground piping that is included in paragraph (d) of Class 43.1 or paragraph (b) of Class 43.2.

Paragraph 1219(1)(f) is reorganized by introducing two new subparagraphs (i) and (ii). Subparagraph 1219(1)(f)(i) continues to exclude expenses in respect of a well that is, or can reasonably be expected to be, used for the installation of underground piping that is included in paragraph (d) of Class 43.1 or paragraph (b) of Class 43.2.

New subparagraph 1219(1)(f)(ii) is introduced to ensure that CRCE does not include an expense that is in respect of a well that is referred to in new paragraph (h). New paragraph (h) generally includes a geothermal well that is described in subparagraph (d)(vii) of Class 43.1.

These amendments are consequential on changes to subparagraph (d)(vii) of Class 43.1. For more information, see the commentary on that provision.

This amendment applies in respect of expenses incurred after March 21, 2017.

ITR
1219(1)(h)

The costs of drilling and completing exploratory wells are fully deductible in the year they are incurred as CRCE when it is reasonable to expect that at least 50 per cent of the capital cost of the depreciable property will be used in an electricity generation project included in Class 43.1 or 43.2 in Schedule II of the Regulations. Where an electricity generation project qualifies for Class 43.2, the costs of drilling and completing geothermal production wells for the project are included in Class 43.2. However, the costs of drilling and completing geothermal wells for supplying heat energy do not qualify for either CRCE nor for inclusion in Class 43.2.

Consequential on amendments to subparagraph (d)(vii) of Class 43.1 that ensure that cost of completing a geothermal well for supplying heat is eligible for inclusion in Class 43.2, new paragraph (h) is introduced to allow for certain expenses in respect of geothermal wells to be eligible for inclusion in CRCE. New paragraph (h) applies to certain expenses in respect of a geothermal project, only if at least 50% of the depreciable property to be used in the project, determined by reference to its capital cost, is described in subparagraph (d)(vii) of Class 43.1.

In particular, new subparagraph (h)(i) ensures that the cost of all geothermal drilling (*e.g.*, including geothermal production wells), for both electricity and heating projects, qualifies as CRCE. Similarly, subparagraph (h)(ii) ensures that an expense incurred solely for the purpose of determining the extent and quality of a geothermal resource qualifies as CRCE.

These amendments are consequential on changes to paragraph (d)(vii) of Class 43.1 which are discussed in more detail in the related explanatory note.

This amendment applies in respect of expenses incurred after March 21, 2017.

ITR
1219(2)(h)

Subsection 1219(2) lists expenses which are specifically excluded from the CRCE definition in subsection 1219(1).

Subsection 1219(2) is amended in two respects consequential on the introduction of new paragraph 1219(1)(h). First, cross references to new paragraph (1)(h) are added in subparagraph 1219(2)(b)(iv) and clause 1219(2)(b)(xi)(A). Second, a cross reference to subparagraph (1)(h)(ii) is added in subparagraph (2)(b)(v).

These amendments ensure that expenditures listed in paragraph (1)(h) are not excluded from CRCE simply because they may be considered capital expenditures.

These amendments apply in respect of expenses incurred after March 21, 2017.

ITR
1219(4)

New subsection 1219(4) of the Regulations provides that expenses under new paragraph (1)(h) are eligible as CRCE only if the geothermal project described in that paragraph is in compliance with all environmental laws, by-laws and regulations of Canada, a province or a municipality in Canada, or of a municipal or public body performing a function of government in Canada.

This amendment is analogous to the requirements under subsection 1104(17) that apply to certain property and equipment described in Classes 43.1 and 43.2.

This amendment is consequential on the introduction of new paragraph 1219(1)(h) and on changes to paragraph (d)(vii) of Class 43.1. For more information, see the commentary on those provisions.

This amendment applies in respect of expenses incurred after March 21, 2017.

Clause 93

Policy reserves

ITR
1401

Section 1401 of the Regulations applies in determining certain amounts for the purpose of calculating a life insurer's Canadian life investment income for the purposes of Part XII.3 of the Act.

Paragraph 1401(5)(b) may apply in certain circumstances to a policy otherwise issued before 2017 to determine the time at which the policy is issued or whether life insurance issued under the policy is deemed to be separate policy for purposes of the applicable rules.

Paragraph 1401(5)(b) is amended to clarify that it applies, in cases where insurance is not added to a policy, only where term insurance in a policy is converted to a permanent policy within the policy.

This amendment comes into force on Royal Assent.

Clause 94

Donations

ITR
3500

The definitions "official receipt" and "other official receipt" are updated to reflect changes to the income tax provisions in respect of which those definitions apply.

The references to subsections 110.1(3) and 118.1(6) and (7) in the definition "official receipt" are repealed. The reference to subparagraph 110.1(3)(a)(ii) is changed to 110.1(2.1)(a)(ii) in the definition "other recipient of a gift".

These amendments come into force on Royal Assent.

Clause 95

Qualified investment

ITR
4900(1)

Subsection 4900(1) of the Regulations lists the types of property that are qualified investments for a trust governed by an RRSP, RRIF or DPSP.

The opening words of subsection 4900(1) are amended by replacing the reference to the definition “qualified investment” in subsection 205(1) of the Act with a reference to the definition “qualified investment” in subsection 146.4(1). This amendment is consequential on the repeal of section 205 and moving the definition “qualified investment” that previously appeared in that section for RDSP purposes to subsection 146.4(1).

This amendment comes into on March 23, 2017.

ITR
4900(1)(g)

Paragraph 4900(1)(g) of the Regulations prescribes, as a qualified investment, a bond, debenture, note or similar obligation issued by, or a deposit with, a credit union that has not at any time in the year granted a benefit, resulting from the investment, to the RRSP or RRIF annuitant or any beneficiary or employer under the DPSP.

The opening words of paragraph 4900(1)(g) are amended to remove an exception that previously applied for RESPs, consequential on the repeal of paragraphs 146.1(2.1)(a) and (b) of the Act and the extension of the anti-avoidance rules of Part XI.01 of the Act to RESPs.

This amendment applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Qualified investment

ITR
4900(5)

Subsection 4900(5) of the Regulations prescribes, as a qualified investment for an RESP, an interest in a trust or a share of a corporation that was a registered investment (as defined in subsection 204.4(1) of the Act) for an RESP during the calendar year or the immediately preceding year.

Subsection 4900(5) is amended to replace the reference to subsection 205(1) of the Act with a reference to subsection 146.4(1), consequential on the repeal of section 205 and moving the

definition “qualified investment” that previously appeared in that section for RDSP purposes to subsection 146.4(1).

This amendment comes into force on March 23, 2017.

Small business investment

ITR
4900(6)

Subsection 4900(6) of the Regulations prescribes certain investments in small businesses to be a qualified investment for RRSPs, RRIFs, and RESPs. Consequential on the repeal of section subsection 4900(8) of the Regulation, the preamble of subsection 4900(6) is amended to remove the reference to subsection 4900(8).

This amendment applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Small business investment

ITR
4900(8)

Subsection 4900(8) of the Regulations disqualifies certain small business investments from being qualified investments for a trust governed by an RESP if a subscriber provides services to the small business, and it is reasonable to consider that part of the return on the small business investment held in the RESP is payment for those services.

Consequential on Part XI.01 of the Act being extended to apply to RESPs, subsection 4900(8) is repealed. A similar rule relating to the provision of services by the controlling individual of an RESP is included in the definition “advantage” in amended subsection 207.01(1) of the Act. Consequently, it is no longer necessary to apply subsection 4900(8) in the context of RESPs.

The repeal applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Small business corporation

ITR
4900(12) and (13)

Subsection 4900(12) of the Regulations allows certain shares of small business corporations, venture capital corporations and cooperative corporations to be qualified investments for RESPs under certain conditions.

Subsection 4900(13) is an anti-avoidance rule intended to ensure that amounts received in respect of shares described in subsection 4900(12) by an RESP trust are in the nature of a return on investment, and not a diverted payment for goods or services.

Subsection 4900(12) and (13) are repealed consequential on amendments to include RESPs among the registered plans that are subject to taxes under Part XI.01 of the Act for holding non-qualified investments or prohibited investments.

The repeal applies in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

ITR
4900(14) and (15)

Subsection 4900(14) of the Regulations allows certain shares of small business corporations, venture capital corporations and cooperative corporations to be qualified investments for RRSPs, RRIFs and TFSAs under certain conditions.

Subsection 4900(15) provides that certain investments are prescribed to be prohibited investments for RRSPs, RRIFs and TFSAs. In general terms, the investments that are prescribed as prohibited investments are investments that are qualified investments solely because of subsection 4900(14), but which are no longer described in any of subparagraphs 4900(14)(a)(i) to (iii).

Consequential on the anti-avoidance rules of Part XI.01 of the Act being extended to apply to RESPs, subsections 4900(14) and (15) of the Regulations are amended to apply also to RESPs.

These amendments apply in respect of any investment acquired after March 22, 2017 and any investment acquired before March 23, 2017 that ceases to be a qualified investment on or after that day.

Clause 96

Prescribed distributions

ITR
5600

Section 5600 prescribes foreign spin-off distributions for the purposes of the foreign spin-off tax-deferred distribution rules in section 86.1 of the Act. Section 86.1 requires that various conditions be met before a distribution is considered to be an “eligible distribution”. The various conditions ensure, among other things, that Canadian shareholders of a foreign corporation are not treated more favourably with respect to a foreign distribution than Canadian shareholders receiving similar distributions from a Canadian corporation.

Certain distributions under the U.S. Internal Revenue Code are considered acceptable without the need for prescription, and this result is provided for in subsection 86.1(2) of the Act. Because there is not the same familiarity with the way in which other countries approach the taxation of

spin-off transactions, there is the additional requirement that a non-U.S. foreign spin-off be prescribed.

Section 5600 is amended to prescribe the distribution by BHP Billiton Limited of Australia, to its common shareholders, of common shares of South32 Limited of Australia on May 24, 2015.

Clause 97

Foreign tax credit generators – hybrid entities exception

ITR
5907(1.07)

Subsections 5907(1.03) to (1.09) of the Regulations are analogous to the rules in subsections 91(4.1) to (4.7) of the Act. Subsection 5907(1.03), in particular, is a rule analogous to subsection 91(4.1) of the Act, and denies underlying foreign tax ("UFT") with respect to foreign income or profits tax if the burden of that tax is not, in fact, borne by the taxpayer.

Subsection 5907(1.07) provides an exception for the purposes of paragraph 5907(1.03)(a) that is analogous to the exception provided in subsection 91(4.5) for the purposes of subparagraph 91(4.1)(*a*)(i). It ensures that subsection 5907(1.03) will not apply solely because an entity that is treated as a corporation under the Act, but that is treated as fiscally transparent entity under the relevant foreign tax law (a "hybrid entity"), owns shares of a foreign corporation.

Subsection 5907(1.07) is amended in a manner analogous to the amendment to subsection 91(4.5), to better align subsection 5907(1.07) with the underlying policy intent. For further information, see the commentary on subsection 91(4.5).

This amendment applies in respect of income or profits tax paid, and amounts referred to in subsections 5907(1.092), (1.1) and (1.2) of the Regulations, in respect of the income of a foreign affiliate of a corporation for taxation years of the foreign affiliate that end in taxation years of the corporation that end after October 24, 2012.

Stub Period FAPI

ITR
5907(8)

New paragraph 5907(8)(b) and new subsection 5907(8.1) of the Regulations ensure appropriate surplus consequences in circumstances where new subsections 91(1.1) to (1.5) of the Act apply. The latter provisions are intended to ensure that "stub period" foreign accrual property income (FAPI) is included in the income of a taxpayer for the taxation year in which the taxpayer disposes of, or reduces in certain circumstances, its interest in a foreign affiliate. For more information, see the commentary under subsections 91(1.1) to (1.5).

Subsection 5907(8) provides rules for the purposes of computing the various amounts in section 5907 (generally, surplus balances of foreign affiliates and amounts relating to them). New paragraph 5907(8)(b) provides that, for these purposes, if subsection 91(1.2) of the Act applies at a particular time in respect of a foreign affiliate of a corporation, the various amounts are to be

computed, in respect of "attributed amounts" for the stub period in respect of the particular time, as if

- the affiliate's taxation year that would have included the particular time ended at the stub-period end time in respect of the particular time; and
- all transactions or events, giving rise to attributed amounts, that occurred at the particular time, occurred at the stub-period end time in respect of the particular time.

These rules are intended to ensure that, where subsection 91(1.2) of the Act applies to cause FAPI of a particular foreign affiliate to be included in computing a taxpayer's income, the FAPI is also reflected in the affiliate's surplus balances at the appropriate time. In particular, this ensures that the resulting surplus is available for the purposes of an election under subsection 93(1), to reduce the gain that the taxpayer or another foreign affiliate of the taxpayer would otherwise realize on a disposition of the particular affiliate's shares prior to the particular affiliate's "normal" taxation year end.

The deeming rules in paragraph 5907(8)(b) apply only for purposes of computing the various amounts in respect of attributed amounts for the stub period in respect of the particular time. Thus, in general terms, the deemed year end is intended to allow only a foreign affiliate's "stub-period FAPI" to be reflected in its surplus balances. The rules do not deem a foreign affiliate's taxation year to end for all surplus computation purposes.

New subsection 5907(8.1) defines the terms "attributed amounts", "stub period" and "stub-period end time", for the purposes of new paragraph 5907(8)(b).

These amendments are deemed to have come into force on July 12, 2013, subject to an election that allows taxpayers to have the amendments apply prospectively.

Clause 98

Prescribed shares

ITR
6204(1)

Subsection 6204(1) of the Regulations sets out the requirements for a share to be a prescribed share for the purposes of the deduction under paragraph 110(1)(d) of the Act.

The preamble of subsection 6204(1) is amended to replace the reference to subparagraph 110(1)(d)(i) with a reference to subparagraph 110(1)(d)(i.1). This amendment is consequential on amendments made in 2010 that renumbered the former subparagraph 110(1)(d)(i) – which set out the requirement that a security underlying an employee option agreement be a prescribed share in order to qualify for the deduction under paragraph 110(1)(d).

This modification applies in respect of acquisitions of securities and transfers or dispositions of rights that occur after 4:00 pm Eastern Standard Time on March 4, 2010.

Clause 99

Prescribed provisions - Pensions

ITR
6503

Paragraphs 60(j.02) to (j.04) of the Act allow the deduction of certain repayments of pension benefits received by an individual. The deduction is available where the repayments are made pursuant to a prescribed statutory provision as a condition of acquiring other past-service pension benefits.

Regulation 6503 prescribes these statutory provisions for the purposes of paragraphs 60(j.02) to (j.04). These statutory provisions allow for the repayment of pension benefits that accrued in periods during which individuals were federal Members of Parliament, public servants or members of the Royal Canadian Mounted Police.

Regulation 6503 is amended to add a reference to subsection 41(5) of the *Canadian Forces Superannuation Act*. This amendment will allow former Canadian Forces pensioners who are re-enrolled in the reserve force to claim a deduction for repayments required to be made to the Canadian Forces pension fund, similar to the deductions permitted under paragraph 60(j.04) of the Act for repayments made under certain statutory provisions of public sector pension plans.

This amendment applies to repayments made after March 31, 2007.

Clause 100

Saskatchewan Loan Forgiveness Program

ITR
7300

Paragraph 12(1)(x) of the Act provides that certain inducements, reimbursements, contributions, allowances and assistance received by a taxpayer in the course of earning income from a business or property must be included in the taxpayer's income to the extent that the amounts have not otherwise been included in income or reduced the cost of a property or the amount of an outlay or expense. Section 7300 of the Regulations provides a list of prescribed amounts that are excluded from the application of paragraph 12(1)(x) of the Act.

Paragraph 7300(c) prescribed the forgiveness of loans under section 9.2 of the *Canada Student Financial Assistance Act* and 11.1 of the *Canada Student Loans Act* for doctors and nurses who locate their professional practices to certain remote regions.

Section 7300 of the Regulations is amended to include as a prescribed amount the portion of a student loan forgiven under a provincial program that would be a prescribed amount under paragraph 7300(c) if section 9.2 of the *Canada Student Financial Assistance Act* and 11.1 of the *Canada Student Loans Act* had applied to that portion of the loan.

This amendment applies after 2012.

Clause 101

Optional forms

ITR
8302(4)(b)

Paragraph 8302(4)(b) of the Regulations contains an exception to the normalized pension rule under paragraph 8302(3)(o), if a medical doctor certifies that the plan member's spouse or common-law partner has a life expectancy significantly shorter than normal.

Subparagraph 8302(4)(b)(i) is amended to permit nurse practitioners to certify in writing that the life expectancy of an individual is significantly shorter than normal.

This amendment applies to certifications made on or after September 8, 2017.

Clause 102

Eligible Service

ITR
8503

Paragraph 8503(3)(a) of the Regulations restricts the lifetime retirement benefits that may be provided to a member (as defined in subsection 147.1(1) of the Act) under a defined benefit provision of a registered pension plan (RPP) to benefits that are provided in respect of certain periods of service (referred to as “eligible service”).

Clause 8503(3)(a)(v)(A) permits a period in respect of which benefits attributable to employment of the member with a former employer accrued to the member under a defined benefit provision of another RPP to be recognized as eligible service if the individual has ceased to be a member of the other RPP. This means that an RPP administrator is prohibited from recognizing a member’s past service under a former employer’s RPP in circumstances where the employee has further benefit entitlements under that other RPP.

Paragraph 8503(3)(a) is amended by adding new subparagraph (v.1) to permit a member’s past service under a former employer’s RPP to be recognized as eligible service on a pro-rated basis in circumstances where the *Pension Benefits Standards Act, 1985* or a similar law of a province require partial transfers of benefit entitlements. The effect of subparagraph 8503(3)(a)(v.1) will be to permit an RPP administrator to recognize any portion of a member’s past service determined by reference to the proportion of property that has been transferred from the former employer’s RPP.

Clause 8503(3)(a)(v)(A) is amended, consequential on the introduction of new subparagraph (v.1), to exclude periods of eligible service recognized under subparagraph (v.1).

These amendments apply in respect of transfers of property that occur after 2012.

Additional conditions

ITR
8503(4)(e) and (f)

Paragraphs 8503(4)(e) and (f) of the Regulations are amended to provide that all medical information taken into account by the plan administrator in determining that a member is totally and permanently disabled, or that a period is a period of disability, may be obtained from a written report of a nurse practitioner.

This amendment applies to reports made on or after September 8, 2017.

Clause 103

Optional forms

ITR
8517(6)(b)

Paragraph 8517(6)(b) of the Regulations contains an exception to the normalized pension rule under paragraph 8517(5)(g), if a medical doctor certifies that the plan member's spouse or common-law partner has a life expectancy significantly shorter than normal.

Clause 8517(6)(b)(ii)(A) is amended to permit nurse practitioners to certify in writing that the life expectancy of an individual is significantly shorter than normal.

This amendment applies to certifications made on or after September 8, 2017.

Clause 104

Capital cost allowance – prescribed classes

ITR
Schedule II

Schedule II to the Regulations lists the properties that can be included in each capital cost allowance (CCA) class. A portion of the capital cost of depreciable property is deductible as CCA each year. CCA rates for each type of property, identified by their CCA classes, are set out in section 1100 of the Regulations.

Class 43.1 (30% CCA rate)

Class 43.1 in Schedule II to the Regulations currently provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment. Class 43.1 (and indirectly Class 43.2) is amended to expand eligibility for inclusion in Classes 43.1 and 43.2 to geothermal equipment that is used primarily for the purpose of generating heat, or a combination of heat and electricity, and to make geothermal heating an eligible thermal energy source for use in a district energy system.

ITR
Class 43.1(d)(vii)

Subparagraph (d)(vii) of Class 43.1 in Schedule II to the Regulations describes equipment that is used primarily for the purpose of generating electrical energy solely from geothermal energy (geothermal energy equipment). Under the present wording of the subparagraph, geothermal energy equipment does not include equipment that is used primarily for the purpose of generating heat.

The subparagraph is amended to expand eligibility for classes 43.1 (30% rate) and 43.2 (50% rate) to include geothermal equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity. In this regard, the eligible costs include the cost of completing a geothermal well (*e.g.*, installing the wellhead and production string) and, for systems that produce electricity, the cost of related electricity transmission equipment. However, equipment used for the purpose of heating a swimming pool using geothermal heat is not eligible.

This amendment applies in respect of property acquired after March 21, 2017 that has not been used or acquired for use before March 22, 2017.

ITR
Class 43.1(d)(xv)

District energy systems transfer thermal energy between a central generation plant and a group or district of buildings by circulating steam, hot water or cold water through a system of underground pipes. Thermal energy distributed by a district energy system can be used for heating, cooling or in an industrial process. District energy equipment that is part of a district energy system is currently included in subparagraph (d)(xv) of Class 43.1 only if the system distributes thermal energy primarily generated by one or more of an eligible cogeneration system, a ground source heat pump, active solar heating equipment, waste-fuelled thermal energy equipment and heat recovery equipment.

Clause (d)(xv)(B) of Class 43.1 is amended to add a reference to property described in subparagraph (d)(vii) of Class 43.1. This amendment adds geothermal equipment as one of the eligible thermal energy sources for use in a district energy system.

This amendment is consequential on changes to paragraph (d)(vii) of Class 43.1, which are discussed in more detail in the related explanatory note, and applies in respect of property acquired after March 21, 2017 that has not been used or acquired for use before March 22, 2017.

ITR
Class 43.2 (50% CCA rate)

Class 43.2 in Schedule II to the Regulations provides for a temporary accelerated CCA rate of 50% for certain Class 43.1 properties. Class 43.2 includes some of the properties described in Class 43.1 if acquired after February 22, 2005 and before 2020.

Consequential on amendments to subparagraphs (d)(vii) of Class 43.1, eligibility for inclusion in 43.2 (50% rate) is expanded to geothermal equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity. Similarly, consequential on amendments to subparagraphs (d)(xv) of Class 43.1, eligibility for inclusion in 43.2 is expanded to make geothermal heating as an eligible thermal energy source for use in a district energy system that is otherwise eligible for inclusion in Class 43.2.

These amendments apply in respect of property acquired after March 21, 2017 that has not been used or acquired for use before March 22, 2017.

Capital Cost Allowance

ITR
Schedule II CCA Class 43.1

Class 43.1 in Schedule II to the Regulations provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment. Class 43.2 provides an accelerated CCA rate of 50% per year (on a declining-balance basis) for most property otherwise included in Class 43.1. In general, Class 43.2 applies to cogeneration equipment and waste-fueled electricity generation equipment described in paragraphs (a) to (c) of Class 43.1 only if the energy efficiency of the system does not exceed a 4,750 BTU per kilowatt-hour requirement (instead of 6,000 BTU per kilowatt-hour requirement for Class 43.1). It also applies to equipment otherwise included in Class 43.1 because of its paragraph (d).

Subparagraph (d)(iv) of Class 43.1 currently applies to certain heat recovery equipment used by a taxpayer, or by a lessee of the taxpayer, primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by extracting for reuse thermal waster that is generated directly in an industrial process (other than an industrial process that generates or processes electrical energy).

Subparagraph (d)(iv) is amended to apply where the primary purpose of the heat recovery equipment is “extracting heat for sale”. This type of heat recovery equipment may also be eligible for inclusion in Class 43.2 (50% CCA rate).

This amendment applies to heat recovery equipment acquired after March 3, 2010.

Clause 105

Repeal of Part LIV

Regulations Amending the Income Tax Regulations (Omnibus, No. 3)

29(14) re ITR 5400

Subsection 29(14) of the *Regulations Amending the Income Tax Regulations (Omnibus, No. 3)* is amended to correct a typographical error by deeming the reference to “1984” to always have been the reference to “1994”.

This amendment applies on Royal Assent.

Part 2 – Amendments to the Excise Tax Act (GST/HST Measures)

Excise Tax Act

Clause 106

Definitions

ETA
123(1)

Subsection 123(1) of the *Excise Tax Act* (the Act) defines terms used in Part IX of the Act and in the Schedules to the Act relating to the goods and services tax/harmonized sales tax (GST/HST).

Subclause 106(1)

Definition "Agency"

ETA
123(1)

The term "Agency" refers to the Canada Revenue Agency continued by subsection 4(1) of the *Canada Revenue Agency Act*.

The amendment repeals this definition as it is no longer needed given that other amendments are made to replace the relevant references to the term "Agency" in the Act by references to the term "Canada Revenue Agency".

This amendment comes into force on royal assent.

Subclause 106(2)

Definition "credit union"

ETA
123(1)

The term "credit union" is defined in subsection 123(1) of the Act and has the meaning assigned by subsection 137(6) of the *Income Tax Act* and includes a corporation described in subparagraph 137.1(5)(a)(i) of that Act.

Currently, there are references to "corporation" in various definitions in subsection 137.1(5) of the *Income Tax Act*. Consequently, to provide for a more precise cross-reference, the definition "credit union" in subsection 123(1) is amended to refer to a corporation described in paragraph (a) of the definition "deposit insurance corporation" in subsection 137.1(5) of that Act.

This amendment is deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act*.

Subclause 106(3)

Definition "cooperative corporation"

ETA
123(1)

The definition "cooperative corporation" in subsection 123(1) of the Act is relevant for purposes of section 140 of the Act. Under section 140, shares or other securities of certain cooperatives are excluded from the rule that would result in tax applying where a membership is supplied in connection with the security.

The French version of the definition is amended to ensure better consistency with the terminology used in the *Income Tax Act*, which is referred to in the definition.

This amendment is deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act*.

Subclause 106(4)

Definition "pension entity"

ETA
123(1)

The existing definition "pension entity" of a pension plan includes a trust, or a person that is deemed to be a trust for the purposes of the *Income Tax Act*, where the pension plan governs the trust.

A consequential amendment is made to the definition "pension entity" to remove the reference to a person that is deemed to be a trust for the purposes of the *Income Tax Act*. The amendment is consequential to the enactment of new section 130.1 of the Act, which deems certain arrangements to be trusts for the purposes of Part IX of the Act.

This amendment is deemed to have come into force on July 23, 2016.

Subclause 106(5)

Definition "pension plan"

ETA
123(1)

The existing definition "pension plan" means a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*) or a pooled registered pension plan (as defined in subsection 147.5(1) of that Act) that is described by either paragraph (a) or paragraph (b) of the definition. Paragraph (a) requires that the registered pension plan or pooled registered pension plan govern a person that is a trust or that is deemed to be a trust for the purposes of that Act.

Paragraph (a) is amended so that it now only requires that the registered pension plan or pooled registered pension plan govern a trust. The amendment to paragraph (a) is consequential to the enactment of new section 130.1 of the Act, which deems certain arrangements to be trusts for the purposes of Part IX of the Act.

This amendment is deemed to have come into force on July 23, 2016.

Subclause 106(6)

Definitions

ETA
123(1)

Subsection 123(1) is amended to add new definitions "master pension entity" and "master pension factor".

Master pension entity

The new definition "master pension entity" is used in sections 157 and 172.1, new section 172.2 and sections 232.01 and 232.02 of the Act. A master pension entity is generally a certain type of trust or corporation that is in whole or part owned by pension entities of pension plans (as those terms are defined in subsection 123(1) of the Act). More specifically, a master pension entity of a pension plan is either (1) a corporation described in paragraph 149(1)(o.2) of the *Income Tax Act*, one or more shares of which are owned by a pension entity of the pension plan; or (2) a trust prescribed to be a master trust for the purposes of paragraph 149(1)(o.4) of the *Income Tax Act* (i.e., a trust described in subsection 4802(1.1) of the *Income Tax Regulations*), one or more units of which are owned by a pension entity of the pension plan. However, a pension entity of a pension plan is excluded from the definition master pension entity.

The definition “master pension entity” is deemed to have come into force on September 23, 2009.

Master pension factor

The new definition “master pension factor” is used in sections 157 and 172.1, new section 172.2 and sections 232.01 and 232.02 of the Act. It generally indicates the percentage to which units or shares of a master pension entity of a pension plan are owned by pension entities of that pension plan.

The master pension factor in respect of a pension plan for a fiscal year of a master pension entity is determined by the formula A divided by B. Element A of the formula is the total value, as of the first day of the fiscal year, of the units or shares of the master pension entity that are held by pension entities of the pension plan on that day. Element B of the formula is the total value, as of the first day of the fiscal year, of the units or shares of the master pension entity.

The definition “master pension factor” is deemed to have come into force on July 22, 2016.

Clause 107

Arrangements deemed to be trusts

ETA
130.1

New section 130.1 of the Act contains a number of rules that apply to property subject to an arrangement governed by the laws of the Province of Quebec for the purposes of applying Part IX of the Act. It applies in the case where an arrangement is deemed to be a trust for purposes of the *Income Tax Act* pursuant to paragraph 248(3)(b) or (c) of that Act. Paragraph 248(3)(b) of the *Income Tax Act* deems certain arrangements established before the October 31, 2003 introduction of the *Civil Code of Quebec* to be trusts for purposes of that Act. Paragraph 248(3)(c) of the *Income Tax Act* deems a qualifying arrangement (as described by subsection 248(3.2) of that Act) to be a trust for purposes of that Act.

Where an arrangement is deemed to be a trust for purposes of the *Income Tax Act* pursuant to paragraph 248(3)(b) or (c) of that Act, the following rules apply for the purposes of Part IX of the Act:

- The arrangement is deemed to be a trust;
- Property subject to rights and obligations under the arrangement is deemed to be held in trust and not otherwise;

- In the case of an arrangement referred to in paragraph 248(3)(b) of that Act, a person that has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of property that is referred to in that paragraph is deemed to be beneficially interested in the trust; and

- In the case of an arrangement referred to in paragraph 248(3)(c) of that Act, any property contributed at any time to the arrangement by an annuitant, a holder or a subscriber of the arrangement, as the case may be, is deemed to have been transferred, at that time, to the trust by the contributor.

New section 130.1 is deemed to have come into force on July 23, 2016.

Clause 108

Apportionment rules

ETA
141.01(1.2), (4), (6) and (7)

Section 141.01 of the Act clarifies and reinforces the requirement to apportion the use of inputs, based on the extent to which the inputs are used or consumed, or acquired, imported or brought into a participating province for consumption or use, for the purposes of making taxable or non-taxable supplies. This apportionment is relevant to the determination of input tax credits.

In the French version of the Act, the references to the expression “for no consideration” are references to the expression “*à titre gratuit*” in some cases and to the expression “*sans contrepartie*” in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subsections 141.01(1.2), (4) and (7) are amended to replace the expression “*à titre gratuit*” with the expression “*sans contrepartie*”.

The French version of subsection 141.01(6) is also amended to correct a grammatical error.

These amendments come into force on royal assent.

Clause 109

Meaning of "investment plan"

ETA
149(5)

Existing subsection 149(5) of the Act defines the term "investment plan" for the purposes of section 149 and includes persons described by any of paragraphs 149(5)(a) to (g). This term is used in paragraph 149(1)(a) to include a number of entities such as investment corporations, mortgage investment corporations, mutual fund corporations and non-resident owned investment corporations, all as defined for income tax purposes, in the definition of "financial institution". Entities that meet the definition "investment plan" in subsection 149(5) are "listed financial institutions" (as defined in subsection 123(1) of the Act) for the purposes of Part IX of the Act by virtue of being a person referred to in paragraph 149(1)(*a*).

Existing paragraph 149(5)(a) describes a trust governed by certain plans described by any of subparagraphs 149(5)(a)(i) to (xiii). Paragraph 149(5)(a) is amended to delete subparagraph 149(5)(a)(xi), which refers to a trust governed by a pooled fund trust as defined for the purposes of the *Income Tax Act* or the *Income Tax Regulations*, as the term "pooled fund trust" is no longer a defined term for the purposes of the *Income Tax Act* or the *Income Tax Regulations*.

As well, paragraph 149(5)(a) is amended to add new subparagraphs (iv.1) and (vi.1), with the result that a trust governed by a TFSA (within the meaning assigned by subsection 146.2(5) of the *Income Tax Act*) or by a registered disability savings plan (within the meaning of subsection 146.4(1) of the *Income Tax Act*) will now be an investment plan for the purposes of section 149.

The amendments to paragraph 149(5)(a) apply in respect of any taxation year of a person that begins after July 22, 2016.

The French versions of paragraphs 149(5)(b) to (e) are amended in order to ensure better consistency with the terminology used in the *Income Tax Act* to refer to these types of entities. The amendments to paragraphs 149(5)(b) to (e) are deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act.*

Existing paragraph 149(5)(g) describes a prescribed person or a person of a prescribed class but only if the prescribed person or person of a prescribed class would be a selected listed financial institution (as described in subsection 225.2(1) of the Act) for a reporting period in a fiscal year that ends in a taxation year of the person if the person were a listed financial institution for the taxation year and preceding taxation year. As a result, if, for the purposes of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, a prescribed person or a

person of a prescribed class has a permanent establishment in a participating province at any time in a taxation year of the person and a permanent establishment in at least one other province at any time in that taxation year, that person will be an investment plan (as well as a listed financial institution and selected listed financial institution) for its reporting periods in its fiscal year that ends in the taxation year. However, a prescribed person or a person of a prescribed class that does not meet this permanent establishment test throughout a taxation year of the person will not be an investment plan for its reporting periods in its fiscal year that ends in the taxation year.

Paragraph 149(5)(g) is amended to remove the requirement that the prescribed person or person of a prescribed class would be a selected listed financial institution for a reporting period in a fiscal year that ends in a taxation year of the person if the person were an investment plan for the taxation year and preceding taxation year. As a result, a prescribed person or person of a prescribed class will be an investment plan irrespective of the provinces in which its permanent establishments are located.

The amendment to paragraph 149(5)(g) applies in respect of any taxation year of a person that begins after July 22, 2016.

Clause 110

Non-arm's length supplies

ETA
155(1)

Existing subsection 155(1) of the Act provides an anti-avoidance rule whereby certain non-arm's length supplies made for less than fair market value or for no consideration are deemed to have been made for fair market value.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of subsection 155(1) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*". Furthermore, the structure of French version of the subsection is also modified to ensure better consistency between the French and English versions of the Act.

These amendments come into force on royal assent.

Clause 111

Pension Plans — election for nil consideration

ETA
157

Existing section 157 of the Act allows a "participating employer" of a "pension plan" to jointly elect with a "pension entity" (all three terms as defined in subsection 123(1) of the Act) of that pension plan to treat actual taxable supplies by the employer to the pension entity as being made for no consideration. The election is provided where the employer accounts for and remits tax on all taxable supplies that the employer is deemed by subsection 172.1(5) or (6) of the Act to have made in respect of the pension plan for the period while the election is in effect.

Section 157 is amended so that it also permits a participating employer of a pension plan to jointly elect with a "master pension entity" (as defined in subsection 123(1)) of that pension plan to treat actual taxable supplies by the employer to the master pension entity as being made for no consideration. The amendments to section 157 amend subsections 157(4) to (10) and add new subsections 157(2.1), (2.2) and (3.1).

The amendments to section 157 apply in respect of supplies made by a participating employer after July 21, 2016, other than

- a supply made by a participating employer of a pension plan to a master pension entity of the pension plan of all or part of property or a service if the participating employer acquired the property or service before the first fiscal year of the participating employer that begins after July 21, 2016; or

- a supply made by a participating employer of a pension plan to a master pension entity of the pension plan of property or a service if the participating employer, before the first fiscal year of the participating employer that begins after July 21, 2016, consumes or uses an employer resource (as defined in subsection 172.1(1) of the Act) for the purpose of making the supply.

Election for nil consideration — master pension entity

ETA
157(2.1)

New subsection 157(2.1) of the Act permits a participating employer of a pension plan and a master pension entity of the pension plan to jointly make an election to have every taxable supply made by the participating employer to the master pension entity be deemed to have been made for no consideration under subsection 157(2.2). Under paragraph 157(5)(b), a joint election

under subsection 157(2.1) is effective from the date specified in the election, which must be the first day of a particular fiscal year of the participating employer. However, the election may only be made if the percentage determined for element A of subsection 157(2.1) in respect of the master pension entity and the participating employer for the particular fiscal year is greater than or equal to 90 per cent. Element A in respect of the master pension entity and the participating employer is the total of all percentages, each of which is a "master pension factor" (as defined in subsection 123(1) of the Act) in respect of a pension plan of the participating employer for the fiscal year of the master pension entity that includes the day on which the election is to become effective.

The requirements for making a valid joint election under subsection 157(2.1) are provided in subsection 157(5). Once the joint election comes into effect, it remains in effect until such time as it ceases to have effect under subsection 157(6).

Effect of subsection (2.1) election

ETA
157(2.2)

New subsection 157(2.2) of the Act provides that, where a participating employer of a pension plan and a master pension entity of the pension plan have jointly made an election under new subsection 157(2.1), every taxable supply, other than a supply excluded by new subsection 157(3.1), made by the participating employer to the master pension entity while the joint election is in effect is deemed to have been made for no consideration for the purposes of Part IX of the Act. The effect of the joint election is that the participating employer would not charge tax on an actual taxable supply made to the master pension entity. However, the employer would remain obligated to account for and remit tax that the employer is deemed to have collected

- under subsection 172.1(5.1), in respect of property or services acquired for the purpose of making the actual taxable supply to the master pension entity; and

- under subsection 172.1(6.1), in respect of an "employer resource" (as defined in subsection 172.1(1) of the Act) of the participating employer used or consumed for the purpose of making the actual taxable supply to the master pension entity.

Where a joint election under this subsection is in effect between a participating employer and a master pension entity of a pension plan in a fiscal year of the participating employer, the participating employer is excluded from being a "selected qualifying employer", within the meaning assigned by subsection 172.1(9) of the Act, of the pension plan for the fiscal year (see note on subsection 172.1(9)).

Non-application of subsection (2.2)

ETA
157(3.1)

New subsection 157(3.1) of the Act provides that subsection 157(2.2) does not apply to a supply that is described below. Subsection 157(2.2) deems, for the purposes of Part IX of the Act, certain supplies made by a participating employer of a pension plan to a master pension entity of the pension plan to have been made for no consideration. Specifically, subsection 157(3.1) provides that subsection 157(2.2) does not apply to:

- a supply deemed to have been made by the participating employer under section 172.1 of the Act;
- a supply of property or of a service that is not acquired by the master pension entity for consumption, use or supply by the master pension entity in the course of a "pension activity" (as defined in subsection 172.1(1)) in respect of the pension plan;
- a supply made by the participating employer to the master pension entity of all or part of property, or of a service, if, at the time the participating employer acquires the property or service, the participating employer is a "selected qualifying employer" (within the meaning assigned by subsection 172.1(9)) of the pension plan;
- a supply made by the participating employer to the master pension entity of property or a service if, at the time the participating employer consumes or uses any "employer resource" (as defined in subsection 172.1(1)) of the participating employer for the purpose of making the supply, the participating employer is a selected qualifying employer of the pension plan; or
- a supply made in prescribed circumstances or by a prescribed person (currently, no circumstances or persons are proposed to be prescribed by regulation).

Joint revocation

ETA
157(4)

Existing subsection 157(4) of the Act allows a participating employer of a pension plan and a pension entity of the pension plan that have jointly made an election under subsection 157(2) to jointly revoke that election.

Subsection 157(4) is amended so that it also allows a participating employer of a pension plan and a master pension entity of the pension plan that have jointly made an election under subsection 157(2.1) to jointly revoke that election.

Form of election and revocation

ETA
157(5)

Existing subsection 157(5) of the Act provides the requirements that a participating employer of a pension plan and a pension entity of the pension plan must meet to make a valid joint election under subsection 157(2) or a valid joint revocation under subsection 157(4).

Subsection 157(5) is amended so that it also provides that the requirements specified in the subsection must be met by a participating employer of a pension plan and a master pension entity of the pension plan in order to make a valid joint election under new subsection 157(2.1) or a valid joint revocation of such an election under subsection 157(4).

Cessation

ETA
157(6)

Existing subsection 157(6) of the Act provides the circumstances under which a joint election made under subsection 157(2) between a participating employer of a pension plan and a pension entity of the pension plan ceases to have effect.

Subsection 157(6) is amended so that it now also provides the circumstances under which a joint election made under subsection 157(2.1) between a participating employer of a pension plan and a master pension entity of the pension plan ceases to have effect. Specifically, subsection 157(6) provides that an election under subsection 157(2.1) between a participating employer of a pension plan and a master pension entity of the pension plan ceases to have effect on the earliest of:

- the day on which the participating employer ceases to be a participating employer of the pension plan;
- the day on which the master pension entity ceases to be a master pension entity of the pension plan;
- the day on which a joint revocation of the joint election made by the participating employer and the master pension entity under subsection 157(4) becomes effective;

- where the Minister of National Revenue has revoked the joint election under subsection 157(9), the day specified in the notice of revocation of the joint election sent under that subsection by the Minister to the participating employer and the master pension entity; and

- the first day of a fiscal year of the master pension entity for which element A in respect of the master pension entity and the participating employer for the fiscal year is less than 90 per cent, where element A is the total of all percentages, each of which is a master pension factor in respect of any pension plan of which the participating employer is a participating employer for that fiscal year of the master pension entity.

Notice of intent

ETA
157(7)

Existing subsection 157(7) of the Act applies where a joint election made under subsection 157(2) by a participating employer of a pension plan and a pension entity of the pension plan is in effect at any time in a particular fiscal year of the participating employer and the participating employer fails to account for, as and when required under Part IX, any tax deemed to have been collected by the participating employer under subsection 172.1(5) or (6) in respect of the pension plan on the last day of the particular fiscal year.

Subsection 157(7) is amended so that it also applies where a joint election made under subsection 157(2.1) by a participating employer of a pension plan and a master pension entity of the pension plan is in effect at any time in a particular fiscal year of the participating employer and the participating employer fails to account for, as and when required under Part IX of the Act, any tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan on the last day of the particular fiscal year. In this case, subsection 157(7) allows the Minister of National Revenue to send a written notice of intent to the participating employer and the master pension entity of the Minister's intention to revoke the joint election as of the first day of the particular fiscal year. The issuance of the notice of intent by the Minister to the participating employer is required before the Minister may exercise the discretion granted to the Minister under subsection 157(9) to revoke the joint election.

Representations to Minister

ETA
157(8)

Existing subsection 157(8) of the Act applies where the Minister of National Revenue has issued a notice of intent under subsection 157(7) to exercise the discretion granted to the Minister under

subsection 157(9) to revoke a joint election made under subsection 157(2) by a participating employer of a pension plan and a pension entity of the pension plan.

Subsection 157(8) is amended so that it also applies where the Minister has issued a notice of intent under subsection 157(7) to exercise the discretion granted to the Minister under subsection 157(9) to revoke a joint election made under subsection 157(2.1) by a participating employer of a pension plan and a master pension entity of the pension plan. In this case, upon receipt of a notice of intent, the participating employer is required by subsection 157(8) to establish to the satisfaction of the Minister that the participating employer did not fail to account for, as and when required under Part IX of the Act, tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan. If the participating employer fails to satisfy the Minister of this, the Minister may revoke the joint election under subsection 157(9).

Notice of revocation

ETA
157(9)

Existing subsection 157(9) of the Act permits the Minister of National Revenue to send a written notice of revocation to a participating employer of a pension plan and to a pension entity of the pension plan that their joint election under subsection 157(2) is revoked as of the day specified in the notice of revocation.

Subsection 157(9) is amended so that is also permits the Minister to send a written notice of revocation to a participating employer of a pension plan and to a master pension entity of the pension plan that their joint election under subsection 157(2.1) is revoked as of the day specified in the notice of revocation. This written notice may only be sent if, after 60 days after the day on which a notice of intent under subsection 157(7) was sent by the Minister to the participating employer, the Minister is not satisfied that the participating employer did not fail to account for, as and when required under Part IX of the Act, tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan.

Revocation — effect

ETA
157(10)

Existing subsection 157(10) of the Act provides that, for the purposes of Part IX of the Act, a joint election made under subsection 157(2) that has been revoked by the Minister of National Revenue under subsection 157(9) is deemed never to have been in effect on any day on or after the day specified in the notice of revocation issued by the Minister under subsection 157(9).

Subsection 157(10) is amended so that it also provides that, for the purposes of Part IX of the Act, a joint election made under subsection 157(2.1) that has been revoked by the Minister under subsection 157(9) is deemed never to have been in effect on any day on or after the day specified in the notice of revocation issued by the Minister under subsection 157(9).

Clause 112

Effect of election

ETA
167(1.1)

Existing subsection 167(1.1) of the Act sets out the rules that apply when, under an agreement to supply a business or part of a business, the supplier and recipient jointly elect under subsection 167(1) of the Act to treat certain supplies made under the agreement as non-taxable.

The French version of subsection 167(1.1) is amended to ensure better consistency with paragraph 167(1)(b) and with the English version of the Act.

This amendment comes into force on royal assent.

Clause 113

Deposits

ETA
168(9)

Existing subsection 168(9) of the Act provides that, if a deposit, whether refundable or not, is given with respect to a taxable supply, GST/HST is not payable on the deposit until the time the supplier applies the deposit against the consideration for the supply.

While the English version of subsection (9) refers to the term “deposit”, the French version of subsection (9) refers to the term “*arrhes*”. In Canada, the term “*arrhes*” is now an archaic notion that is rarely used. Even when still used, it is usually intended to mean a non-refundable deposit rather than its strict technical meaning, which was either a right of withdrawal that could be exercised by both the vendor and the purchaser or prepaid liquidated damages. Consequently, the French version of subsection 168(9) is amended to replace the term “*arrhes*” with the general term “*dépôt*”.

This amendment comes into force on royal assent.

Clause 114

Pension Plans

ETA
172.1

Existing section 172.1 of the Act sets out the rules for determining when a person that is a registrant and a participating employer of a pension plan (both terms as defined in subsection 123(1) of the Act) will be deemed to have made a taxable supply of property or a service relating to a pension activity (as defined in subsection 172.1(1)) in respect of the pension plan. Section 172.1 also deems tax in respect of that deemed taxable supply to have become payable on the day the supply is deemed to have been made and the employer is deemed to have collected that tax on that day. The employer must add that tax in determining its net tax and, where that net tax is a positive amount, remit that net tax.

Section 172.1 is amended in relation to its application to activities in respect of master pension entities (as defined in subsection 123(1)). These amendments to section 172.1 amend the definitions “pension activity” and “specified supply” in subsection 172.1(1) as well as subsections 172.1(2), (4), (5), (7) to (10) and (12). The amendments also add new definitions “master pension group” and “specified resource” in subsection 172.1(1) and new subsections 172.1(5.1), (6.1), (7.1) and (8.1).

Further, section 172.1 is amended to change the definition “excluded activity” in subsection 172.1(1), to add the new definitions “defined benefit pension plan” and “defined contribution pension plan” in subsection 172.1(1) and to amend subsections 172.1(5), (6) and (7).

Subclauses 114(1) to (5)

Definitions

ETA
172.1(1)

Subsection 172.1(1) of the Act defines terms used in section 172.1.

In this subsection, the definition “excluded activity” is amended and the new definitions “defined benefits pension plan” and “defined contributions pension plan” are added. These amendments to subsection 172.1(1) apply in respect of fiscal years of an employer beginning after July 22, 2016.

Further, subsection 172.1(1) is amended to provide that the terms defined in it also apply in new section 172.2 of the Act. In addition, the definitions “pension activity” and “specified supply”

are amended and the new definitions “master pension group” and “specified resource” are added. These amendments to subsection 172.1(1) are deemed to have come into force on July 22, 2016.

Excluded activity

The existing definition “excluded activity” generally describes an activity in respect of a pension plan that is undertaken by a participating employer of the pension plan but that is an activity of a type that is normally carried on by an employer for purposes other than administering a pension plan, such as for securities regulation or financial reporting purposes. Excluded activities are carved out from the definition “pension activity” in subsection 172.1(1) and, as a result, the acquisition of property or a service, or the consumption or use of “employer resources” (as defined in subsection 172.1(1)), exclusively in the course of excluded activities is not subject to the deemed supply rules contained in subsections 172.1(5), (6) and (7) and in new subsections 172.1(5.1), (6.1) and (7.1).

The definition “excluded activity” in subsection 172.1(1) is amended to add new paragraph (f). Paragraph (*f*) provides that an excluded activity includes an activity undertaken exclusively in relation to a part of a pension plan where

- that part of the pension plan is either a defined contribution pension plan or a defined benefits pension plan (both terms as defined in this subsection); and
- no pension entity (as defined in subsection 123(1)) of the pension plan administers or holds assets in respect of that part of the pension plan.

For example, if an employer is a participating employer of a pension plan, if the pension plan has both a defined contribution pension plan part and a defined benefits pension plan part and if there is no pension entity administering the defined contribution pension plan part of the pension plan or holding assets in respect of that part, then as a result of this amendment an activity of the employer undertaken exclusively in relation to the defined contribution pension plan part of the pension plan will be an excluded activity.

Defined benefits pension plan

The new definition “defined benefits pension plan” means the part of a pension plan that is in respect of benefits under the plan that are determined in accordance with a formula set forth in the plan and under which the contributions made by a participating employer of the pension plan are not determined in accordance with a formula set forth in the plan.

The definition “defined benefits pension plan” is used in the definition “excluded activity” in this subsection and is identical to the existing definition “defined benefits pension plan” in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Defined contribution pension plan

The new definition “defined contribution pension plan” means the part of a pension plan that is not a defined benefits pension plan (as defined in this subsection).

The definition “defined contribution pension plan” is used in the definition “excluded activity” in this subsection and is identical to the existing definition of “defined contribution pension plan” in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Master pension group

The new definition “master pension group” applies in respect of an employer and of a master pension entity. A master pension group in respect of an employer and of a master pension entity is the group of one or more pension plans that consists of every pension plan that meets two conditions. The first condition is that the employer is a participating employer of the pension plan and the second condition is that the master pension entity is a master pension entity of the pension plan (as those terms are defined in subsection 123(1) of the Act). The definition “master pension group” is used in new subsections 172(5.1), (6.1) and (7.1) of the Act.

Pension activity

The existing definition “pension activity” in respect of a pension plan means any activity that is not an excluded activity (as defined in subsection 172.1(1)) and that relates to the establishment, management or administration of the pension plan or a pension entity of the pension plan. Pension activity also includes the management or administration of assets in respect of the pension plan, which includes the investment of assets held in a trust governed by the pension plan or owned by a corporation that administers the pension plan or any trust or corporation controlled or owned by that trust or corporation.

The definition “pension activity” in subsection 172.1(1) is amended to also include the establishment, management or administration of a master pension entity (as defined in subsection 123(1)) of the pension plan and the management or administration of assets held by a master pension entity of the pension plan.

Specified resource

The new definition “specified resource” means property or a service that a participating employer of a pension plan acquired for the purpose of making a supply of all or part of that property or service to a pension entity or master pension entity of the pension plan. The definition “specified resource” is used in subsections 172.1(5) and (5.1), as well as in section 232.01 of the Act and in the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Specified supply

The existing definition “specified supply” is used in subsections 172.1(9), (10), (12) and (13) of the Act to determine if a participating employer of a pension plan is a selected qualifying employer, or a qualifying employer, of the pension plan for a fiscal year of the participating employer. The definition “specified supply” is used to create a link between a taxable supply deemed to have been made by a participating employer of a pension plan under subsection 172.1(5), (6) or (7) and the pension plan.

The definition is amended so that a specified supply of a participating employer of a pension plan to the pension plan also includes

- a taxable supply deemed to have been made under new subsection 172.1(5.1) of all or part of property or a service that the participating employer acquired for the purpose of making a supply of all or part of the property or service to a master pension entity of the pension plan;
- a taxable supply deemed to have been made under subsection 172.1(6.1) of an employer resource (as defined in subsection 172.1(1)) of the participating employer that the participating employer consumed or used for the purpose of making a supply of property or a service to a master pension entity of the pension plan; and
- a taxable supply deemed to have been made under subsection 172.1(7.1) of an employer resource of the participating employer that the participating employer consumed or used in the course of pension activities in respect of the pension plan.

Subclause 114(6)

Excluded resource

ETA
172.1(2)

Existing subsection 172.1(2) of the Act sets out rules for determining whether property or a service supplied to a person that is a participating employer of a pension plan is an excluded resource for the purposes of section 172.1 of the Act. This determination is relevant for subsections 172.1(5), (6) and (7). Subsection 172.1(2) provides that property or a service, supplied to a person that is a participating employer of a pension plan by another person, is an excluded resource of the participating employer in respect of a pension plan if the conditions in paragraphs 172.1(2)(a) and (b) apply.

Existing paragraph 172.1(2)(a) applies where the supply to the participating employer is made either in or outside Canada by another person and where no tax would be payable under Part IX

of the Act if the supply of the same property or service were made by the other person to each pension entity of the pension plan, rather than to the employer, and if the pension entity and the other person were dealing at arm's length.

Paragraph 172.1(2)(a) is amended so that it now applies where the supply to the employer by another person is made either in or outside Canada and where, for each pension entity or master pension entity of the pension plan, no tax would be payable under Part IX of the Act in respect of the supply if

- the supply of the same property or service were instead made by the other person to the pension entity or master pension entity, as the case may be, rather than to the employer, and
- the pension entity or the master pension entity, as the case may be, and the other person were dealing at arm's length.

Property or service that is supplied by another person cannot be an excluded resource if there is any pension entity of the pension plan or master pension entity of the pension plan that would be required to pay tax if it acquired the property or service from the other person in an arm's length transaction.

It should be noted that, in addition to being relevant for subsections 172.1(5), (6) and (7), the determination of whether property or a service is an excluded resource under amended subsection 172.1(2) is also now relevant for new subsections 172.1(5.1), (6.1) and (7.1), as the acquisition of property or a service that is an excluded resource will not trigger the deemed supply rules contained in paragraphs 172.1(5.1)(a) to (d) nor will the consumption or use of an employer resource that is an excluded resource trigger the deemed supply rules contained in paragraphs 172.1(6.1)(a) to (d) or paragraphs 172.1(7.1)(a) to (d).

The amendments to paragraph 172.1(2)(a) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 114(7)

Specified pension entity

ETA
172.1(4)

Existing subsection 172.1(4) of the Act sets out rules for determining the specified pension entity of a pension plan in respect of a participating employer of the pension plan. The determination of a specified pension entity is relevant to subsection 172.1(7) since only a specified pension entity of a pension plan may be deemed to have paid tax to the participating employer of the pension

plan under that subsection and be eligible to claim a rebate in respect of that tax under amended section 261.01 of the Act.

Subsection 172.1(4) is amended to provide that it applies for the purposes of section 172.1. The amendment is made as the term specified pension entity of a pension plan is now used in new subsections 172.1(5.1), (6.1) and (7.1), in addition to subsection 172.1(7).

The amendment to subsection 172.1(4) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 114(8) and (9)

Acquisition for supply to pension entity

ETA
172.1(5)

Existing subsection 172.1(5) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of the whole or part of property or a service, other than an excluded resource described in subsection 172.1(2), and to have collected tax in respect of that supply, where the participating employer acquired the property or service (referred to as a "specified resource") with the intention of re-supplying all or part of it to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan.

Subsection 172.1(5) is amended in two ways. Firstly, a consequential amendment is made to subsection 172.1(5) to reflect that the term "specified resource" is now defined in subsection 172.1(1). This amendment to subsection 172.1(5) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Secondly, an amendment is made to subparagraph 172.1(5)(d)(ii). Paragraph 172.1(5)(d) provides that, for the purposes of determining an input tax credit, a rebate or adjustment to net tax under section 261.01 of the Act and certain tax adjustments provided under section 232.01 of the Act, the pension entity is deemed to have received a supply of the specified resource or part and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(5)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(5)(c) in determining the amount of tax in respect of that deemed supply.

Subparagraph 172.1(5)(d)(ii) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respected of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Subparagraph 172.1(5)(d)(ii) now provides that the amount of tax that the pension entity is deemed to have paid is determined by the formula A minus B. Element A is equal to:

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(5)(c) in respect of the supply; and

- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(5)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or

- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to subparagraph 172.1(5)(d)(ii) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining an input tax credit of a pension entity if the input tax credit is claimed in a return under Division V of Part IX of the Act for a reporting period of the pension entity that is filed on or before July 22, 2016;

- in respect of a tax adjustment note issued under subsection 232.01(3) on or before July 22, 2016;

- for the purposes of determining a rebate under subsection 261.01(2) for a claim period (as defined in subsection 259(1) of the Act) of a pension entity if an application for the rebate is filed on or before July 22, 2016; and

- for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election made

by the qualifying employer under any of subsections 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 114(10)

Acquisition for supply to master pension entity

ETA
172.1(5.1)

New subsection 172.1(5.1) of the Act deems an employer to have made a taxable supply of the whole or part of property or a service, where the employer acquired that property or service with the intention of re-supplying all or part of it to a master pension entity of a pension plan of which the employer is a participating employer. Subsection 172.1(5.1) deems the employer to have collected an amount of tax in respect of that supply that is determined based on the fair market value of the whole or part of the property or service. In determining its net tax, the employer will be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in respect of the employer and the master pension entity may then be entitled to claim a rebate under amended section 261.01, or in some cases claim an input tax credit, in respect of a portion of this tax.

More specifically, subsection 172.1(5.1) applies where an employer that is a registrant acquires a specified resource (as defined in subsection 172.1(1)) for the purpose of making a supply of all or part of the specified resource to a master pension entity of a pension plan of which the employer is a participating employer and where the master pension entity is acquiring the specified resource for consumption, use or supply by the master pension entity in the course of pension activities in respect of one or more pension plans that are included in the master pension group in respect of the employer and the master pension entity at the time the specified resource was acquired by the employer. However, subsection 172.1(5.1) does not apply if the specified resource acquired by the employer is an excluded resource. Nor does it apply if at the time the specified resource was acquired by the employer, the employer was a selected qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of a specified resource, the following rules set out in paragraphs 172.1(5.1)(a) to (d) apply.

Paragraph 172.1(5.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the specified resource or part on the last day of the fiscal year of the employer in which it acquired the specified resource. This deemed supply is a separate supply from any actual supply of the specified resource or part made to the master pension entity. Since

the employer is deemed to have made a taxable supply of the specified resource or part, the employer is considered to have acquired the specified resource or part for supply in the course of its commercial activities and may be eligible to claim an input tax credit in respect of this acquisition.

For the purposes of Part IX of the Act, paragraph 172.1(5.1)(b) deems tax, in the amount determined under paragraph 172.1(5.1)(c), to have become payable in respect of that deemed taxable supply and deems the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it acquired the specified resource.

For the purposes of Part IX of the Act, paragraph 172.1(5.1)(c) deems the amount of tax under paragraph 172.1(5.1)(b) to be the total of all amounts, each of which is an amount determined for a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it acquired the specified resource. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource. Element G is the provincial factor (as defined in subsection 172.1(1)) in respect of both the pension plan and the participating province for the fiscal year in which the employer acquired the specified resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it acquired the specified resource.

Paragraph 172.1(5.1)(d) generally provides deeming rules solely for the purpose of determining an input tax credit of a specified pension entity and for the purposes of sections 232.01, 232.02 and 261.01 of the Act. Paragraph 172.1(5.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer

resource was acquired, paragraph 172.1(5.1)(d) provides that, for the specific purposes described above, the specified pension entity is deemed to have received a supply of the specified resource or part on the particular day that is the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount determined by the formula A minus B.

Element A is

- if the pension entity is a selected listed financial institution (as described in subsection 225.2(1) of the Act) on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph 172.1(5.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(5.1)(c) in respect of the supply); and

- if the pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(5.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is a part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or

- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

Furthermore, for input tax credit purposes, the specified pension entity is deemed to have acquired the specified resource or part for consumption, use or supply in the course of its commercial activities to the same extent that the specified resource or part was acquired by the employer for the purpose of making a supply of the specified resource or part to the master pension entity for consumption, use or supply by the master pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the master pension entity.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was acquired, paragraph 172.1(5.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the specified resource or part or to have paid tax in respect of that supply.

New subsection 172.1(5.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 114(11)

Consumption or use of employer resource for supply

ETA
172.1(6)

Existing subsection 172.1(6) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of an employer resource, other than an excluded resource, and to have collected tax in respect of that supply, where the employer resource is consumed or used by the employer for the purpose of making a supply of property or a service to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities. Paragraph 172.1(6)(d) provides that, for the purposes of determining an input tax credit, a rebate or adjustment to net tax under section 261.01 of the Act and certain tax adjustments provided under section 232.02 of the Act, the pension entity is deemed to have received a supply of the employer resource and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(6)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(6)(c) in determining the amount of tax in respect of that deemed supply.

Subparagraph 172.1(6)(d)(ii) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respect of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Subparagraph 172.1(6)(d)(ii) now provides that the amount of tax that the pension entity is deemed to have paid is equal to the amount determined by the formula A minus B. Element A is equal to

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(6)(c) in respect of the supply; and

- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(6)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or

  - that the participating employer has recovered, or is entitled to recover by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to subparagraph 172.1(6)(d)(ii) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining an input tax credit of a pension entity if the input tax credit is claimed in a return under Division V of Part IX of the Act for a reporting period of the pension entity that is filed on or before July 22, 2016;

  - in respect of a tax adjustment note issued under subsection 232.02(2) on or before July 22, 2016;

  - for the purposes of determining a rebate under subsection 261.01(2) for a claim period of a pension entity if an application for the rebate is filed on or before July 22, 2016; and

  - for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election made by the qualifying employer under any of subsection 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 114(12)

Employer resource for supply to master pension entity

ETA
172.1(6.1)

New subsection 172.1(6.1) of the Act deems an employer to have made a taxable supply of an employer resource (as defined in subsection 172.1(1)) where the employer consumes or uses the employer resource for the purpose of making a supply of property or a service to a master pension entity of a pension plan of which the employer is a participating employer. Subsection

172.1(6.1) also deems the employer to have collected an amount of tax that is determined based on the fair market value of the employer resource. In determining its net tax, the employer will be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in respect of the employer and the master pension entity may then be entitled to claim a rebate under amended section 261.01, or in some cases claim an input tax credit, in respect of a portion of this tax.

More specifically, subsection 172.1(6.1) applies where an employer that is a registrant consumes or uses an employer resource for the purpose of making a supply of property or a service (referred to in subsection 172.1(6.1) as a "pension supply") to a master pension entity of the pension plan and where the master pension entity is acquiring the property or service for consumption, use or supply by the master pension entity in the course of pension activities in respect of one or more pension plans that are included in the master pension group in respect of the employer and the master pension entity at the time the consumption or use of the employer resource occurs. However, subsection 172.1(6.1) does not apply if the employer resource consumed or used by the employer is an excluded resource. Nor does it apply if at the time the employer resource was consumed or used, the employer was a selected qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of an employer resource, the following rules set out in paragraphs 172.1(6.1)(a) to (d) apply.

Paragraph 172.1(6.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the employer resource (referred to in subsection 172.1(6.1) as the "employer resource supply") on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. This deemed supply is a separate supply from any actual supply of the employer resource made to the master pension entity. Since the employer is deemed to have made a taxable supply of the employer resource, the employer is considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(6.1)(b) deems tax, in the amount determined under paragraph 172.1(6.1)(c), to have become payable in respect of that deemed taxable supply and deems the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(6.1)(c) deems the amount of tax under paragraph 172.1(6.1)(b) to be the total of all amounts, each of which is an amount determined for

a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of the tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the employer resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of the tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the employer resource. Element G is the provincial factor in respect of both the pension plan and the participating province for the fiscal year in which the employer consumed or used the employer resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purpose of determining the fair market value of the employer resource for elements C and F, if the employer resource was consumed during the fiscal year for the purpose of making the pension supply, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. If the employer resource was used, but not consumed, for the purpose of making the pension supply, the fair market value of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(6.1)(d) generally provides deeming rules solely for the purpose of determining an input tax credit of a specified pension entity and for the purposes of sections 232.01, 232.02 and 261.01 of the Act. Paragraph 172.1(6.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(6.1)(d) provides that, for the specific purposes described above, the specified pension entity is deemed to have received a supply of the employer resource on the particular day that is the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount determined by the formula element A minus element B.

Element A is

- if the specified pension entity is a selected listed financial institution on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph 172.1(6.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(6.1)(c) in respect of the supply); and

- if the specified pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(6.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or

- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

Furthermore, for input tax credit purposes, the specified pension entity is deemed to have acquired the employer resource for consumption, use or supply in the course of its commercial activities to the same extent that the property or service supplied in the pension supply was acquired by the master pension entity for consumption, use or supply by the master pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the master pension entity.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(6.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the employer resource or to have paid tax in respect of that supply.

New subsection 172.1(6.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 114(13) to (15)

Employer resource other than for supply — pension entity

ETA
172.1(7)

Existing subsection 172.1(7) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of an employer resource, other than an excluded resource, and to have collected tax in respect of that supply, where the employer consumes or uses the employer resource in the course of pension activities in respect of the pension plan, otherwise than for the purpose of making a supply of property or a service to a pension entity of the pension plan of which the employer is a participating employer. Three amendments are made to subsection 172.1(7).

The first amendment to subsection 172.1(7) excludes from the application of subsection 172.1(7) the consumption or use by an employer of employer resources in the course of pension activities of the pension plan where those pension activities are the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets in respect of the pension plan that are held by a master pension entity of the pension plan.

The first amendment to subsection 172.1(7) applies in respect of fiscal years of a participating employer beginning after September 22, 2009 but before July 22, 2016.

A transitional rule applies in respect of this first amendment where two conditions are met. The first condition is that, in assessing under section 296 of the Act the net tax for a particular reporting period of a participating employer of a pension plan, a particular amount was included in determining the net tax for the reporting period as an amount of tax in respect of an employer resource that was deemed to have been collected on a particular day in the reporting period by the participating employer under paragraph 172.1(7)(b). The second condition is that, as a result of the application of the first amendment to subsection 172.1(7), the particular amount is not deemed to have been collected by the participating employer under that paragraph.

Where these two conditions are met, the participating employer may request that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not deemed to have been collected by the participating employer under paragraph 172.1(7)(b). On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax for the particular reporting period, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the particular amount is not deemed to have been collected by the participating

employer under paragraph 172.1(7)(b). In addition, the following two consequences may also follow:

- The first consequence applies if three conditions are met. First, a pension entity of the pension plan makes an election under subsection 261.01(5), (6) or (9) of the Act with a qualifying employer (as defined in subsection 261.01(1)) of the pension plan for the claim period (as defined in subsection 259(1) of the Act) of the pension entity that includes the particular day. Second, the qualifying employer deducts, in determining its net tax for a reporting period, an amount as all or part of a particular amount in respect of the employer resource that was deemed to have been paid by the pension entity under paragraph 172.1(7)(d) of the Act. Third, as a result of the application of the first amendment, the particular amount is not deemed to have been paid by the pension entity under that paragraph. If these three conditions are met, the Minister must under section 296 assess, reassess or make an additional assessment of the net tax for the reporting period, and of any interest, penalty or other obligation of the qualifying employer, solely for the purpose of taking into account that the particular amount is not deemed to have been paid by the pension entity under paragraph 172.1(7)(d).

- The second consequence applies if two conditions are met. First, in assessing under section 297 of the Act the amount of a rebate under subsection 261.01(2) of the Act for a claim period of a pension entity, an amount was included in determining the pension rebate amount (as defined in subsection 261.01(1) of the Act) for the claim period as an amount in respect of the employer resource that was deemed to have been paid by the pension entity under paragraph 172.1(7)(d). Second, as a result of the application of the first amendment, the amount is not deemed to have been paid by the pension entity under that paragraph. If these two conditions are met, the Minister must under sections 296 and 297 of the Act assess, reassess or make an additional assessment of the rebate, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the amount was not deemed to have been paid by the pension entity under paragraph 172.1(7)(d).

This request by the participating employer to the Minister must be made in writing and be made on or before the day that is one year after the day on which the Act enacting the first amendment to subsection 172.1(7) receives royal assent.

Currently, subsection 172.1(7) provides that this subsection does not apply in respect of the consumption or use of employer resources by a participating employer of a pension plan if subsection 172.1(6) applies in respect of that consumption or use. Subsection 172.1(6) would apply where the consumption or use is for the purpose of making a supply of property or service to a pension entity of the pension plan. The second amendment to subsection 172.1(7) provides

that this subsection also does not apply in respect of the consumption or use of employer resources if either of new subsections 172.1(6.1) or (7.1) applies to that consumption or use. New subsection 172.1(6.1) would apply where the consumption or use is for the purpose of making a supply of property or service to a master pension entity of the pension plan. New subsection 172.1(7.1) would apply where neither of subsections 172.1(6) and (6.1) applies to the consumption or use and where the consumption or use is in the course of pension activities that relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan.

The second amendment to subsection 172.1(7) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

The third amendment concerns paragraph 172.1(7)(d), which provides that, for the purposes of determining a rebate or an adjustment to net tax under section 261.01 of the Act, the pension entity is deemed to have received a supply of the employer resource and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(7)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(7)(c) in determining the tax in respect of that deemed supply.

Paragraph 172.1(7)(d) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respect of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Paragraph 172.1(7)(d) now provides that the amount of tax that the pension entity is deemed to have paid is equal to the determined by the formula A minus B. Element A is equal to

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(7)(c) in respect of the supply; and

- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(7)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to paragraph 172.1(7)(d) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining a rebate under subsection 261.01(2) for a claim period of a pension entity if an application for the rebate is filed on or before July 22, 2016; and
- for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election made by the qualifying employer under any of subsection 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 114(16)

Employer resource other than for supply — master pension entity

ETA
172.1(7.1) to (8.1)

New subsection 172.1(7.1) of the Act deems an employer to have made a taxable supply of an employer resource where the employer consumes or uses the employer resource in the course of pension activities, otherwise than for the purpose of making a supply of property or a service to a pension entity or master pension entity of a pension plan of which the employer is a participating employer. However, unlike subsection 172.1(7), subsection 172.1(7.1) applies where the consumption or use is in the course of pension activities of one or more pension plans in the master pension group in respect of the employer and a master pension entity and where those pension activities relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan.

Subsection 172.1(7.1) deems the employer to have collected an amount of tax that is determined based on the fair market value of the employer resource. In determining its net tax, the employer will be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in

respect of the employer and the master pension entity may then be entitled to claim a rebate in respect of this tax under amended section 261.01.

More specifically, subsection 172.1(7.1) applies where four conditions are met. First, an employer that is a registrant consumes or uses an employer resource in the course of pension activities in respect of one or more pension plans that are included in a master pension group of both the employer and the master pension entity. Second, it is the case that neither subsection 172.1(6) nor subsection 172.1(6.1) applies to the consumption or use (i.e., the consumption or use is not for the purpose of making a supply of property or a service to a pension entity or a master pension entity of a pension plan of which the employer is at that time a participating employer). Third, the pension activities relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan. Finally, subsection 172.1(7.1) only applies if the employer resource consumed or used by the employer is not an excluded resource and if, at the time the employer resource was consumed or used, the employer was not a qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of an employer resource, the following rules set out in paragraphs 172.1(7.1)(a) to (d) apply.

Paragraph 172.1(7.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the employer resource (referred to in this provision as the “employer resource supply”) on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. Since the employer is deemed to have made a taxable supply of the employer resource, the employer is considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(7.1)(b) deems tax, in the amount determined under paragraph 172.1(7.1)(c), to have become payable in respect of that deemed taxable supply and the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(7.1)(c) deems the amount of tax under paragraph 172.1(7.1)(b) to be the total of all amounts, each of which is an amount determined for a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of the tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the employer resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of the tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the employer resource. Element G is the provincial factor in respect of both the pension plan and the particular participating province for the fiscal year in which the employer consumed or used the employer resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purpose of determining the fair market value of the employer resource for elements C and F, if the employer resource was consumed during the fiscal year in the course of the pension activities that relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. If the employer resource was used, but not consumed, in the course of such pension activities, the fair market value of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(7.1)(d) generally provides deeming rules for the purpose of determining under section 261.01 of the Act an eligible amount of a specified pension entity. Paragraph 172.1(7.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(7.1)(d) provides that, for the specific purpose described above, the specified pension entity is deemed to have paid tax, on the particular day that is the last day of the fiscal year of the employer, equal to the amount determined by the formula A minus B.

Element A is

- if the pension entity is a selected listed financial institution on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph

172.1(7.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(7.1)(c) in respect of the supply); and

- if the pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(7.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or

- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(7.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the employer resource or to have paid tax in respect of that supply.

New subsection 172.1(7.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Existing subsection 172.1(8) of the Act places an information requirement on a participating employer of a pension plan where that participating employer is deemed by any of subsections 172.1(5), (6) and (7) to have made a supply of property or a service. Subsection 172.1(8) requires the participating employer to provide prescribed information, in prescribed form and in a manner satisfactory to the Minister of National Revenue, to the pension entity of the pension plan that is deemed to have paid tax in respect of that supply.

Subsection 172.1(8) is amended so that it also places an information requirement on a participating employer of a pension plan where that participating employer is deemed to have made a supply of property or a service by any of new subsections 172.1(5.1), (6.1) and (7.1).

The amendment to subsection 172.1(8) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

New subsection 172.1(8.1) of the Act places an information requirement on a master pension entity of a pension plan. It requires that the master pension entity provide, in a manner

satisfactory to the Minister, the master pension factor in respect of the pension plan for a fiscal year of the master pension entity to each participating employer of the pension plan on or before the day that is 30 days after the first day of the fiscal year. It also requires that the master pension entity provide, in the same manner and within the same time limit, to each participating employer of the pension plan any other information that the Minister may specify.

New subsection 172.1(8.1) applies in respect of fiscal years of a master pension entity beginning after July 21, 2016.

Subclauses 114(17) to (20)

Selected qualifying employer

ETA
172.1(9)

Existing subsection 172.1(9) of the Act sets out rules for determining whether a participating employer of a pension plan is a selected qualifying employer of the pension plan for a fiscal year of the employer. Where a participating employer is a selected qualifying employer of the pension plan for a fiscal year of the employer, subsections 172.1(5), (6) and (7), as well as new subsections 172.1(5.1), (6.1) and (7.1), do not apply to the employer in respect of the pension plan for the fiscal year. Where a participating employer is a selected qualifying employer of the pension plan for a fiscal year of the employer, it will also be a qualifying employer of the pension plan for the same fiscal year, as determined by subsection 172.1(10) of the Act, for the purposes of subsections 172.1(7) and (7.1).

In order for a particular participating employer of a pension plan to be a selected qualifying employer of the pension plan for a fiscal year of the employer, the employer must meet a number of conditions. One condition is that the employer has not made a joint election under subsection 157(2) with a pension entity of the pension plan that is in effect in the fiscal year. An amendment to subsection 172.1(9) adds the additional condition that the employer has not made a joint election under new subsection 157(2.1) with a master pension entity of the pension plan that is in effect in the fiscal year.

Two further conditions for the particular participating employer to be a selected qualifying employer are the following. The first condition is that the amount determined for element A in subsection 172.1(9) for the particular participating employer in respect of the pension plan for the fiscal year must be less than $5,000. A second condition is that the amount, expressed as a percentage, determined by the formula A/(B – C) for the particular participating employer in respect of the pension plan for the fiscal year must be less than 10 per cent.

Elements A, B and C of the formula in subsection 172.1(9) are amended to reflect the enactment of new subsections 172.1(5.1), (6.1) and (7.1).

Element A is currently generally the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsections 172.1(9) to (11)) required to account for under the deemed taxable supply rules in subsections 172.1(5), (6) and (7) in the preceding fiscal year of the particular participating employer. Element A is amended to also include the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsections 172.1(9) to (11)) required to account for under the deemed taxable supply rules in new subsections 172.1(5.1), (6.1) and (7.1) in the preceding fiscal year of the particular participating employer.

Element B is the total of the amounts included in paragraph (a), (b) or (c) of that element. Paragraph (b) of element B currently includes an amount of GST (or of the federal component of the HST) that any participating employer of the pension plan, including the particular participating employer, was required to account for under subsection 172.1(5), (6) or (7) in the preceding fiscal year of the particular participating employer. Paragraph (b) is amended to also include an amount of GST (or of the federal component of the HST) that any participating employer of the pension plan, including the particular participating employer, was required to account for under the deemed taxable supply rules in new subsections 172.1(5.1), (6.1) and (7.1) in the preceding fiscal year of the particular participating employer.

Element C is the total of the amounts included in paragraph (a) or (b) of that element. Paragraph (b) of element C includes an amount in respect of a recoverable amount (as defined in subsection 261.01(1) of the Act) of a pension entity of the pension plan in respect of a claim period ending in a fiscal year of the pension entity that ends in that preceding fiscal year of the particular participating employer. An amount is currently included in paragraph (b) only to the extent that the recoverable amount is GST (or the federal component of the HST) deemed to have been paid by the pension entity under paragraph 172.1(5)(d), (6)(d) or (7)(d) for the purposes of section 261.01. Paragraph (b) of element C is amended so that an amount is to be included in respect of a recoverable amount of the pension entity in respect of the claim period only to the extent that the recoverable amount is GST (or the federal component of the HST) deemed to have been paid by the pension entity under paragraph 172.1(5)(d), (5.1)(d), (6)(d), (6.1)(d), (7)(d) or (7.1)(d), whichever is applicable, for the purposes of section 261.01.

The amendments to subsection 172.1(9) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 114(21) to (23)

Qualifying employer

ETA
172.1(10)

Existing subsection 172.1(10) of the Act sets out rules for determining whether a participating employer of a pension plan is a qualifying employer of the pension plan for a fiscal year of the participating employer. Where a participating employer is a qualifying employer of the pension plan for a fiscal year of the participating employer, subsection 172.1(7), as well as new subsection 172.1(7.1), do not apply to the participating employer in respect of the pension plan for the fiscal year.

In order for a particular participating employer of a pension plan to be a qualifying employer of the pension plan for a fiscal year of the particular participating employer, the particular participating employer must meet certain conditions. One condition is that the amount determined for element A for the particular participating employer in respect of the pension plan for the fiscal year must be less than $5,000. Another condition is that the amount, expressed as a percentage, determined by the formula A/(B – C) for the particular participating employer in respect of the pension plan for the fiscal year must be less than 10 per cent.

Elements A, B and C of the formula in subsection 172.1(10) are amended to reflect the enactment of new subsections 172.1(5.1), (6.1) and (7.1).

Element A is currently generally the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsection 172.1(10) or (11)) required to account for under the deemed taxable supply rules in subsection 172.1(7) in the preceding fiscal year of the particular participating employer. Element A is amended to also include the amount of GST (or of the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsection 172.1(10) or (11)) required to account for under the deemed taxable supply rules in new subsection 172.1(7.1) in the preceding fiscal year of the particular participating employer.

Elements B and C in the formula in subsection 172.1(10) have the same meaning as elements B and C in the formula in subsection 172.1(9). Elements B and C in the formula in subsection 172.1(10) are amended in the same manner as elements B and C in the formula in subsection 172.1(9) and the description above of the amendments to elements B and C in the formula in

subsection 172.1(9) apply equally to the amendments to elements B and C in the formula in subsection 172.1(10) (see note on subsection 172.1(9)).

The amendments to subsection 172.1(10) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 114(24)

Mergers and amalgamations

ETA
172.1(12)

Existing subsection 172.1(12) of the Act applies where two or more corporations (each of which is referred to in subsection 172.1(12) as a "predecessor"), any one of which is a participating employer of a pension plan, are merged or amalgamated to form a corporation (referred to in subsection 172.1(12) as the "new corporation"), which is a participating employer of the pension plan. Subsection 172.1(12) assists in the determination of whether the new corporation is, subsequent to the merger or amalgamation, a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the new corporation under any of subsections 172.1(9), (10) and (11).

Existing paragraph 172.1(12)(b) provides that any amount of tax that was deemed to have been collected under any of subsections 172.1(5), (6) and (7) by a predecessor (or that would have been so deemed to have been collected by a predecessor, but for the fact that the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to have been collected under the same applicable subsection by the new corporation on the last day of the prior fiscal year of the new corporation. Each of these amounts is also, for the purposes of determining if the new corporation is a selected qualifying employer or a qualifying employer of the pension plan for the first fiscal year of the new corporation, deemed not to have been collected by a predecessor.

Paragraph 172.1(12)(b) is amended so that it also provides that any amount of tax that was deemed to have been collected under any of new subsections 172.1(5.1), (6.1) and (7.1) by a predecessor (or that would have been so deemed to have been collected by a predecessor, but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to have been collected under the same applicable subsection by the new corporation on the last day of the prior fiscal year of the new corporation. Each of these amounts is also, for purposes of determining if the new

corporation is a selected qualifying employer or a qualifying employer of the pension plan for the first fiscal year of the new corporation, deemed not to have been collected by a predecessor.

Existing paragraph 172.1(12)(c) provides that any specified supply of a predecessor to the pension plan that was deemed to have been made under any of subsections 172.1(5), (6) or (7) (or that would have been deemed to have been so made by a predecessor, but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to be a specified supply of the new corporation to the pension plan.

Paragraph 172.1(12)(c) is amended so that it also provides that any specified supply of a predecessor to the pension plan that was deemed to have been made under any of new subsections 172.1(5.1), (6.1) and (7.1) (or that would have been deemed to have been so made by a predecessor but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to be a specified supply of the new corporation to the pension plan.

The amendments to subsection 172.1(12) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Clause 115

Tax deemed paid by designated pension entity

ETA
172.2

New section 172.2 of the Act contains deeming rules that generally provide that, for the purposes of section 261.01 of the Act, where an amount of tax becomes payable, or is paid without having become payable, by a master pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act), an amount of tax representing all or part of that amount is deemed to have been paid by a designated pension entity (within the meaning of subsection 172.2(2)) of the pension plan. The amount of tax deemed to be paid by a designated pension entity of a pension plan is determined in accordance with subsection 172.2(3). The designated pension entity may then be able to claim a rebate or make an election under section 261.01 in respect of the amount of tax it is deemed to have paid.

New section 172.2 applies in respect of amounts of tax that become payable, or that are paid without having become payable, by a master pension entity after July 21, 2016.

Excluded amount

ETA
172.2(1)

New subsection 172.2(1) sets out rules for determining whether an amount of tax is an excluded amount of a master pension entity. This determination is relevant for subsection 172.2(3) as no part of an excluded amount of a master pension entity of a pension plan is deemed under that subsection to have been paid by a pension entity of the pension plan for the purposes of section 261.01.

An excluded amount of a master pension entity is an amount of tax that

- is deemed to have been paid by the master pension entity under Part IX of the Act (other than tax deemed under section 191 of the Act to have been paid in respect of a residential complex), such as tax resulting from a change-in-use of capital property or in respect of employee allowances and reimbursements;

- became payable by the master pension entity when it is entitled to claim a public service body rebate under section 259 of the Act; or

- is payable under subsection 165(1) of the Act — or is deemed to have been paid under section 191 — by the master pension entity in respect of a taxable supply to it of a residential complex, addition to a residential complex or land, if, in respect of that supply, the master pension entity is entitled to claim a new residential rental property rebate under section 256.2 of the Act, or would be so entitled after paying the tax payable in respect of the taxable supply.

Designated pension entity

ETA
172.2(2)

New subsection 172.2(2) sets out rules for determining the designated pension entity of a pension plan in respect of a master pension entity of the pension plan. The determination of a designated pension entity is relevant for subsection 172.2(3) since only a designated pension entity of a pension plan may be deemed by those subsections to have paid an amount of tax, for the purposes of section 261.01, in respect of tax actually paid by the master pension entity.

Where, at a particular time, the pension plan has only one pension entity, that pension entity is the designated pension entity of the pension plan in respect of each master pension entity of the pension plan. Where, at a particular time, the pension plan has more than one pension entity and

the master pension entity has made a joint election under new subsection 172.2(4) with a pension entity of the pension plan that is in effect at the particular time, that pension entity is the designated pension entity of the pension plan in respect of the master pension entity at the particular time. If, however, at the particular time, the pension plan has more than one pension entity and the master pension entity has made no election under new subsection 172.2(4) with a pension entity of the pension plan that is in effect at that time, then there is no designated pension entity of the pension plan. In this last case, no pension entity of the pension plan will be deemed to have paid an amount of tax, for the purposes of section 261.01, in respect of tax paid by the master pension entity.

A master pension entity of one or more pension plans may, at one time, have only one designated pension entity for each pension plan but each master pension entity of a pension plan may have a different pension entity of the pension plan as its designated pension entity of the pension plan.

The rules under subsection 172.2(2) for determining the designated pension entity of a pension plan in respect of a master pension entity of the pension plan are similar to the rules under subsection 172.1(4) for determining the specified pension entity of a pension plan in respect of a participating employer for the purposes of subsections 172.1(5.1), (6.1), (7) and (7.1) of the Act. It should be noted that, where a pension plan has two or more pension entities, it is possible that the pension entity that is the designated pension entity of the pension plan in respect of a master pension entity of the pension plan and the pension entity that is the specified pension entity of the pension plan in respect of a participating employer of pension plan are two different pension entities.

Tax deemed paid by designated pension entity — section 261.01

ETA
172.2(3)

New subsection 172.2(3) applies for the purposes of sections 261.01 of the Act. Subsection 172.2(3) generally deems a designated pension entity (within the meaning of subsection 172.2(2)) of a pension plan to have paid, for the purposes of that section, an amount of tax that is determined in respect of an amount of tax paid by a master pension entity of the pension plan, subject to certain exceptions. The amount of tax that subsection 172.2(3) deems a designated pension entity to have paid is included in determining the pension entity's pension rebate amount (as defined in subsection 261.01(1)) for a claim period of the pension entity. The pension rebate amount in turn would be used to determine

- the maximum amount of a rebate for the claim period that the pension entity, if it is a "qualifying pension entity" (as defined in subsection 261.01(1)), may be entitled to claim under subsection 261.01(2); and

- the maximum amount of a deduction from net tax that a “qualifying employer” (as defined in subsection 261.01(1)) of the pension plan may be entitled to deduct under any of subsections 261.01(5), (6) or (9).

Subsection 172.2(3) applies if a particular amount of tax becomes payable, or is paid without having become payable, by a master pension entity of one or more pension plans at any time in a fiscal year of the master pension entity and if the particular amount of tax is not an excluded amount (within the meaning of subsection 172.2(1)) of the master pension entity. In this case, subsection 172.2(3) provides that, for each of those pension plans, the designated pension entity of the pension plan at that time in respect of the master pension entity is deemed to have paid at that time an amount of tax equal to an amount determined by the formula A multiplied by B.

Where the designated pension entity is a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) and the particular amount of tax is payable under any of subsection 165(2), sections 212.1 and 218.1 of the Act and Division IV.1 of Part IX of the Act, then element A in respect of the particular amount of tax is equal to zero.

In any other case, element A would be equal to the particular amount of tax less the total of all amounts, each of which is included in the particular amount of tax and is

- an input tax credit that the master pension entity is entitled to claim in respect of the particular amount of tax;

- an amount for which it can reasonably be regarded that the master pension entity has obtained or is entitled to claim a rebate, refund or remission; or

- an amount that can reasonably be regarded as having been included in an amount adjusted, refunded or credited in favour of the master pension entity in accordance with subsection 232(3) of the Act.

Element B is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes that time. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Designated pension entity election

ETA
172.2(4)

New subsection 172.2(4) provides an election that may be made if a pension plan has two or more pension entities and if there is a master pension entity of the pension plan. Subsection

172.2(4) permits the master pension entity to jointly elect with one of the pension entities of the pension plan for that pension entity to be, while the election is in effect, the designated pension entity of the pension plan in respect of the master pension entity. An election under subsection 172.2(4) must be made in prescribed form containing prescribed information and is in effect beginning from the day set out in the election until the day it ceases to have effect as provided for under subsection 172.2(5).

Effective period of election

ETA
172.2(5)

New subsection 172.2(5) sets out the effective period of a joint election made under subsection 172.2(4) between a master pension entity of a pension plan and a pension entity of the pension plan. Subsection 172.2(5) provides that the joint election becomes effective on the day set out in the election form. It also provides that the joint election ceases to have effect on the earliest of:

- the day on which the master pension entity ceases to be a master pension entity of the pension plan;
- the day on which the pension entity ceases to be a pension entity of the pension plan;
- the day on which another joint election made under subsection 172.2(4) between the master pension entity and a different pension entity of the pension plan becomes effective; and
- the day specified in a joint revocation of the joint election made by the master pension entity and the pension entity under subsection 172.2(6).

Revocation

ETA
172.2(6)

New subsection 172.2(6) allows a master pension entity of a pension plan and a pension entity of the pension plan that have jointly made an election under subsection 172.2(4) to jointly revoke that election, effective on a day specified in the revocation. The joint revocation must be made in prescribed form containing prescribed information.

Clause 116

Restriction on input tax credits

ETA
178(18)(c)

Existing subsection 178(18) of the Act sets out certain rules under which GST/HST is not payable on a supply of property or a service made by a network seller to a sales representative of the network seller or a relative of the sales representative and that also restricts input tax credits that may be claimed by the network seller in respect of the property or service. This subsection contains rules that apply when property (other than a select product of the network seller) or a service is acquired or imported or brought into a participating province by the network seller for the purpose of supplying it to a sales representative of the network seller or a relative of the sales representative for no consideration or consideration that is less than the fair market value of the property or service.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 178(18)(c) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 117

Adjustments to direct seller's net tax

ETA
178.3(4)(b)(ii) and (iii)

Existing subsection 178.3(4) of the Act provides that a direct seller may claim a deduction in determining the direct seller's net tax if an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken if the supply is for consideration less than the suggested retail price of the product or for no consideration.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. Furthermore, in the French version of the Act, the references to the expression "nominal consideration" are references to the expression "*contrepartie négligeable*" in some cases and to the expression "*contrepartie symbolique*" in other cases. To ensure better

consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subparagraphs 178.3(4)(b)(ii) and (iii) are amended to replace the expressions "*à titre gratuit*" with the expression "*sans contrepartie*" and to replace the expression "*contrepartie négligeable*" with the expression "*contrepartie symbolique*".

These amendments come into force on royal assent.

Clause 118

Adjustment to distributor's net tax

ETA
178.4(4)(b)(ii) and (iii)

Existing subsection 178.4(4) of the Act provides that a distributor of a direct seller may claim a deduction in determining the distributor's net tax if an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken if the supply is for consideration less than the suggested retail price of the product or for no consideration.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. Furthermore, in the French version of the Act, the references to the expression "nominal consideration" are references to the expression "*contrepartie négligeable*" in some cases and to the expression "*contrepartie symbolique*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subparagraphs 178.4(4)(b)(ii) and (iii) are amended to replace the expressions "*à titre gratuit*" with the expression "*sans contrepartie*" and to replace the expression "*contrepartie négligeable*" with the expression "*contrepartie symbolique*".

These amendments come into force on royal assent.

Clause 119

Restriction on input tax credits

ETA
178.5(8)(a)

Existing subsection 178.5(8) of the Act denies input tax credits to a direct seller (for whom an approval granted under subsection 178.2(3) of the Act is in effect) or a distributor of the direct seller in respect of property or a service (other than an exclusive product of the direct seller) that is imported or acquired or brought into a participating province by the direct seller or distributor

for the purpose of supplying it to an independent sales contractor of the direct seller or a relative of the contractor for no consideration or for consideration that is less than the fair market value of the property or service. Subsection 178.5(8) also provides that no tax is payable on the supply to the contractor or the relative of the contractor. These rules apply if the contractor or the relative of the contractor is acquiring the property or service for use otherwise than exclusively in the course of commercial activities.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 178.5(8)(a) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 120

Buying group method

ETA
178.6(5)(d)

It is common in certain industries for businesses to enter into group purchasing arrangements in order to enable members of the group to obtain the benefit of volume rebates offered by suppliers. Section 178.6 of the Act allows qualifying buying groups to ignore, for GST/HST purposes, pass-through supplies (as defined in subsection 178.6(1)). Under this optional method, the supply of property or service by the buying group is deemed to be a supply from the original supplier to the ultimate recipient.

Existing subsection 178.6(5) sets out the rules that apply if a buyer designation is in effect. Under those rules, the supply by the original supplier to the buyer is deemed to be a supply from the original supplier to the ultimate recipient and the tax paid or payable in respect of the deemed supply is deemed to be paid or payable by the ultimate recipient. However, the buyer and the ultimate recipient are jointly and severally liable for the payment of that tax.

In the English version of paragraph 178.6(5)(d), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 121

Drop shipments

ETA
179

The purpose of the drop shipment rules, as set out in section 179 of the Act and Division IV of Part IX of the Act, is twofold. The rules generally allow a person that is a non-resident and not registered for purposes of the Goods and Services Tax/Harmonized Sales Tax ("GST/HST") to acquire in Canada goods, or commercial services in respect of goods, on a tax-free basis, provided the goods are ultimately exported, or are retained in Canada by a registrant that agrees to accept a potential liability for tax in respect of a subsequent transfer or non-commercial use of the goods. In addition, the drop shipment rules generally help to ensure that GST/HST applies to goods located in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were acquired from an unregistered non-resident person outside of Canada and imported for final consumption in Canada.

Subclauses 121(1) and (2)

Delivery to consignee of a non-resident

ETA
179(1)

Subsection 179(1) of the Act sets out a general rule that applies where a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service and the registrant also causes physical possession of the goods to be transferred to another person in Canada. In these circumstances, the registrant is deemed to have made a taxable supply of the goods in Canada to the non-resident person and the consideration for this deemed supply is generally deemed to be equal to the fair market value of the goods. The registrant is therefore required to account for tax on this deemed supply, but is not required to account for tax on the actual supply of the goods or service made by the registrant to the non-resident person. This general rule is subject to certain exceptions that are set out in subsections 179(1) to (3) of the Act.

Subparagraph 179(1)(a)(i) sets out a condition for the application of the general rule in subsection 179(1). Specifically, this condition is satisfied if a registrant, under an agreement between the registrant and an unregistered non-resident person,

- makes a taxable supply in Canada of goods by way of sale to the non-resident person;
- makes a taxable supply in Canada of a service of manufacturing or producing goods to the non-resident person; or
- acquires physical possession of goods (other than goods of a person that is resident in Canada or is registered for GST/HST purposes) for the purpose of making a taxable supply of a commercial service in respect of the goods to the non-resident person.

Subparagraph 179(1)(a)(i) is amended in respect of the condition related to the acquisition of the physical possession of goods for the purposes of making a taxable supply of a commercial service in order to:

- remove the restriction that the goods not be goods of a person that is registered for GST/HST purposes, and
- clarify that the supply of the commercial service must be made in Canada.

Due to these amendments, the rules in subsection 179(1) may now apply to a commercial service, supplied in Canada, that is in respect of the goods of a non-resident person that is registered for GST/HST purposes. In these circumstances, new subsection 179(2.1) of the Act may apply to relieve tax in respect of a subsequent transfer of physical possession of those goods in Canada by the registrant service provider.

Paragraph 179(1)(c) deems the registrant to have made a taxable supply of goods to an unregistered non-resident person where the registrant supplies the goods, or a service in respect of goods, to the non-resident person and also transfers physical possession of the goods to another person in Canada. This paragraph is amended to clarify that this deemed supply is deemed to have been made in Canada.

These amendments apply in respect of supplies made after July 22, 2016.

Subclauses 121(3) and (4)

Exception where delivery to registrant consignee of a non-resident

ETA
179(2)

Subsection 179(2) of the Act provides an exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies in the following circumstances:

- under an agreement, a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;

- under the agreement, the registrant causes the transfer of physical possession of those goods at a place in Canada to a consignee that is registered for the purposes of the GST/HST; and

- the consignee issues a certificate (referred to as a "drop shipment certificate") to the registrant.

The issuance of a valid drop shipment certificate in the circumstances described in subsection 179(2) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subparagraph 179(2)(a)(i) sets out one of the conditions for the issuance of a valid drop shipment certificate. This condition is that a registrant either makes a taxable supply in Canada of goods to an unregistered non-resident person or makes a taxable supply of a commercial service in respect of goods to an unregistered non-resident person. Subparagraph 179(2)(a)(i) is amended in the case of a taxable supply of a commercial service in respect of goods in order to clarify that the supply of the service must be made in Canada in order for a drop shipment certificate to be issued.

In addition to the amendments to subparagraph 179(2)(a)(i), other amendments are being made to subsection 179(2) to clarify the existing conditions for the issuance of a drop shipment certificate. More specifically, new paragraph 179(2)(b.1) states that in order for a registered consignee to issue a valid drop shipment certificate, it must be acquiring physical possession of the goods

- as the recipient of a taxable supply of the goods by an unregistered non-resident person;

- for the purpose of making a taxable supply in Canada of a service of manufacturing or producing other goods to an unregistered non-resident person that is not a consumer of the service, provided that the goods are incorporated or transformed into, attached to or combined or assembled with, the other goods, or are directly consumed or expended, in the manufacture or production of those other goods;

- if the goods are not the goods of a person that is resident in Canada, for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person that is not a consumer of the service; or

- for the purpose of making a taxable supply in Canada of a commercial service in respect of other goods (other than goods of a person that is resident in Canada) to an unregistered non-resident person that is not a consumer of the service, provided that the goods are incorporated into, attached to or combined or assembled with, the other goods, or are directly consumed or expended, in the provision of the commercial service.

These conditions clarify that the consignee, on acquiring physical possession of the goods, must have a potential GST/HST liability under the drop shipment rules in respect of the goods in order to issue a valid drop shipment certificate. As a consequence of new paragraph 179(2)(b.1), paragraph 179(2)(c) is amended so that the registered consignee is required to acknowledge in the drop shipment certificate that it is acquiring the goods either as the recipient of a taxable supply of the goods made by an unregistered non-resident person, or for one of the other purposes described above.

These amendments apply in respect of supplies made after July 22, 2016. In addition, new paragraph 179(2)(b.1) and the amendment to paragraph 179(2)(c) also apply in respect of supplies made before July 23, 2016 in respect of which, before that day, an amount was charged, collected or remitted as or on account of tax under Part IX of the Act.

Subclauses 121(5) and (6)

Exception — certificate of registered owner

ETA
179(2.1)

New subsection 179(2.1) of the Act provides another exception to the application of the general rule in subsection 179(1) of the Act in respect of a supply of goods, or a supply of a service in respect of goods, that is made in Canada by a registrant to an unregistered non-resident person that is not a consumer of the goods or service. Similar to the exception provided in subsection 179(2), this new subsection provides that, in certain circumstances, a certificate (referred to as an “owner’s certificate”) may be issued that has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

New subsection 179(2.1) generally provides that an owner's certificate may be issued if the following four conditions are satisfied:

- under an agreement, a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;

- under the agreement, the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;

- either of the following two circumstances exists:

    - immediately after the particular time, the goods are goods of a third person that is registered for GST/HST purposes, or

    - the consignee is taking physical possession of the goods at the particular time as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and

- the consignee is not entitled to issue a drop shipment certificate under subsection 179(2) in respect of the goods.

In the case where the registrant originally supplied the goods by way of sale to the unregistered non-resident person, a fifth condition must also be met in order to issue an owner's certificate. Specifically, in that case, the goods must become the goods of the third person mentioned above after they have become the goods of the non-resident person.

Once the above conditions are satisfied, new subsection 179(2.1) sets out the rules concerning who may issue the owner's certificate and its contents. These rules vary depending on which of two alternatives cases is applicable. Specifically:

- In the case where the goods are goods of a registered third person immediately after the registrant causes the transfer of physical possession of the goods to the consignee, the owner's certificate can be given to the registrant by this third person. In this case, the certificate must state the third person's name and registration number. Further, the certificate must acknowledge that the goods, immediately after that time, are the goods of the third person and that the third person is assuming any potential tax liability that it may have under Division IV of Part IX of the Act in respect of the goods.

- In the case where the consignee is acquiring physical possession of the goods from the registrant as the recipient of a taxable supply by way of sale of the goods that was previously made by a registered third person, the owner's certificate can be given to the registrant by the third person, or by the consignee where the consignee is registered for GST/HST purposes. In this case, the certificate must state the third person's name and registration number (and the name and registration number of the consignee in the case where the consignee gives the certificate). Further, it must acknowledge that the third person made a taxable supply by way of sale of the goods to the consignee before the transfer of physical possession and that the consignee is taking physical possession of the goods as the recipient of that supply.

New subsection 179(2.1) of the Act generally applies in respect of supplies made after July 22, 2016.

In addition, a transitional version of new subsection 179(2.1) of the Act may apply in respect of supplies made before July 23, 2016. This will be the case only where the following five conditions are met:

- under an agreement, a registrant supplies, before July 23, 2016, goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;

- no amount in respect of that supply is charged, collected or remitted as or on account of tax under Part IX of the Act;

- under the agreement the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;

- the consignee is acquiring physical possession of the goods at the particular time as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and

- the registrant retains a certificate that is given by the registered third person, or by the consignee where the consignee is registered for GST/HST purposes, that states the registered third person's name and registration number and, if the certificate is given by the consignee, states the consignee's name and registration number.

If these conditions are satisfied, new subsection 179(2.1) provides that subsection 179(1) does not apply to the supply of the goods, or the supply of a service in respect of the goods, thereby relieving the registrant from having to remit GST/HST on a supply of the goods that would otherwise be deemed to have been made under that subsection. It also provides that the supply of

the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), is deemed to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subclause 121(7)

Exception where export

ETA
179(3)

Subsection 179(3) of the Act provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies where both of the following two conditions are met:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service; and
- the goods are exported by the registrant or are transferred by the registrant to another person in Canada for export.

The exportation of the goods in the conditions described in subsection 179(3) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subparagraph 179(3)(a)(iii) is amended in respect of the situation where a registrant acquires physical possession of goods (other than goods of a person that is resident in Canada) for the purpose of making a taxable supply of a commercial service in respect of the goods to an unregistered non-resident person in order to clarify that the supply of the service must be made in Canada for the exception to apply.

This amendment applies in respect of supplies made after July 22, 2016.

Subclauses 121(8) to (11)

Retention of possession

ETA
179(4)

Subsection 179(4) of the Act generally applies where goods are sold by a particular registrant to an unregistered non-resident person and physical possession of the goods is retained, after ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. The rules in subsection 179(4) generally have the effect of ensuring that the drop shipment rules continue to apply in respect of the goods of the non-resident person in these circumstances. Specifically, these rules have the effect of ensuring that the sale of the goods to the non-resident person is deemed under subsection 179(2) to have been made outside of Canada, thereby relieving the GST/HST on that supply. At the same time, these rules ensure that the registrant that is retaining physical possession of the goods has a potential tax liability under Division IV of Part IX of the Act if it retains the goods otherwise than for consumption, use or supply exclusively in its commercial activities or under subsection 179(1) if it transfers physical possession of the goods in Canada to another person.

The rules set out in subsection 179(4) apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition “imported taxable supply” in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(4) is amended so that its rules apply for the purpose of the entirety of the definition “imported taxable supply” in section 217.

One of the conditions for the application of the rules in subsection 179(4) is that the goods are retained by a registrant for certain purposes that are set out in paragraph 179(4)(b). One of these purposes is to make a supply of a commercial service in respect of the goods to the non-resident person that purchased the goods or to a person that subsequently acquires ownership of the goods. Subparagraph 179(4)(b)(ii) is amended to clarify that this condition is only met where the supply of the commercial service is a taxable supply that is made in Canada.

If the conditions for the application of the rules in subsection 179(4) that are set out in paragraphs 179(4)(a) and (b) are met in respect of a sale of goods by a particular registrant to an unregistered non-resident person, then paragraphs 179(4)(c) and (d) apply to deem certain things to occur. These deeming rules have the effect of determining how the other drop shipment rules set out in section 179 and in Division IV of Part IX of the Act may apply in respect of the goods.

Paragraph 179(4)(c) applies where the particular registrant also retains physical possession of the goods after ownership of the goods is transferred to the non-resident person. This paragraph deems the particular registrant to have transferred physical possession of the goods to another registrant and to have obtained a certificate described in paragraph 179(2)(c) (i.e. a "drop shipment certificate") from that other registrant. This has the effect of causing the supply of the goods to the non-resident person to meet the conditions for the application of subsection 179(2). Subsection 179(2) therefore applies to deem the supply to have been made outside of Canada and therefore the supply is relieved of tax.

The rule that deems that the goods are transferred to another registrant is set out in new subparagraph 179(4)(c)(i). This rule is amended to clarify that the deemed transfer is deemed to have been made in Canada and under the agreement for the sale of the goods. These amendments ensure that the deemed transfer of physical possession meets all of the conditions for the issuance of a drop shipment certificate.

The rule that deems the particular registrant to have obtained a drop shipment certificate from that other registrant is now set out in new subparagraph 179(4)(c)(ii). This rule is amended to clarify that the certificate is specifically in respect of the transfer of physical possession of the goods that is deemed to have occurred under subparagraph 179(4)(c)(i).

Paragraph 179(4)(c) also deems the particular registrant to have acquired physical possession of the goods for the purpose referred to in paragraph 179(4)(b). This rule places a potential tax liability on the particular registrant if the particular registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the particular registrant later transfers physical possession of the goods in Canada to another person. This deeming rule, which is now set out in new subparagraph 179(4)(c)(iii) and (iv), is amended as follows to clarify its applications in the following three cases.

- The first case is where the particular registrant retains physical possession of the goods for the purpose of

  - transferring physical possession of the goods to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or

  - making a taxable supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is not an unregistered non-resident person.

  In this case, the rule is clarified so that the particular registrant is deemed under new clause 179(4)(c)(iii)(A) to have acquired physical possession of the goods, under the agreement for the supply of the goods to the non-resident person, for the purpose of

making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service.

- The second case is where the particular registrant retains physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or to a subsequent purchaser that is also an unregistered non-resident person. In this case, the particular registrant is deemed under new clause 179(4)(c)(iii)(B) to have acquired physical possession of the goods, under the agreement for the supply of the commercial service, for that purpose.

- The third case is where the particular registrant retains physical possession of the goods for the purpose of receiving a particular supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or a subsequent purchaser. In this case, the particular registrant is deemed, under new subparagraph 179(4)(c)(iv), to have acquired physical possession of the goods, as the recipient of the particular supply and under the agreement for the particular supply, from another registrant that sold the goods to a non-resident person. Further, the particular registrant is deemed to have given a drop shipment certificate to that other registrant in respect of that acquisition. Finally, that acquisition is deemed to have occurred at the time when, and at the place where, the goods are delivered or made available to the particular registrant under the agreement for that supply.

Paragraph 179(4)(d) applies where another registrant, other than the particular registrant that sold the goods to the non-resident person, retains physical possession of the goods after ownership of the goods is transferred to the non-resident person and gives a drop shipment certificate to the particular registrant. This paragraph deems physical possession of the goods to have been transferred from the particular registrant to the other registrant. Since a drop-shipment certificate is obtained by the particular registrant that sold the goods to the non-resident person, the sale of the goods to the non-resident person is deemed to be a supply made outside of Canada pursuant to subsection 179(2) and, hence, relieved of tax. This paragraph is amended to clarify the application of this relief in the following two cases.

- The first case is where the other registrant retains physical possession of the goods for the purpose of

  - transferring physical possession of them to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or

  - making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or a subsequent purchaser.

In this case, the rule in new clause 179(4)(d)(i)(A) is amended to clarify that the deemed transfer of physical possession of the goods is deemed to have been made at a place in Canada and under the agreement for the sale of the goods. These amendments ensure that the transfer meets all of the conditions for the issuance of a drop shipment certificate.

- The second case is where the other registrant retains physical possession of the goods for the purpose of receiving a particular supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or the subsequent purchaser. In this case, the deemed transfer under new subparagraph 179(4)(d)(ii) is deemed to have been made under the agreement for the sale of the goods and at the time when, and at the place where, the goods are delivered or made available to the other registrant under the agreement for the particular supply.

Paragraph 179(4)(d) also deems the other registrant to have acquired physical possession of the goods for the purpose referred to in paragraph 179(4)(b). These rules place a potential tax liability on the other registrant if the other registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the other registrant transfers physical possession of the goods in Canada to another person. This deeming rule is amended as follows to clarify the application of this potential liability in the following three cases.

- The first case is where the other registrant retains physical possession of the goods for the purpose of

  - transferring physical possession of the goods to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or

  - making a taxable supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is not an unregistered non-resident person.

  In this case, the other registrant is now deemed, under new subclause 179(4)(d)(i)(B)(I), to have acquired physical possession of the goods, under an agreement between the other registrant and the non-resident person, for the purpose of making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service.

- The second case is where the other registrant retains physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or a subsequent purchaser that is also an unregistered non-resident person. In this case, the other registrant is now deemed, under

new subclause 179(4)(d)(i)(B)(II), to have acquired physical possession of the goods, under the agreement for the supply of the commercial service, for that purpose.

- The third case is where the other registrant retains physical possession of the goods for the purpose of receiving a supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or the subsequent purchaser. In this case, the other registrant is deemed, under new subparagraph 179(4)(d)(ii), to have acquired physical possession of the goods, as the recipient of that supply and under the agreement for that supply, from the particular registrant. As well, that acquisition is deemed to have occurred at the time when, and at the place where, the goods are delivered or made available to the other registrant under the agreement for that supply.

The amendment to subsection 179(4) that clarifies that this subsection applies for the purpose of the entire definition “imported taxable supply” in section 217 of the Act applies in respect of supplies made after July 22, 2016. The remaining amendments to subsection 179(4) apply in respect of supplies made after July 22, 2016, and in respect of supplies made on or before July 22, 2016 in respect of which, on or before that day, an amount was charged, collected or remitted as or on account of tax under Part IX of the Act.

Subclause 121(12)

Transfer of possession to bailee

ETA
179(5)

Subsection 179(5) of the Act sets out the treatment under the drop shipment rules of bailees that provide storage or shipping services in respect of goods. The rules set out in this subsection apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition “imported taxable supply” in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(5) is amended so that its rules apply for the purpose of the entirety of the definition “imported taxable supply” in section 217.

This amendment applies in respect of supplies made after July 22, 2016.

Subclause 121(13)

Goods transferred to bailee by non-resident

ETA
179(6)

Subsection 179(6) of the Act sets out a rule that applies to bailees that acquire goods from an unregistered non-resident person for the sole purpose of storing or shipping them. The rules set out in this subsection apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition “imported taxable supply” in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(6) is amended so that its rules apply for the purpose of the entirety of the definition “imported taxable supply” in section 217.

This amendment applies in respect of supplies made after July 22, 2016.

Subclause 121(14)

Drop shipments

ETA
179

Section 179 of the Act generally allows a person that is a non-resident and not registered for purposes of the GST/HST to acquire in Canada goods, or commercial services in respect of goods, on a tax-free basis, provided the goods are ultimately exported, or are retained in Canada by a registrant that agrees to accept a potential liability for tax in respect of a subsequent transfer or non-commercial use of the goods. In addition, this provision generally helps to ensure that GST/HST applies to goods located in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were acquired from an unregistered non-resident person outside of Canada and imported for final consumption in Canada.

These amendments to section 179 apply in respect of supplies made after the day on which the Act implementing this section receives royal assent.

Drop shipments — deemed supply

ETA
179(1)

Subsection 179(1) of the Act sets out a rule that generally applies where a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of

goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service and the registrant also causes physical possession of the goods to be transferred to another person in Canada. In these circumstances, the registrant is deemed to have made a taxable supply of the goods in Canada to the non-resident person and the consideration for this deemed supply is generally deemed to be equal to the fair market value of the goods. The registrant is therefore required to account for tax on this deemed supply, but is not required to account for tax on the actual supply of the goods made by the registrant to the non-resident person. This general rule is subject to the provisions of subsections 179(1) to (4) of the Act.

A condition for the application of subsection 179(1) is set out in paragraph 179(1)(a). This condition is satisfied if a registrant, under an agreement between the registrant and an unregistered non-resident person,

- does one of the following three actions:
  - makes a taxable supply in Canada of goods by way of sale to the non-resident person,
  - makes a taxable supply in Canada of a service of manufacturing or producing goods to the non-resident person, or
  - acquires physical possession of goods (other than goods of a person that is resident in Canada) for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person; and
- causes physical possession of those goods to be transferred, at a place in Canada, either to a consignee or to the non-resident person.

Paragraph 179(1)(a) is amended to remove the condition that the taxable supply and the transfer of physical possession be performed under a single agreement between the registrant and the non-resident person. The supply and the transfer of the goods may not be under the same agreement, and therefore the reference to an agreement is not necessary in this subsection. The condition that the registrant cause physical possession of the goods to be transferred is moved to new paragraph 179(1)(b), and the remaining paragraphs of subsection 179(1) are renumbered accordingly.

Paragraph 179(1)(a) is also amended to add a fourth scenario to the three possible actions that the registrant may perform in order for subsection 179(1) to apply. This new scenario, as described in new subparagraph 179(1)(a)(iv), is where the registrant acquires physical possession of goods for the purpose of leasing the goods from an unregistered non-resident person. Under this new scenario, however, subsection 179(1) may apply only if the registrant either gives a drop

shipment certificate in respect of the acquisition or claims an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act. This new scenario is added to ensure that the drop shipment rules continue to apply to GST/HST-relieved goods of an unregistered non-resident person if the goods remain in Canada under a leasehold arrangement.

Subsection 179(1) is also amended to generally update the wording in accordance with current legislative drafting standards.

Exception — certificate of registered consignee

ETA
179(2)

Subsection 179(2) of the Act provides for an exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies in the following circumstances:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- the registrant causes the transfer of physical possession of those goods at a place in Canada to a consignee that is registered for the purposes of the GST/HST; and
- the consignee issues a certificate (referred to as a “drop shipment certificate”) to the registrant.

The issuance of a valid drop shipment certificate in the circumstances described in subsection 179(2) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(2) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the registrant and the non-resident person are removed. Also, a reference to the scenario where the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

Subsection 179(2) is also amended to generally update the wording in accordance with current legislative drafting standards.

Exception — certificate of registered owner

ETA
179(3)

Subsection 179(3) of the Act (formerly subsection 179(2.1) of the Act) provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies if the following conditions are satisfied:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;
- either of the following two circumstances exists:
    - immediately after the particular time, the goods are goods of a third person that is registered for GST/HST purposes, or
    - the consignee is acquiring physical possession of the goods as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and
- the consignee is not entitled to issue a drop shipment certificate under subsection 179(2) in respect of the goods.

If the above conditions are satisfied, a certificate (referred to as an “owner’s certificate”) may be issued that has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(3) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the registrant and the non-resident person are removed. Also, a reference to the scenario where

the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

Exception — export

ETA
179(4)

Subsection 179(4) of the Act (formerly subsection 179(3) of the Act) provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies where the following two conditions are met:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service; and

- the goods are exported by the registrant or are transferred by the registrant to another person in Canada for export.

The exportation of the goods in the conditions described in subsection 179(4) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(4) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the particular registrant and the non-resident person are removed. Also, a reference to the scenario where the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

In addition, the wording in subparagraph 179(4)(b)(i), which describes the scenario where the goods are directly exported by the registrant, has been updated to reflect the wording of other provisions of the Act that describe an export of goods, particularly section 12 of Part V of Schedule VI to the Act.

Subsection 179(4) is also amended to generally update the wording in accordance with current legislative drafting standards.

Retention of possession

ETA
179(5)

Subsection 179(5) of the Act (formerly subsection 179(4) of the Act) generally applies where goods are sold by a particular registrant to an unregistered non-resident person and physical possession of the goods is retained, after ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. The rules in subsection 179(5) generally have the effect of ensuring that the drop shipment rules continue to apply in respect of the goods of the non-resident person in these circumstances.

Paragraphs 179(5)(a) and (b) set out the conditions under which the rules in paragraphs 179(5)(c) and (d) apply. One condition, in paragraph 179(5)(a), is that ownership of the goods is transferred to the non-resident person. This paragraph is amended to clarify that the goods are required to be supplied in Canada by way of sale to the non-resident person and that the non-resident person must not be a consumer of the goods.

Another condition for the application of subsection 179(5) that is set out in paragraph 179(5)(b) is that the goods are retained, after the time when ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. This condition is amended in two ways. First, where the goods are retained by a registrant other than the particular registrant, the condition that this other registrant must give a drop shipment certificate to the particular registrant is removed as a consequence of amendments to paragraph 179(5)(d) that are described below. Second, the timing of the application of this test is changed so that the particular registrant or the other registrant, as the case may be, must have physical possession of the goods at the time when the goods are delivered or made available to the non-resident purchaser under the agreement for the supply of the goods and must retain physical possession of the goods after that time.

The final condition for the application of the rules in 179(5), as set out in paragraph 179(5)(b), is that the goods are retained for one of the purposes listed in that paragraph. Two of those purposes are amended as follows:

- Where the goods are retained for the purpose of transferring physical possession of the goods to the non-resident purchaser, a subsequent purchaser or a person designated by the non-resident purchaser or a subsequent purchaser, subparagraph 179(5)(b)(i) is amended to clarify that this must be the sole reason for which they are retained.

- Previously, the goods could be retained for the purpose of consumption, use or supply by the registrant retaining physical possession of the goods pursuant to an agreement for a supply of the goods made by way of sale or lease to that registrant by the non-resident purchaser, by a subsequent purchaser or by a lessee or sub-lessee of the non-resident purchaser or of the subsequent purchaser. This condition is amended to remove the reference to an agreement and the references to the words “consumption, use or supply” and “by way of sale or lease”, as those references are not necessary. This condition is therefore now met if the registrant retains physical possession of the goods as the recipient of a supply of the property made by the non-resident purchaser, by a subsequent purchaser or by a lessee or sub-lessee of a subsequent purchaser. This condition is further amended to exclude the case where new subsection 179(9) of the Act applies in respect of the sale of the goods to the non-resident purchaser. New subsection 179(9) applies in the special case where goods are sold by a registrant to an unregistered non-resident person and, at the time when the goods are delivered or made available to the non-resident person pursuant to that sale, that registrant or another registrant leases the goods from the non-resident person or from another unregistered non-resident person. Finally, this condition has been moved to new subparagraph 179(5)(b)(v) of the Act.

Consequential to amendments that are made to subsection 179(2), subsection 179(5) is amended to expand its application to include circumstances where goods are retained for the following two new purposes that are listed in paragraph 179(5)(b).

- Amended subparagraph 179(5)(b)(iii) generally applies when goods are retained for the purpose of being used as an input to manufacture or produce other goods for an unregistered non-resident person.

- New subparagraph 179(5)(b)(iv) generally applies when goods are retained for the purpose of being used as an input to a supply of a commercial service in respect of other goods supplied to an unregistered non-resident person.

If the conditions for the application of subsection 179(5) that are set out in paragraphs 179(5)(a) and (b) are met in respect of a sale of goods by a particular registrant to an unregistered non-resident person, then paragraphs 179(5)(c) and (d) apply to deem certain things to occur. These deeming rules have the effect of determining how the other drop shipment rules set out in section 179 and in Division IV of Part IX of the Act continue to apply in respect of the goods.

Paragraph 179(5)(c) generally applies where the particular registrant has physical possession of the goods at the time the goods are delivered or made available to the non-resident person. Previously, this paragraph deemed the particular registrant to have transferred physical possession of the goods to another registrant and to have obtained a drop shipment certificate

from that other registrant. This deeming rule ensured that subsection 179(2) applied in respect of the supply by way of sale of the goods by the particular registrant to the unregistered non-resident person in order to deem that supply to have been made outside of Canada, thereby relieving the GST/HST on that supply. Instead, this supply is now deemed under subparagraph 179(5)(c)(i) to have been made outside of Canada for the purposes of Part IX of the Act, thereby providing the same relief in a more direct manner.

Paragraph 179(5)(c) also deems the particular registrant to have acquired physical possession of the goods for a deemed purpose that is determined by the actual purpose for which the goods are retained by the particular registrant. These deeming rules have the effect of placing a potential tax liability on the particular registrant if the particular registrant retains physical possession of the goods otherwise than for consumption, use or supply exclusively in its commercial activities or if the particular registrant transfers physical possession of the goods in Canada to another person. These deeming rules that are set out in new clauses 179(5)(c)(ii)(A) and (B) are amended to remove the reference to the agreement for the supply of the goods as that reference is no longer required due to the amendments to subsection 179(1).

Paragraph 179(5)(d) generally applies where another registrant, other than the particular registrant that sold the goods to the non-resident person, has physical possession of the goods at the time the goods are delivered or made available to the non-resident person. The rules set out in this paragraph apply for the purposes of section 179 and the definition “imported taxable supply” in section 217 and are generally intended to deem to be true the conditions that would have been true if the goods were sold by the particular registrant to the non-resident person and then transferred by the particular registrant to the other registrant, in order to ensure that the drop shipment rules set out in section 179 and in Division IV of Part IX of the Act may be applied accordingly in respect of the goods. The particular rules that apply in this paragraph depend on the purpose, as described in paragraph 179(5)(b), for which the goods are retained by the other registrant.

The first case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods for the sole purpose of transferring physical possession of them to another person, as described in subparagraph 179(5)(b)(i). In this case, the rules, as set out in amended subparagraph 179(5)(d)(i), apply only if the other registrant gives a certificate to the particular registrant that contains the information that is required to be included in a drop-shipment certificate. If such a certificate is given, then the particular registrant is deemed to have caused physical possession of the goods to be transferred at a place in Canada to the other registrant. The other registrant is also deemed to have acquired physical possession of the goods for the purpose of making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service. This deemed transfer and acquisition are now, due to the amendments to paragraph 179(5)(b), deemed to occur when the goods are

delivered or made available to the non-resident purchaser of the goods. Finally, the certificate given by the other registrant to the particular registrant is deemed to be a valid drop-shipment certificate. This last deeming rule is a clarification of the condition in existing paragraph 179(4)(b) that a drop shipment certificate be given where the other registrant retains physical possession after the sale to the non-resident purchaser. Absent this new rule, the other registrant may not have been able to issue a valid drop shipment certificate since physical possession of the goods was not transferred, and the other registrant did not acquire physical possession of them, after the sale to the non-resident purchaser.

The various deeming rules that apply in this first case generally have the effect of ensuring that subsection 179(2) applies in respect of the sale of the goods to the non-resident person so that it is deemed to be a supply made outside of Canada and, hence, relieved of tax. These deeming rules also place a potential tax liability on the other registrant if the other registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the other registrant transfers physical possession of the goods in Canada to another person.

The second case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods for one of the following purposes:

- to make a taxable supply in Canada of a commercial service in respect of the goods to the non-resident purchaser or to a person that acquires ownership of the goods after the non-resident purchaser (i.e., a “subsequent purchaser”), as described in subparagraph 179(5)(b)(ii);

- to use the goods as an input to the manufacture or production of other goods for the non-resident purchaser or another unregistered non-resident person, as described in subparagraph 179(5)(b)(iii); or

- to use the goods as an input to a commercial service in respect of other goods that is made to the non-resident purchaser or another unregistered non-resident person, as described in subparagraph 179(5)(b)(iv).

In this second case, amended subparagraph 179(5)(d)(ii) applies to deem the particular registrant to have caused physical possession of the goods to be transferred at a place in Canada to the other registrant. Further, the other registrant is deemed to have acquired physical possession of the goods for the purpose for which they are retained (i.e., for whichever of the three purposes mentioned above is applicable). In all of the above scenarios except one, this deemed transfer and acquisition are now, due to the amendments to paragraph 179(5)(b), deemed to occur when the goods are delivered or made available to the non-resident purchaser of the goods. Where the other registrant retains physical possession of the goods for the purpose of making a taxable

supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is registered, however, the deemed transfer and acquisition are now deemed to have occurred at the time when the goods are delivered or made available to that subsequent purchaser.

The various deeming rules that apply in this second case set up the conditions to ensure that subsection 179(1) applies in respect of the sale of the goods by the particular registrant to the non-resident purchaser. Therefore, the particular registrant will have a potential GST/HST liability in respect of the goods unless one of the exceptions in subsections 179(2) to (4) applies. These deeming rules also set up the conditions to allow this potential GST/HST liability of the particular registrant to be relieved under subsection 179(2) or (3).

The third case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods as the recipient of another supply of the goods and subsection 179(9) does not apply in respect of the sale of the goods to the non-resident person, as described in subparagraph 179(5)(b)(v). In this case, new subparagraph 179(5)(d)(iii) deems the particular registrant to have caused physical possession of the goods to be transferred to the other registrant at the place where, and at the time when, the goods are delivered or made available to the other registrant under the agreement for that other supply. It also deems the other registrant to have acquired, at the same time and place, physical possession of the goods from the particular registrant as the recipient of that other supply. These deeming rules have the same effects as in the second case described above, except that due to the application of subparagraph 179(1)(a)(iv) the other registrant will only have a potential tax liability under the drop shipment rules if it issues a drop shipment certificate in respect of the goods to the particular registrant or if it claims an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act.

Subsection 179(5) is also amended to generally update the wording in accordance with current legislative drafting standards.

Transfer of possession to bailee

ETA
179(6)

Subsection 179(6) of the Act (formerly subsection 179(5) of the Act) sets out rules that apply in the case where a registrant transfers physical possession of goods to a bailee, the bailee is acquiring the goods for the sole purpose of storing or shipping them and the bailee does not give a drop shipment certificate under subsection 179(2) of the Act to the registrant in respect of the goods at or before the time that the goods are transferred to the bailee.

Previously, this subsection stated that it also applied where the bailee is acquiring the goods for the sole purpose of shipping them, whether or not a drop shipment certificate is given by the bailee. This condition is removed, as it is not necessary. The amendments to subsection 179(2) clarify that a bailee that is acquiring goods for the sole purpose of shipping them is not entitled to issue a drop shipment certificate. Therefore, in the case of a transfer to a bailee solely for the purpose of shipping, it will always be the case that the bailee does not give a drop shipment certificate under subsection 179(2).

Under this subsection, the storage and shipping services supplied by the bailee are generally excluded from the drop-shipment rules. If the goods are returned to the registrant by the bailee, the registrant is deemed, for the purpose of the drop shipment rules, to retain physical possession of the goods throughout the period that they are held by the bailee. If physical possession of the goods is to be transferred by the bailee to a consignee, however, then physical possession of the goods is deemed, for the purposes of the drop shipment rules, to be directly transferred by the registrant to the consignee. In both of these cases the bailee is deemed for the purposes of the drop shipment rules not to have acquired physical possession of the goods.

In order to ensure that the rules in this subsection work properly with the rules set out in subsections 179(1) and (2) of the Act and in Division IV of Part IX of the Act, as amended, the rules are amended to clarify where and when these deemed transfers of physical possession of the goods by the registrant to a consignee are deemed to occur and for what purpose the consignee is acquiring the goods. In particular, the transfer is deemed to occur at the time and place where the bailee transfers physical possession of the goods to the consignee and the consignee is deemed to be acquiring the goods from the registrant for the same purpose for which it is acquiring the goods from the bailee.

An exception to the two scenarios described above may occur where the bailee is acquiring the goods for the purpose of storing them. This exception occurs when the bailee opts into the drop shipment rules by giving to the registrant a certificate that contains the information that is required to be included in a drop shipment certificate under subsection 179(2) after it receives the goods but before the consignee is identified. In this case, for the purposes of the drop shipment rules, under clause 179(6)(b)(ii)(B) physical possession of the goods is deemed to be transferred by the registrant to the bailee at the time the certificate is given and the certificate is deemed to be a valid drop-shipment certificate.

Other amendments to subsection 179(6) are consequential to the amendments to subsections 179(1) and (2) that are described above. In particular, subsection 179(6) is amended to replace the cross-references to paragraph 179(2)(c), which is the paragraph under which a drop-shipment certificate would be issued on or before the day on which the Act implementing this section

receives royal assent, with a cross-reference to paragraph 179(2)(d), which is the paragraph under which a drop shipment certificate would be issued after that day.

Finally, this subsection is amended to update and clarify the wording in accordance with current legislative drafting standards.

Goods transferred to bailee by non-resident

ETA
179(7)

Subsection 179(7) of the Act (formerly subsection 179(6) of the Act) sets out a rule that applies to bailees that acquire goods from an unregistered non-resident person for the sole purpose of storing or shipping them. This subsection is amended to update and clarify the wording in accordance with current legislative drafting standards.

Lease from unregistered non-resident

ETA
179(8) to (12)

New subsections 179(8) to (12) of the Act set out new rules that apply for the purposes of the GST/HST drop shipment rules, as set out in section 179 of the Act and Division IV of Part IX of the Act, in circumstances involving leases. These new subsections apply where a registrant leases goods from an unregistered non-resident lessor and has either given a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that it is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act. Generally, under these rules the registrant lessee is deemed to have obtained physical possession of the goods at the beginning of the lease period and to retain physical possession of them until the end of the lease period. This is true even if the actual physical possession of the goods is held during all or a part of the lease period by a third person, such as a sublessee. Therefore, these rules generally ensure that the registrant lessee (rather than other persons that have physical possession of the goods during the lease period) will have a potential GST/HST liability in respect of the goods either due to the application of subsection 179(1) of the Act or under Division IV of Part IX of the Act.

There is an exception to this general rule in cases where another registrant has physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person. This exception is explained below in more detail under the description of subsection 179(11).

Beginning of lease from unregistered non-resident

ETA
179(8)

New subsection 179(8) of the Act sets out the rules that apply when a registrant lessee begins to lease goods from an unregistered non-resident lessor. These rules apply where, immediately before the beginning of the lease period, the goods were leased by another registrant from either the non-resident lessor or another unregistered non-resident person. They also apply where, immediately after the beginning of the lease period, another registrant had physical possession of the goods and where, immediately before the beginning of the lease period, the registrant lessee did not have possession or use of the goods under a lease, licence or similar arrangement between the registrant lessee and an unregistered non-resident.

In both of these cases, the other registrant (i.e., the previous lessee or the registrant that had physical possession of the goods) is deemed to have transferred, at the beginning of the lease period, physical possession of the goods to the registrant lessee. If the other registrant meets all of the other conditions for the application of subsection 179(1) in respect of the goods, this deeming rule would have the effect of placing a potential tax liability on the other registrant under the drop shipment rules unless one of the exceptions set out in subsection 179(2) to (4) applies. Additionally, the registrant lessee is deemed to have acquired physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident lessor. This second deeming rule has two potential effects.

- If subsection 179(1) applies to place a potential tax liability in respect of the goods on the other registrant, this deeming rule allows the registrant lessee to issue a drop shipment certificate to the other registrant under subsection 179(2).

- If the registrant lessee either issues a drop shipment certificate in respect of the goods under subsection 179(2) or claims an input tax credit in respect of tax that the registrant lessee is deemed to have paid in respect of the goods under subsection 178.8(2) or section 180, this deeming rule places a potential tax liability on the registrant lessee under the drop shipment rules. This potential tax liability would arise if the registrant lessee acquires the goods for consumption, use or supply otherwise than exclusively in its commercial activities or if the registrant lessee causes (or is deemed to have caused) physical possession of the goods to be transferred in Canada to another person.

Under paragraph 179(8)(c), the rules in subsection 179(8) do not apply if another registrant acquired physical possession of the goods before the beginning of the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person and if that other registrant

continues to retain physical possession of the goods after the beginning of the lease period. In this case, the other registrant would have a potential tax liability under the drop shipment rules.

As well, under paragraph 179(8)(b), the rules in subsection 179(8) do not apply if, immediately before the beginning of a new lease period, the registrant lessee is leasing the goods from the non-resident lessor or from another unregistered non-resident person. In this case, under the rules set out in subsection 179(10), the new lease is treated for the purposes of the drop shipment rules as a continuation of the previous lease, and the registrant lessee is deemed to retain physical possession throughout both lease periods, unless physical possession of the goods is transferred during the lease period to a registrant service provider in the circumstances described in subsection 179(11).

Lease subsequent to sale

ETA
179(9)

New subsection 179(9) of the Act applies where goods are sold in Canada by a particular registrant to an unregistered non-resident person that is not a consumer of the goods and, at the time when the goods are delivered or made available to the non-resident person under that sale, the particular registrant or another registrant is leasing the goods, or intends to lease the goods, from the non-resident person or from another unregistered non-resident person. An example of such a transaction would be a sale-leaseback agreement between a registrant and an unregistered non-resident person.

Where the goods are to be leased back by the particular registrant, subsection 179(9) deems the sale of the goods by the particular registrant to the non-resident person to have been made outside of Canada and the GST/HST is therefore relieved on the sale. Furthermore, the particular registrant is deemed to have re-acquired physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident person. Additionally, the particular registrant is deemed to have given a drop shipment certificate described in paragraph 179(2)(d) in respect of that acquisition. This places a potential tax liability under the drop shipment rules on the particular registrant if the particular registrant acquires the goods for consumption, use or supply otherwise than exclusively in its commercial activities or if the particular registrant causes (or is deemed to have caused) physical possession of the goods to be transferred in Canada to another person.

Where the goods are to be leased by another registrant, subsection 179(9) deems the particular registrant to have caused physical possession of the goods to be transferred to the other registrant at the place where, and at the time when, the goods are delivered or made available to the other registrant under the agreement for that other supply. It also deems the other registrant to have

acquired, at the same time and place, physical possession of the goods from the particular registrant as the recipient of that other supply. These two deeming rules set up the conditions to ensure that subsection 179(1) applies in respect of the sale of the goods by the particular registrant to the unregistered non-resident purchaser. Therefore, the particular registrant will have a potential GST/HST liability in respect of the goods unless one of the exceptions in subsections 179(2) to (4) applies. These deeming rules also set up the conditions to allow this potential GST/HST liability of the particular registrant to be relieved under subsection 179(2) or (3).

Deemed possession during lease

ETA
179(10)

New subsection 179(10) of the Act sets out the rule that a registrant lessee of goods that are leased from an unregistered non-resident lessor is deemed to retain physical possession of the goods throughout the lease period, for the purposes of the drop shipment rules. This rule ensures that any potential tax liability that arises due to the application of the drop shipment rules generally rests with the registrant lessee and not with any other person (other than certain commercial service providers) that may have physical possession of the goods during the lease period, such as a sublessee. This rule only applies if the registrant lessee has either given a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act.

If these conditions are met, subsection 179(10) deems the registrant lessee to retain physical possession of the goods throughout a particular period, which begins when the registrant lessee acquires physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident lessor. This acquisition by the registrant lessee could occur at the beginning of the lease period. It could also occur at any time during the lease period when another registrant, that acquired physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person, transfers physical possession of the goods to the registrant lessee.

The end of the particular period during which the registrant lessee is deemed to retain physical possession of the goods is the earliest of the following times:

- the time at which the registrant lessee causes physical possession of the goods to be transferred to another registrant that is acquiring physical possession of the goods during a part of the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person;

- the time at which the registrant lessee causes physical possession of the goods to be transferred to any unregistered non-resident person; and

- the time at which the registrant lessee causes physical possession of the goods to be transferred to any other person, provided that the transfer occurs after the lease period and after the period of any subsequent lease from an unregistered non-resident lessor.

Possession by service provider during lease

ETA
179(11)

New subsection 179(11) of the Act sets out two rules that may apply where goods are being leased by a registrant and another registrant retains possession of the goods during a part of the lease period for the purpose of supplying a commercial service in respect of the goods to an unregistered non-resident person. These two rules are exceptions to the general rule in subsection 179(10) of the Act.

The first rule, as set out in paragraph 179(11)(d), applies in the following circumstances:

- a registrant lessee is leasing goods from an unregistered non-resident lessor;

- a particular person (e.g., a sub-lessee of the goods) causes physical possession of the goods to be transferred to a registrant service provider during the lease period;

- the registrant service provider is acquiring physical possession of the goods for the purpose of supplying a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person; and

- the particular person is neither the registrant lessee nor another registrant that had physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person.

In this case, the registrant lessee of the goods is deemed to have caused the transfer of physical possession of the goods to the registrant service provider. Additionally, the particular person is deemed to have not caused this transfer of physical possession of the goods. These deeming rules have the following two effects.

- The first effect only applies if the registrant lessee of the goods has either issued a drop shipment certificate in respect of the goods under subsection 179(2) or claimed an input tax credit in respect of tax that the registrant lessee of the goods is deemed to have paid in

respect of the goods under subsection 178.8(2) or section 180. In this case, the registrant lessee will have a potential GST/HST liability in respect of the goods due to the operation of subsection 179(1) unless one of the exceptions in subsections 179(2) to (4) applies.

- The second effect is that the registrant service provider may provide a drop shipment certificate under subsection 179(2) to the registrant lessee of the goods, thereby relieving the registrant lessee of the goods of the potential tax liability described above.

The second rule, as set out in paragraph 179(11)(e), applies in the following circumstances:

- a registrant lessee is leasing goods from an unregistered non-resident lessor;
- a registrant service provider has physical possession of the goods during a part of the lease period for the purpose of supplying a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person;
- the registrant service provider causes physical possession of the goods to be transferred during the lease period to a particular person (e.g., a sub-lessee of the goods) at a particular place; and
- the particular person is neither the registrant lessee nor another registrant that has physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person.

In this case, the registrant service provider is deemed to have caused physical possession of the goods to be transferred at the particular place to the registrant lessee of the goods and not to the particular person. Additionally, the registrant lessee is deemed to have acquired the goods for the purpose of leasing the goods from the non-resident lessor. These deeming rules have the following two effects.

- The first effect is that the registrant lessee of the goods may provide a drop shipment certificate under subsection 179(2) to the registrant service provider, thereby relieving the registrant service provider of any potential tax liability in respect of the goods that the registrant service provider may have due to the operation of subsection 179(1).
- The second effect only applies if the registrant lessee of the goods gives a drop shipment certificate to the registrant service provider. In this case, the registrant lessee will have a potential tax liability under the drop shipment rules if the registrant lessee acquires the goods otherwise than for consumption, use or supply exclusively in its commercial

activities or if the registrant lessee causes physical possession of the goods to be transferred in Canada to another person.

In either of the above cases, if the registrant service provider causes physical possession of the goods to be transferred in Canada to another person then due to the operation of subsection 179(1):

- the supply of a commercial service in respect of the goods made by the registrant service provider to the non-resident lessor or to another unregistered non-resident person is relieved from tax, and

- the registrant service provider has a potential tax liability in respect of the goods, unless one of the exceptions in subsections 179(2) to (4) applies.

End of lease period

ETA
179(12)

New subsection 179(12) of the Act sets out the rules that apply when a registrant stops leasing goods from an unregistered non-resident lessor. These rules apply at the end of such a lease only if no other rules set out in new subsections 179(8) to (11) of the Act apply. More particularly, the rules set out in subsection 179(12) apply if all of the following conditions are met:

- immediately after the particular lease agreement in respect of the goods between the registrant lessee and the non-resident lessor ends, a particular person other than the registrant lessee has physical possession of the goods;

- after the particular lease agreement ends, the registrant lessee does not lease the goods under another lease agreement with the non-resident lessor or with another unregistered non-resident person (if such a lease agreement is entered into, the registrant lessee would be considered to retain physical possession of the goods pursuant to subsection 179(10));

- after the particular lease agreement ends, another registrant does not lease the goods under another lease agreement with the non-resident lessor or with another unregistered non-resident person (if such a lease agreement is entered into, the other registrant would be considered to have acquired and to retain physical possession of the goods pursuant to subsections 179(8) and (10)); and

- the particular person that has physical possession of the goods immediately after the particular lease agreement ends is not a registrant that acquired physical possession of the goods before the end of the lease agreement for the purpose of making a taxable supply in

Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person (if the particular person is a registrant that has physical possession of the goods for such a purpose, physical possession of the goods would be considered to have been transferred to the particular person at the time when it acquired the goods pursuant to subsection 179(11)).

If all of these conditions are met, subsection 179(12) deems the registrant lessee to have caused physical possession of the goods to be transferred to the particular person at the time when the particular lease agreement ends and at the place where the particular person has physical possession of the goods immediately after that time. If the registrant lessee has either issued a drop shipment certificate in respect of the goods under subsection 179(2) or claimed an input tax credit in respect of tax that the registrant lessee is deemed to have paid in respect of the goods under subsection 178.8(2) or section 180, the registrant lessee may have a potential GST/HST liability in respect of the goods due to the operation of subsection 179(1) as a result of this deeming rule, unless one of the exceptions in subsections 179(2) to (4) applies.

Subsection 179(12) provides another deeming rule that applies where the particular person is a registrant that, immediately after the particular lease agreement ends, has physical possession of the goods for one of the following purposes:

- as the recipient of a taxable supply of the goods made by an unregistered non-resident person;

- for the purpose of making a supply in Canada of a service of manufacturing or producing other goods to an unregistered non-resident person that is not a consumer of those other goods, provided that the goods are incorporated or transformed into, attached to or combined or assembled with, those other goods, or are directly consumed or expended, in the manufacture or production of those other goods; or

- for the purpose of making a supply in Canada of a commercial service in respect of other goods (other than goods of a person that is resident in Canada) to an unregistered non-resident person that is not a consumer of those other goods, provided that the goods are incorporated into, attached to or combined or assembled with, those other goods, or are directly consumed or expended, in provision of the commercial service.

In these cases, the particular person is deemed to have acquired physical possession of the goods for that same purpose at the time when the particular lease agreement ends and at the place where the particular person has physical possession of the goods immediately after that time. This deeming rule allows the particular person to issue a drop shipment certificate to the registrant lessee. Additionally, this deeming rule may have the effect of placing a potential tax

liability under the drop shipment rules on the particular person if the particular person acquires the goods otherwise than for consumption, use or supply exclusively in its commercial activities or if the particular person causes physical possession of the goods to be transferred in Canada to another person.

Use of Railway Rolling Stock

ETA
179(13)

Subsection 179(13) of the Act (formerly subsection 179(7) of the Act) provides a rule that applies where railway rolling stock is acquired in Canada and exported. It provides that the rolling stock may be subject to the exception to the drop shipment rules set out in subsection 179(3) of the Act even if the railway rolling stock is used to transport goods while the rolling stock is being exported from Canada. Subsection 179(13) is amended to update a cross-reference to a paragraph of subsection 179(4) (formerly subsection 179(3)) due to the renumbering of that subsection.

Clause 122

Receipt of property from non-resident

ETA
180(a)(ii)

Section 180 of the Act deals with situations where a registrant receives a supply of goods from an unregistered non-resident person, or acquires physical possession of goods for the purpose of supplying a commercial service in respect of the goods to an unregistered non-resident person, and the non-resident person pays tax on those goods either pursuant to the operation of subsection 179(1) or on their importation under Division III. In these circumstances, section 180 may permit the registrant to claim an input tax credit, or a rebate under section 259 or 260, in respect of the tax paid by the non-resident person.

Subparagraph 180(a)(ii) describes the situation where the registrant is acquiring physical possession of the goods for the purpose of supplying a commercial service in respect of the goods to the non-resident person. The amendments to this subparagraph are consequential to the amendments made to subsection 179(1). In particular, subparagraph 180(a)(ii) is amended to clarify that the goods may not be goods of a person resident in Canada and that the supply of the commercial service must be made in Canada, as the relief provided by section 180 is not intended to apply in respect of the goods of residents of Canada or where the commercial services are supplied outside of Canada.

These amendments to subparagraph 180(a)(ii) of the Act apply in respect of supplies made after July 22, 2016.

Clause 123

Seizure and repossession

ETA
183(1)(b) and (10.1)(d)

Section 183 of the Act provides rules for the application of GST/HST to property seized or repossessed by a creditor.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of paragraphs 183(1)(b) and (10.1)(d) are amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

These amendments come into force on royal assent.

Clause 124

Supply to insurer on settlement of claim

ETA
184(1)(b)

Existing subsection 184(1) of the Act treats a transfer of property to an insurer in the course of settling a claim as having occurred for no consideration for the purposes of Part IX of the Act (other than sections 193 and 257 of the Act).

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 184(1)(b) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 125

Definitions

ETA
217

Section 217 of the Act contains definitions that are used in Division IV of Part IX of the Act. Amendments to section 217 amend the definitions “imported taxable supply” and “permitted deduction”.

Subclauses 125(1) to (4)

Definition “imported taxable supply”

ETA
217

Division IV of Part IX of the Act imposes tax in respect of “imported taxable supplies”, which include certain supplies made outside of Canada and certain other supplies on which the recipient, as opposed to the supplier, is required to account for tax.

The existing definition “imported taxable supply” in section 217 of the Act includes, as a result of existing paragraph (b) of that definition, a taxable supply (other than a zero-rated supply) of goods that meets the following conditions. First, the taxable supply is made by an unregistered non-resident person to a registrant that issues a drop-shipment certificate when it acquires physical possession of the goods. Second, the registrant is acquiring the goods for consumption, use or supply otherwise than exclusively in its commercial activities. Alternatively, this second condition is satisfied if the goods are a passenger vehicle that the registrant is acquiring for use in Canada as capital property in the commercial activities of the registrant and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

Existing subparagraph (b)(i) of the definition “imported taxable supply” is superfluous insofar as the conditions described in existing subparagraph (b)(ii) can be met only if the conditions in existing subparagraph (b)(i) are also met. Paragraph (b) is therefore amended in order to remove the conditions described in existing subparagraph (i), and to renumber existing subparagraphs (ii) and (iii) accordingly. This paragraph is also amended to update the wording in accordance with current legislative drafting standards.

These amendments to paragraph (b) of the definition “imported taxable supply” in section 217 of the Act apply in respect of supplies made after the day on which the Act implementing this section receives royal assent.

New paragraph (b.01) of the definition of “imported taxable supply” in section 217 of the Act is introduced as a consequence of the introduction of new subsection 179(2.1) of the Act. That new subsection provides an exception to the general drop shipment rule in subsection 179(1) of the Act in cases where a registrant issues an owner certificate in respect of a transfer of physical possession of goods at a place in Canada.

The amended definition of “imported taxable supply” now includes, as a result of new paragraph (b.01), a taxable supply (other than a zero-rated supply) by way of sale of goods that meets the following conditions. First, the taxable supply of goods by way of sale is made by an unregistered non-resident person to a registrant that issues an owner certificate in respect of the goods. Second, the registrant is acquiring the goods for consumption, use or supply otherwise than exclusively in the course of its commercial activities. Alternatively, this second condition is satisfied if the goods are a passenger vehicle that the registrant is acquiring for use in Canada as capital property in the course of its commercial activities and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

New paragraph (b.01) of the definition of “imported taxable supply” in section 217 of the Act applies in respect of supplies made after July 22, 2016.

Paragraph (b.01) of the definition of “imported taxable supply” in section 217 of the Act is further amended to replace the cross-reference to subparagraph 179(2.1)(e)(i), which is the subparagraph under which an owner certificate would be issued after July 22, 2016, with a cross-reference to subparagraph 179(3)(c)(i), which is the subparagraph under which an owner certificate would be issued after the day on which the Act implementing this section receives royal assent. This amendment applies in respect of supplies made after the day on which the Act implementing this section receives royal assent.

The existing definition “imported taxable supply” in section 217 of the Act also includes, as a result of exiting paragraph (b.1) of that definition, a taxable supply of goods that meets the following conditions. First, the taxable supply is made by an unregistered non-resident person to a resident of Canada. Second, the non-resident person previously made a taxable supply of the goods by way of lease, license or similar arrangement to a third person that is a registrant. Third, this third person was entitled to claim an input tax credit or was not required to self-assess tax under Division IV in respect of the goods. Finally, the third person either was not dealing at arm’s length with the non-resident person or was related to the resident recipient of the taxable supply.

As a consequence of the introduction of the new lessee rules in the drop-shipment rules, existing paragraph (b.1) is replaced with new paragraph (b.1). The amended definition “imported taxable supply” now includes, as a result of new paragraph (b.1), a taxable supply (other than a zero-

rated supply) of goods made by way of sale by an unregistered non-resident person to a registrant that satisfies the following conditions:

- the registrant previously acquired physical possession of the goods as the recipient of another supply of the goods that was made by way of lease, license or similar arrangement;
- the registrant either gave to another registrant a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that it is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act; and
- the registrant purchases the goods for consumption, use or supply otherwise than exclusively in the course of its commercial activities, or the goods are a passenger vehicle that the registrant acquires for use in Canada as capital property in the course of its commercial activities and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

As a result of the amendments to paragraph (b.1), it generally applies in cases where a registrant leases goods located in Canada from an unregistered non-resident person and subsequently purchases the goods from the unregistered non-resident person or from another unregistered non-resident person.

Revised paragraph (b.1) of the definition “imported taxable supply” in section 217 of the Act applies in respect of supplies made after the day on which the Act implementing this section receives royal assent.

Subclause 125(5)

Definition “permitted deduction”

ETA
217

The existing definition “permitted deduction” in section 217 of the Act describes the amounts that can be deducted in determining an amount of qualifying consideration or an external charge (as those terms are defined in section 217) or in determining an internal charge under subsection 217.1(4)

The English version of paragraph (f) of the definition “permitted deduction” in section 217 is amended to correct a grammatical error.

This amendment comes into force on royal assent.

Clause 126

Imported supplies of financial institutions

ETA
217.1

Existing section 217.1 of the Act provides various interpretation rules that apply in respect of the self-assessment provisions in section 218.01 and subsection 218.1(1.2) of the Act, which apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

Amendments to section 217.1 amend subsections 217.1(6) and (7) in respect of the application of the interpretation rules contained in those subsections to the pension plan rebate and election rules contained in section 261.01 of the Act.

The amendments to section 217.1 apply in respect of any claim period (as defined in subsection 259(1) of the Act) of a pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act) that ends after September 23, 2009.

As well, two transitional rules apply in respect of the amendments to section 217.1. The first transitional rule applies where

- a pension entity of a pension plan claimed a rebate under subsection 261.01(2) of the Act for a claim period of the pension entity;
- one or more particular amounts were not included as eligible amounts (as defined in subsection 261.01(1) of the Act) of the pension entity for the claim period in determining the amount of the rebate; and
- as a result of the application of the amendments to section 217.1, those particular amounts are eligible amounts for the claim period.

This first transitional rule allows the pension entity to request that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that those particular amounts are eligible amounts for the claim period. On receipt of the request, the Minister must with all due dispatch consider the request and under sections 296 and 297 of the Act assess, reassess or make an additional assessment of the rebate under subsection 261.01(2) for the claim period, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the particular amounts are eligible amounts for the claim period. This request by the pension entity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending section 217.1 receives royal assent.

The second transitional rule applies where

- a pension entity of a pension plan has made an election under subsection 261.01(5), (6) or (9) of the Act with the qualifying employers of the pension plan for a claim period of the pension entity;

- as a result of the election for the claim period, a qualifying employer (as defined in subsection 261.01(1)) of the pension plan has made a deduction, in determining its net tax for a reporting period of the qualifying employer, in respect of the pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the claim period

  - one or more particular amounts were not included as eligible amounts of the pension entity for the claim period in determining the pension rebate amount of the pension entity for the claim period and the deduction from the net tax of the qualifying employer in respect of that pension rebate amount; and

  - as a result of the application of the amendments to section 217.1, those particular amounts are eligible amounts of the pension entity for the claim period.

This second transitional rule allows the qualifying employer to request that the Minister make an assessment, reassessment or additional assessment for the purpose of taking into account that those particular amounts are eligible amounts for the reporting period of the qualifying employer. On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax of the qualifying employer for the reporting period, and of any interest, penalty or other obligation of the qualifying employer, solely for the purpose of taking into account that the particular amounts are eligible amounts for the claim period of the pension entity in question. This request by the pension entity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending section 217.1 receives royal assent.

Subclause 126(1)

Qualifying rule for credits and rebates

ETA
217.1(6)

Existing subsection 217.1(6) of the Act sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) in respect of an external charge, or of an amount of qualifying consideration (as those terms are defined in section 217 of the Act), that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become

payable, during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant. The rules in subsection 217.2(6) apply for the purpose of determining an input tax credit of a qualifying taxpayer.

Subsection 217.1(6) is amended to provide that the rules in the subsection also apply for the purpose of determining an eligible amount of a pension entity for a claim period of a qualifying taxpayer that is a pension entity. As a result, a pension entity may be eligible to claim a rebate under subsection 261.01(2) in respect of an external charge, or an amount of qualifying consideration, of the pension entity. Similarly, where a pension entity has made an election with one or more qualifying employers of the pension plan under any of subsections 261.01(5), (6) or (9) of the Act, those qualifying employers may be able to claim a deduction in determining their net tax in respect of an external charge, or an amount of qualifying consideration, of the pension entity.

Subclause 126(2)

Qualifying rule for credits and rebates — internal charge

ETA
217.1(7)

Existing subsection 217.1(7) of the Act sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, in respect of an internal charge (as described in subsection 217.1(4)) during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant. The rules in subsection 217.1(7) apply for the purpose of determining an input tax credit of a qualifying taxpayer.

Subsection 217.1(7) is amended to provide that the rules in the subsection also apply for the purpose of determining an eligible amount (as defined in subsection 261.01(1) of the Act) of a pension entity for a claim period of a qualifying taxpayer that is a pension entity. As a result, a pension entity may be eligible to claim a rebate under subsection 261.01(2) in respect of an internal charge of the pension entity. Similarly, where a pension entity has made an election with one or more qualifying employers (as defined in subsection 261.01(1)) of the pension plan under any of subsections 261.01(5), (6) or (9), those qualifying employers may be able to claim a deduction in determining their net tax in respect of an internal charge of the pension entity.

Clause 127

Tax in participating province

ETA
218.1

Existing section 218.1 of the Act imposes tax in respect of the provincial component of the HST on an imported taxable supply (as defined in section 217 of the Act) of property or a service made outside Canada where the property or service is acquired for consumption, use or supply otherwise than exclusively in the course of a commercial activity. It also includes a self-assessment provision in respect of the provincial component of the HST that is applicable to qualifying taxpayers (as described in subsection 217.1(1) of the Act) resident in a participating province.

Subclauses 127(1) to (4)

Tax in participating province

ETA
218.1(1)

Existing paragraph 218.1(1)(a) applies in respect of an imported taxable supply of intangible personal property or a service. It provides the following rules:

- Where a resident of a participating province that is the recipient of the supply acquires the property or service for a purpose prescribed by regulations in respect of the supply, that recipient is liable for the provincial component of the HST irrespective of the extent to which the property was acquired for consumption, use or supply in participating provinces. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a purpose only in the case of stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).

- In the absence of a prescribed purpose in respect of the supply, a second test applies whereby a resident of a participating province that is the recipient of an imported taxable supply of intangible personal property or a service is liable for the provincial component of the HST where the property or service is acquired by the resident for consumption, use or supply to an extent prescribed by regulations (currently, an extent of at least 10%) in the participating provinces.

Where a recipient of an imported taxable supply of intangible personal property or a service is liable for the tax under this paragraph, that tax is calculated using a formula whereby element C of the formula in paragraph 218.1(1)(a) is the prescribed percentage in respect of the supply or, in the absence of a prescribed percentage in respect of the supply, the extent to which the property or service is acquired for consumption, use or supply in each participating province. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage only in the case of supplies made to stratified investment plans with one or more provincial series and in the case of supplies made to provincial investment plans.

Paragraph 218.1(1)(a) is amended to remove the first test in that paragraph that refers to a prescribed purpose. As a result, paragraph 218.1(1)(a) now applies if a resident of a participating province is the recipient of an imported taxable supply of intangible personal property or a service and the property or service is acquired by the resident for consumption, use or supply to an extent prescribed by regulations (currently, an extent of at least 10%) in the participating provinces. In addition, element C of the formula in paragraph 218.1(1)(a) is amended to remove the reference to a prescribed percentage so that element C is always the extent to which the property or service is acquired for consumption, use or supply in each participating province.

Existing paragraph 218.1(1)(b) provides that the provincial component of the HST is also imposed upon a person that is either the recipient of a taxable supply described in any of paragraphs (b.1) to (b.3) or (c.1) to (e) of the definition “imported taxable supply” in section 217 of the Act or is both a registrant and the recipient of a taxable supply described paragraph (b) of that definition. Paragraph 218.1(1)(b) is amended in two ways.

The first amendment concerns subparagraph 218.1(1)(b)(ii), which currently provides that the provincial component of the HST is imposed on a supply of property described in any of paragraphs (b.1) to (b.3) of the definition “imported taxable supply” in section 217, if the property is delivered or made available to the recipient of the supply in a participating province and the recipient is either a resident in the province or a registrant. This subparagraph is amended to provide that the provincial component of the HST is also imposed on a supply of goods that is described in new paragraph (b.01) of the definition “imported taxable supply” in section 217, if the goods are delivered or made available to the recipient of the supply in a participating province and the recipient is either a resident in the province or a registrant.

The second amendment concerns the formula used to calculate the tax under paragraph 218.1(1)(b). Element C of this formula is, in the case of an imported taxable supply of intangible personal property, the prescribed percentage in respect of the supply or, in the absence of a prescribed percentage in respect of the supply, generally the extent to which the property is acquired for consumption, use or supply in the participating province in which the supply is made. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a

percentage only in the case of supplies made to stratified investment plans with one or more provincial series and in the case of supplies made to provincial investment plans.

Element C of the formula in paragraph 218.1(1)(b) is amended to remove the reference to a prescribed percentage so that element C of the formula is, in the case of an imported taxable supply of intangible personal property, generally the extent to which the property is acquired for consumption, use or supply in the participating province in which the supply is made.

The amendments to paragraphs 218.1(1)(a) and (b), other than the amendment to subparagraph 218.1(1)(b)(ii), are consequential to amendments to section 7.01 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts paragraphs 218.1(1)(a) and (b) in in the case of provincial stratified investment plans and in the case of provincial investment plans (as those terms are defined in subsection 1(1) of the *New Harmonized Value-added Tax System Regulations, No. 2*).

The amendments to paragraphs 218.1(1)(a) and (b) apply in respect of any supply made after July 22, 2016.

Subclauses 127(5) to (7)

Tax in participating province

ETA
218.1(1.2)

Existing subsection 218.1(1.2) of the Act is a self-assessment provision that applies to a qualifying taxpayer (as described in subsection 217.1(1) of the Act) that is resident in a participating province. The tax imposed under this provision must be determined for each participating province if the qualifying taxpayer is resident in any participating province.

Existing paragraph 218.1(1.2)(a) applies where an election under subsection 217.2(1) of the Act is in effect for a specified year (as defined in section 217 of the Act) of the qualifying taxpayer. It requires a qualifying taxpayer that is resident in a participating province to self-assess the provincial component of the HST calculated for each participating province by the formula A plus B.

- Element A is the total of all amounts, each of which is determined for an internal charge (as described in subsection 217.1(4)) for the specified year that is greater than zero by the formula A_1 multiplied by A_2. Element A_1 is the internal charge. Element A_2 is the prescribed percentage in respect of the internal charge or, in the absence of a prescribed percentage in respect of the internal charge, the extent to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply

the whole or part of property or of a qualifying service (as defined in section 217), in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

- Element B is the total of all amounts, each of which is determined for an external charge (as defined in section 217 of the Act) for the specified year that is greater than zero by the formula B_1 multiplied by B_2. Element B_1 is the external charge. Element B_2 is the prescribed percentage in respect of the external charge or, in the absence of a prescribed percentage in respect of the external charge, the extent to which the external charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the external charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage for elements A_2 and B_2 of paragraph 218.1(1.2)(a) only in the case of stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).

Elements A_2 and B_2 of paragraph 218.1(1.2)(a) are each amended to remove the references to prescribed percentages. Element A_2 is always the extent to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province. Element B_2 is always the extent to which the external charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the external charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Existing paragraph 218.1(1.2)(b) applies where no election under subsection 217.2(1) is in effect for a specified year of the qualifying taxpayer and requires a qualifying taxpayer that is resident in a participating province to analyze each amount of qualifying consideration (as defined in section 217) for the specified year that is greater than zero and to determine the provincial component of the HST in respect of each of these amounts using the formula C multiplied by D. Element C is the qualifying consideration. Element D of the formula is the prescribed percentage in respect of the qualifying consideration or, in the absence of a prescribed percentage in respect

of qualifying consideration, the extent to which the qualifying consideration is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage for element D of paragraph 218.1(1.2)(b) only in the case of stratified investment plans with one or more provincial series and in the case of provincial investment plans.

Element D of paragraph 218.1(1.2)(b) is amended to remove the reference to prescribed percentages. Element D is now always the extent to which the qualifying consideration is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

The amendments to subsection 218.1(1.2) are consequential to the enactment of new section 7.03 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts subsection 218.1(1.2) in the case of provincial stratified investment plans and in the case of provincial investment plans (as those terms are defined in subsection 1(1) of those Regulations).

The amendments to subsection 218.1(1.2) apply in respect of any specified year of a qualifying taxpayer that ends after July 22, 2016.

Clause 128

Pension entities

ETA
220.05(3.1)

Existing subsection 220.05(3.1) of the Act provides that no tax under subsection 220.05(1) becomes payable on the bringing into a participating province of tangible personal property by a pension entity of a pension plan where the tangible personal property had been supplied to the pension entity by a participating employer of the same pension plan and where the amount of the provincial component of the HST determined under paragraph 172.1(5)(c) of the Act (in respect of a supply made by the participating employer of the same tangible personal property) or under paragraph 172.1(6)(c) (in respect of a supply made by the participating employer of an employer resource (as defined in subsection 172.1(1)) consumed or used to make the supply of the same tangible personal property) is greater than zero.

Subsection 220.05(3.1) is amended to reflect the enactment of new subsections 172.1(5.1) and (6.1). It now also provides that no tax under subsection 220.05(1) becomes payable on the bringing into a participating province of tangible personal property by a master pension entity of a pension plan where the tangible personal property had been supplied to the master pension entity by a participating employer of the pension plan and where the amount of the provincial component of the HST determined under paragraph 172.1(5.1)(c) of the Act (in respect of a supply made by the participating employer of the same tangible personal property) or under paragraph 172.1(6.1)(c) (in respect of a supply made by the participating employer of an employer resource consumed or used to make the supply of the same tangible personal property) is greater than zero.

The amendments to subsection 220.05(3.1) are deemed to have come into force on July 22, 2016.

Clause 129

Tax on intangible property and services

ETA
220.08

Section 220.08 of the Act provides for the self-assessment of the provincial component of the HST in certain cases by persons who are residents of a participating province and who are the recipients of certain taxable supplies of intangible personal property or services acquired for consumption, use or supply in a participating province.

Section 220.08 is amended in respect of its application to supplies made to certain investment plans and to supplies made by a participating employer of a pension plan to a master pension entity of the same pension plan (as those terms are defined in subsection 123(1) of the Act).

Subclause 129(1)

Tax in participating province

ETA
220.08(1)

Existing subsection 220.08(1) of the Act provides for the self-assessment of the provincial component of the HST by a recipient of a taxable supply of intangible personal property or a service. It applies only where the recipient is a resident of a participating province. Self-assessment of the provincial component of the HST by a recipient of a taxable supply of intangible personal property or a service is required only if the property or service is acquired

- for a purpose prescribed by regulations in respect of the supply; or

- in the absence of a prescribed purpose, for consumption, use or supply in any of the participating provinces other than the province where the supply is made.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage only in the case of supplies made to stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of supplies made to provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).

Subsection 220.08(1) is amended to remove the reference to a prescribed purpose. Thus subsection 220.08(1) only requires self-assessment of the provincial component of the HST by the recipient of a taxable supply of intangible personal property or a service if the property or service is acquired for consumption, use or supply in any of the participating provinces other than the province where the supply is made.

The amendments to subsection 220.08(1) are consequential to the enactment of new section 12.2 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts subsection 220.08(1) in the case of supplies made to provincial stratified investment plans and in the case of supplies made to provincial investment plans (as those terms are defined in subsection 1(1) of those Regulations).

This amendment applies to any supply made after July 22, 2016.

Subclause 129(2)

Pension entities

ETA
220.08(3.1)

Existing subsection 220.08(3.1) of the Act provides that the requirement under subsection 220.08(1) to self-assess tax in respect of certain supplies of intangible personal property or services, does not apply to a supply of intangible personal property or a service by a participating employer of a pension plan to a pension entity of the same pension plan where the amount of the provincial component of the HST determined under paragraph 172.1(5)(c) of the Act (in respect of a supply of the same intangible personal property or service) or under paragraph 172.1(6)(c) (in respect of a supply of an employer resource (as defined in subsection 172.1(1)) consumed or used to make the supply of the same intangible personal property or service) is greater than zero.

Subsection 220.08(3.1) is amended to reflect the enactment of new subsections 172.1(5.1) and (6.1) of the Act. Amended subsection 220.08(3.1) also provides that subsection 220.08(1) does not apply to a supply of intangible personal property or a service made by a participating employer of a pension plan to a master pension entity of the pension plan where the amount of the provincial component of the HST determined under paragraph 172.1(5.1)(c) (in respect of a supply of the same intangible personal property or service) or under paragraph 172.1(6.1)(c) (in respect of a supply of an employer resource consumed or used to make the supply of the same intangible personal property or service) is greater than zero.

The amendments to subsection 220.08(3.1) are deemed to have come into force on July 22, 2016.

Clause 130

Net tax

ETA
225.1(2)

Section 225.1 of the Act sets out a streamlined accounting method by which registrants that are charities (as defined in subsection 123(1) of the Act) calculate their net tax. Subsection 225.1(2) sets out the formula for determining the net tax of a charity for a reporting period under this method. The formula takes the form A minus B. Element A represents amounts that are required to be added and element B represents amounts that are deductible in determining the net tax of a charity under this method. Element B is the total of the amounts described in paragraphs (a) to (d) of element B.

Element B is amended to add new paragraph (b.1) which describes further amounts that may be deducted by a charity in determining its net tax for a reporting period of the charity. Specifically, paragraph (b.1) describes 60 per cent of the total of the tax adjustments that may be deducted under paragraph 232.01(5)(a) or 232.02(4)(a) of the Act by the charity for the reporting period. As a result of this amendment, a charity may, in determining its net tax under subsection 225.1(2) for a reporting period of the charity, deduct 60 per cent of the total tax amount (as defined in subsection 232.01(2) or 232.02(1), as applicable) of a tax adjustment note that is issued by the charity on a day included in the reporting period.

The amendments to subsection 225.1(2) apply in respect of reporting periods of a charity that end on or after September 23, 2009. In addition, a transitional rule applies where

- a charity has issued a tax adjustment note under subsection 232.01(3) or 232.02(2) on a particular day;

- the charity has filed a return for the reporting period that includes the particular day and no election under subsection 225.1(6) is in effect during the reporting period;
- the charity did not, in determining its net tax under subsection 225.1(2) for the reporting period, include tax adjustments that may be deducted under paragraph 232.01(5)(a) or 232.02(4)(a) of the Act by the charity; and
- as a result of the application of the amendments to subsection 225.1(2), the charity was permitted, in determining its net tax under subsection 225.1(2) for the reporting period, to deduct amounts in respect of the tax adjustment notes it issued under subsection 232.01(3) or 232.02(2) during the reporting period.

This transitional rule allows the charity to request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account the deduction permitted under amended subsection 225.1(2) for the reporting period of the charity in respect of the tax adjustment notes issued by the charity under subsection 232.01(3) or 232.02(2). On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax of the charity for the reporting period, and of any interest, penalty or other obligation of the charity, solely for the purpose of taking into account this amendment to subsection 225.1(2) for the reporting period in question. However, to be valid, this request by the charity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending subsection 225.1(2) receives royal assent.

Clause 131

Selected listed financial institutions

ETA
225.2

Section 225.2 of the Act sets out rules for determining the net tax of a selected listed financial institution (within the meaning of subsection 225.2(1)). These special rules provide for adjustments to the net tax of these financial institutions in respect of the provincial component of the HST.

Section 225.2 is amended in respect of the adjustment that a selected listed financial institution must make to its net tax in respect of the provincial component of the HST under subsection 225.2(2) and in respect of the election provided for under subsection 225.2(4).

Subclauses 131(1) to (3)

Adjustments to net tax

ETA
225.2(2)

Existing subsection 225.2(2) of the Act requires a person to make an adjustment, determined by a formula, to its net tax in respect of the provincial component of the HST for each reporting period during which it is a selected listed financial institution.

Element A of the formula generally includes GST or the federal component of the HST payable by a selected listed financial institution, as well as other amounts in respect of supplies received by the selected listed financial institution that are deemed under section 150 of the Act to be supplies of financial services. Paragraph (b) of the description of element A requires the selected listed financial institution to include in the formula all amounts each of which would be tax under subsection 165(1) of the Act in respect of a supply (other than a supply to which paragraph (c) of the description of element A applies) that would, in the absence of section of section 150, have become payable by the selected listed financial institution. Paragraph (c) applies where the selected listed financial institution has made both an election under section 150 and an election under subsection 225.2(4) with the supplier that made the supply to the selected listed financial institution. Paragraph (c) requires the selected listed financial institution to include in the formula all amounts, each of which is an amount determined for a supply made by the supplier to the financial institution to which section 150 applies that is equal to the tax calculated on the supplier's cost of making the supply (excluding any remuneration to employees, the cost of financial services and tax payable under Part IX of the Act).

Element F of the formula is a deduction from the formula and generally describes the provincial component of the HST payable by a selected listed financial institution, as well as other amounts in respect of supplies received by the selected listed financial institution that are deemed under section 150 to be supplies of financial services. Paragraph (b) of the description of element F applies where the selected listed financial institution has made both an election under section 150 and an election under subsection 225.2(4) with the supplier that made the supply to the selected listed financial institution. Paragraph (b) requires the selected listed financial institution to include in element F an amount equal to the provincial component of the HST payable by the supplier that is included in the cost to the supplier of making these supplies.

Subsection 225.2(2) is amended in two ways. First, paragraph (c) of element A is amended to clarify that the amount to be included in the formula in subsection 225.2(2) is an amount that is equal to the GST or the federal component of the HST calculated on the supplier's cost of

making these supplies, excluding any remuneration to employees, the cost of financial services and tax payable under this Part.

This amendment to paragraph (c) applies in respect of any reporting period of a selected listed financial institution that ends on or after July 1, 2010.

Second, consequential amendments are made to paragraph (c) of element A and paragraph (b) of element F to reflect amendments to subsection 225.2(4) that provide that the election made under that subsection in respect of a supply made by a person to a financial institution is no longer an election made jointly by the person and the financial institution and is now made solely by the financial institution.

These amendments to paragraph (c) of element A and paragraph (b) of element F apply in respect of any election made under subsection 225.2(4) that becomes effective after the day on which these amendments receive royal assent.

It should be noted that a July 22, 2016 news release of the Department of Finance proposed amendments that would have rearranged the effect of paragraphs (b) and (c) of element A and of paragraph (b) of element F. Specifically, those proposed amendments would have provided that, if an election under subsection 225.2(4) were in effect in respect of supplies made by a supplier to a selected listed financial institution in respect of which an election under section 150 has been made, the financial institution would include in elements A and F of the formula in subsection 225.2(2) the tax generally calculated on the supplier's cost of making the supply. As well, those proposed amendments would have provided that, if no election under subsection 225.2(4) were in effect in respect of supplies made by a supplier to a selected listed financial institution in respect of which an election under section 150 has been made, the financial institution would include in element A of the formula the tax that would otherwise apply in respect of the supply in the absence of an election made under section 150. However, following consultations those proposed amendments to rearrange the effect of paragraphs (b) and (c) of element A and of paragraph (b) of element F are no longer proposed to be enacted.

Subclause 131(4)

Election

ETA
225.2(4) and (5)

Existing subsection 225.2(4) of the Act provides that, where a selected listed financial institution that is a member of a closely related group (as defined in subsection 123(1) of the Act) has made a joint election under section 150 of the Act with another member of the closely related group, the selected listed financial institution can also make a second joint election with that member.

This joint election applies to supplies made by the member to the selected listed financial institution and it allows the selected listed financial institution to have paragraph (c) of the description of element A in the formula in subsection 225.2(2) of the Act apply to these supplies rather than paragraph (b) of the description of element A.

Subsection 225.2(4) is amended to provide that the election under the subsection is now an election made solely by the selected listed financial institution and is no longer a joint election made by both the selected listed financial institution and the other member of the closely related group.

As well, subsection 225.2(4) is amended to require that the election be made in prescribed form containing prescribed information. This requirement was previously contained in subsection 225.2(5).

Existing subsection 225.2(5) sets out the requirements for making a valid election under subsection 225.2(4) in respect of supplies made to a selected listed financial institution. Subsection 225.2(5) requires that the election be made in prescribed form containing prescribed information, specify the day on which it is to become effective and be filed by the financial institution with the Minister of National Revenue.

Subsection 225.2(5) is repealed. As a result, an election made under subsection 225.2(4) is no longer required to be filed with the Minister in order to be a valid election.

The requirement in paragraph 225.2(5)(a) that the election be made in prescribed form containing prescribed information remains in force but is moved to subsection 225.2(4). Similarly, the requirement in paragraph 225.2(5)(b) that the election specify the day on which the election is to become effective also remains in force but is moved to subsection 225.2(6).

The amendments to subsection 225.2(4) and the repeal of subsection 225.2(5) apply in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Subclauses 131(5) and (6)

Effective period of election

ETA
225.2(6)

Existing subsection 225.2(6) of the Act specifies the length of the period during which an election made under subsection 225.2(4) of the Act is in effect. The election under subsection 225.2(4) is in respect of supplies made by a supplier to a selected listed financial institution, where the supplier and the financial institution have jointly made an election under section 150

of the Act, and affects the adjustment that a selected listed financial institution is required to make to its net tax calculation under subsection 225.2(2) of the Act (for further information, see the notes for the amendments to subsection 225.2(2)). Subsection 225.2(6) provides that an election under subsection 225.2(4) remains in effect until the earliest of:

- the day the election under section 150 ceases to be in effect;
- the day the two parties jointly revoke, in prescribed form containing prescribed information, the election;
- the day the supplier becomes a prescribed person, or a person of a prescribed class, for the purposes of subsection (4); and
- the day the selected listed financial institution ceases to be a selected listed financial institution.

Subsection 225.2(6) is amended in two ways. First, a consequential amendment is made to subsection 225.2(6) as a result of the amendment to subsection 225.2(4) that provide that the election is no longer a joint election between the selected listed financial institution and the person and is now an election made solely by the selected listed financial institution.

This first amendment to subsection 225.2(6) applies in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Second, a consequential amendment is made to paragraph 225.2(6)(b) to reflect that the revocation of an election made under subsection 225.2(4) is now made under new subsection 225.2(6.1).

This second amendment to paragraph 225.2(6)(b) applies in respect of any revocation that becomes effective after the day on which the Act implementing this clause receives royal assent.

Subclause 131(7)

Notice of election and revocation

ETA
225.2(6.1) and (6.2)

New subsection 225.2(6.1) of the Act permits a selected listed financial institution — that has made an election under subsection 225.2(4) in respect of supplies made by a supplier to the financial institution — to revoke that election. The revocation of the election must be made in prescribed form containing prescribed information. It becomes effective on a day that is specified

in the revocation and that is at least 365 days after the day on which the election under subsection 225.2(4) becomes effective. These revocation provisions were formerly contained in paragraph 225.2(6)(b), except that that paragraph required that the revocation be made jointly by the financial institution and the supplier whereas subsection 225.2(6.1) provides that any revocation can be made solely by the financial institution.

New subsection 225.2(6.1) applies in respect of any revocation that becomes effective after the day on which the Act implementing this clause receives royal assent

New subsection 225.2(6.2) of the Act provides notification requirements in respect of an election made under subsection 225.2(4), as well as in respect of the cessation of an election made under that subsection. Subsection 225.2(6.2) applies where a particular selected listed financial institution that is a member of a closely related group has made a joint election under section 150 with another member of the group that is also a selected listed financial institution and where the particular selected listed financial institution has made an election under subsection 225.2(4) in respect of supplies made by the other member to the particular selected listed financial institution.

Where subsection 225.2(6.2) applies, it requires that the particular selected listed financial institution, in a manner satisfactory to the Minister of National Revenue, notify the other member of the fact that the election under subsection 225.2(4) was made and of the day the election becomes effective. This notification must be made on or before the day the election becomes effective or any later day that the Minister may allow.

Further, subsection 225.2(6.2) requires that, if the election under subsection 225.2(4) ceases to be effective on a particular day as specified in subsection 225.2(6), the particular selected listed financial institution must, in a manner satisfactory to the Minister, notify the other member that the election has ceased to be effective. This notification must be made on or before the particular day the election ceases to be effective or any later day that the Minister may allow.

New subsection 225.2(6.2) applies in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Clause 132

Tax adjustment notes

ETA
232.01

Existing section 232.01 of the Act allows a participating employer of a pension plan (as those terms are defined in subsection 123(1) of the Act) to issue a note (referred to in section 232.01 as

a “tax adjustment note”) to a pension entity (as defined in subsection 123(1) of the Act) of the pension plan where the participating employer is deemed under subsection 172.1(5) to have made a taxable supply of property or a service and has also charged tax on an actual supply of the same property or service to the pension entity. Section 232.01 requires the pension entity receiving the tax adjustment note to pay back any input tax credit, or rebate under subsection 261.01(2) of the Act, that was claimable in respect of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for the claim period for which the deemed tax is an eligible amount (as defined in subsection 261.01(1)), section 232.01 requires each participating employer to pay back any deduction in respect of that deemed tax that it was entitled to as a result of that election to the extent that the deemed tax was effectively reduced by the tax adjustment note.

Section 232.01 is amended so that it also allows a participating employer of a pension plan to issue a tax adjustment note to a pension entity of the pension plan where the participating employer is deemed under subsection 172.1(5.1) to have made a taxable supply of property or a service and has also charged tax on an actual supply of the same property or service to a master pension entity (as defined in subsection 123(1) of the Act) of the pension plan. Section 232.01 is also amended with respect to the obligation of a pension entity to pay back a rebate that was claimable under subsection 261.01(2) and the obligation of a participating employer to pay back any deduction that it claimed in determining its net tax as a result of an election made under subsection 261.01(5), (6) or (9).

Subclause 132(1)

Tax adjustment note — subsections 172.1(5) and (5.1)

ETA
232.01(3)

Existing subsection 232.01(3) generally allows a participating employer of a pension plan to issue a note (referred to in section 232.01 as a “tax adjustment note”) in respect of a specified resource in the case where subsection 172.1(5) deems the participating employer to have made a taxable supply of all or part of the specified resource and a pension entity of the pension plan to have received such a supply and where tax is also payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer on an actual supply of the specified resource or part made to the pension entity.

Subsection 232.01(3) is amended to also allow a participating employer of a pension plan to issue a tax adjustment note in respect of a specified resource where new subsection 172.1(5.1) deems the participating employer to have made a taxable supply of all or part of a specified

resource and where the participating employer makes an actual supply of the specified resource or part to a master pension entity of the pension plan. Specifically, the amendments to subsection 232.01(3) apply where the following circumstances exist:

- a participating employer of a pension plan is deemed under paragraph 172.1(5.1)(a) to have made a taxable supply of all or part of a specified resource and is deemed under paragraph 172.1(5.1)(b) to have collected tax in respect of this deemed supply;

- a pension entity of the pension plan is deemed under subparagraph 172.1(5.1)(d)(i) to have received a supply of all or part of the specified resource and is deemed under subparagraph 172.1(5.1)(d)(ii) to have paid tax in respect of that supply (note that this pension entity would be the specified pension entity of the pension plan, as determined under subsection 172.1(4)); and

- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by a master pension entity of the pension plan to the participating employer on an actual supply of the specified resource or part made to the master pension entity.

Where the amendments to subsection 232.01(3) apply, the participating employer may issue a tax adjustment note in respect of the specified resource or part to the pension entity specifying a federal component amount determined in accordance with amended paragraph 232.01(4)(a) and a provincial component amount determined in accordance with amended paragraph 232.01(4)(b). The issuance of this note will then allow the employer to make an adjustment to its net tax under paragraph 232.01(5)(a). The tax adjustment note must be in compliance with subsection 232.01(6).

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 132(2) and (3)

Federal and provincial component amounts

ETA
232.01(4)

Subsection 232.01(4) determines the maximum amount of both the federal component amount and the provincial component amount of a tax adjustment note that may be issued under subsection 232.01(3) on a particular day in respect of all or part of a specified resource. Existing subsection 232.01(4) applies where there is a taxable supply of the specified resource or part that is deemed to have been made under paragraph 172.1(5)(a). Subsection 232.01(4) is amended so

that it also applies where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a).

Paragraph 232.01(4)(a) determines the maximum amount of the federal component amount of a tax adjustment note that is issued on a particular day. This amount is determined by the formula: A (adjustment for GST or the federal component of HST) minus B (total of all amounts, each of which is the federal component amount of another tax adjustment note previously issued under subsection 232.01(3) in respect of the specified resource or part).

Element A of the formula is amended to provide that, where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a), element A is the lesser of: (a) the federal component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5.1)(c); and (b) the amount determined by the formula A_1 multiplied by A_2. Element A_1 of the formula is all amounts of the GST or the federal component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of an actual taxable supply of the same specified resource or part. Element A_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Paragraph 232.01(4)(b) determines the maximum amount of the provincial component amount of a tax adjustment note. This amount is determined by the formula: C (adjustment for provincial component of HST) minus D (total of all amounts, each of which is the provincial component amount of another tax adjustment note previously issued under subsection 232.01(3) in respect of the specified resource or part).

Element C of the formula is amended to provide that, where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a), element C is the lesser of: (a) the provincial component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5.1)(c); and (b) the amount determined by the formula C_1 multiplied by C_2. Element C_1 of the formula is all amounts of the provincial component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of an actual taxable supply of the same specified resource or part. Element C_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day.

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 132(4) to (10)

Effect of tax adjustment note

ETA
232.01(5)

Existing subsection 232.01(5) of the Act provides rules that apply where a participating employer of a pension plan (as those terms are defined in subsection 123(1)) is deemed under subsection 172.1(5) to have made a taxable supply of property or a service, has charged tax on an actual supply of the same property or service to a pension entity (as defined in subsection 123(1)) of the pension plan and has issued a note, referred to as a tax adjustment note, to the pension entity in respect of the same property or service. The rules that apply in these circumstances are set out in paragraphs 232.01(5)(a) to (d).

Subsection 232.01(5) is amended so that it also applies where a participating employer of a pension plan is deemed under new subsection 172.1(5.1) to have made a taxable supply of property or a service, has charged tax on an actual supply of the same property or service to a master pension entity (as defined in subsection 123(1)) of the pension plan and has issued a note, referred to as a tax adjustment note, to a pension entity of the pension plan in respect of the same property or service. This amendment to subsection 232.01(5) is deemed to have come into force on July 22, 2016.

Existing paragraph 232.01(5)(c) applies where the following conditions are met:

- any part of an amount of tax that a pension entity is deemed to have paid under subparagraph 172.1(5)(d)(ii) in respect of a supply of the property or service that a participating employer is deemed to have made under paragraph 172.1(5)(a) is an eligible amount (as defined in subsection 261.01(1) of the Act) of the pension entity for a particular claim period (as defined in subsection 259(1) of the Act) of the pension entity;

- the pension entity is eligible to claim for the particular claim period a rebate under subsection 261.01(2) of the Act in respect of the eligible amount; and

- a tax adjustment note has been issued in respect of the deemed tax.

Existing paragraph 232.01(5)(c) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by a formula. The payment required under paragraph 232.01(5)(c) must be made by the pension entity to the Receiver General by the last day of the pension entity’s claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.01(5)(c) is amended in three ways.

First, paragraph 232.01(5)(c) is amended to provide that it now only applies to require a pension entity to pay back an amount as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount (as defined in subsection 261.01(1)) for a particular claim period of the pension entity.

This amendment to paragraph 232.01(5)(c) applies in respect of any claim period of a pension entity that begins after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(5)(c) also applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.01(5)(c) by a pension entity of a pension plan in respect of a tax adjustment note issued to it,
- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,
- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and
- July 23, 2016 is after the last day of the claim period of the pension entity that immediately follows the claim period of the pension entity that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the pension entity may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount payable under paragraph 232.01(5)(c) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and
- under section 296, assess, reassess, or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.01(5)(c).

Second, paragraph 232.01(5)(c) is amended in respect of the deadline for the pension entity to make the payment required under this paragraph to the Receiver General. This payment must now be made by the later of

- the day on which the rebate claim is filed, and
- the last day of the claim period of the pension entity that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Third, the formula in paragraph 232.01(5)(c), which determines the amount that the pension entity is required to pay, is amended in respect of elements E and F of the formula. Currently, element E of the formula is the pension rebate amount of the pension entity for the particular claim period and element F of the formula is the total determined for element B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period. Element E is amended so that it is now the amount of the rebate determined for the pension entity under subsection 261.01(2) for the particular claim period. Element F is amended so that it is now the pension rebate amount of the pension entity for the particular claim period. These amendments to elements E and F are consistent with the first amendment to paragraph 232.01(5)(c) described above.

The second and third amendments to paragraph 232.01(5)(c) apply in respect of claim periods of a pension entity that end after July 22, 2016.

Existing paragraph 232.01(5)(d) applies to a participating employer of a pension plan that made a deduction in determining its net tax as a result of being party to an election under subsection 261.01(5), (6) or (9), where the election is in respect of an eligible amount of a pension entity of the pension plan for a particular claim period of the pension entity. Paragraph 232.01(5)(d) applies where tax that the pension entity was deemed to have paid on a particular day under subparagraph 172.1(5)(d)(ii) was included in the eligible amount and where subsequently a tax adjustment note was issued in respect of that deemed tax. Paragraph 232.01(5)(d) generally requires the participating employer to add back an amount in respect of the amount deducted from its net tax. The amount required to be added back by the participating employer is determined by a formula where element F of the formula is

- where the pension entity was not a selected listed financial institution on the particular day, the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period; and

- where the pension entity was a selected listed financial institution on the particular day, the total of the pension rebate amount and the provincial pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the particular claim period.

The amount determined under existing paragraph 232.01(5)(d) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

Paragraph 232.01(5)(d) is amended in three ways.

First, paragraph 232.01(5)(d) is amended to provide that it now only applies to require a participating employer to add an amount to its net tax as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount for a claim period of the pension entity.

This first amendment to paragraph 232.01(5)(d) applies in respect of any reporting period of an employer for which the return is filed after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(5)(d) also applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.01(5)(d) by a participating employer of a pension plan in respect of a tax adjustment note issued to a pension entity of the pension plan,

- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,

- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and

- July 23, 2016 is after the day on which the return is filed for the reporting period of the participating employer that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the participating employer may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount payable under paragraph 232.01(5)(d) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and
- under section 296, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the employer, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.01(5)(d).

Second, paragraph 232.01(5)(d) is amended with respect to the reporting period of the participating employer for which it must add back an amount in computing its net tax. The participating employer must now make the addition required by paragraph 232.01(5)(d) in determining its net tax for the reporting period that includes the day that is the later of

- the day on which the tax adjustment note is issued, and
- the day on which the election under subsection 261.01(5), (6) or (9), as the case may be, is filed with the Minister of National Revenue.

Third, element F of the formula is amended so that it is now always the pension rebate amount of the pension entity, irrespective of whether the pension entity was a selected listed financial institution on the particular day or not.

The second and third amendments to paragraph 232.01(5)(d) apply in respect of any reporting period of a participating employer of a pension plan if the return for the reporting period is filed after July 22, 2016 or is required to be filed on or before a day that is after July 22, 2016.

Clause 133

Effect of tax adjustment note

ETA
232.02

Existing section 232.02 of the Act allows a participating employer of a pension plan (as those terms are defined in subsection 123(1) of the Act) to issue a note (referred to in section 232.02 as a “tax adjustment note”) to a pension entity (as defined in subsection 123(1) of the Act) of the pension plan where the participating employer is deemed under subsection 172.1(6) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making a supply of property or a service (referred to in section 232.02 as an “actual pension supply”) to a pension entity of the pension plan and the participating employer has also charged tax on an actual pension supply of the same property or service made to the pension entity. Section 232.02 requires the pension entity receiving the tax adjustment note to pay back any input tax credit or rebate under subsection 261.01(2) of the Act that was claimable in respect

of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for the claim period for which the deemed tax is an eligible amount (as defined in subsection 261.01(1)), section 232.02 requires each participating employer to pay back any deduction in respect of that deemed tax that it was entitled to claim as a result of the election to the extent that the deemed tax was effectively reduced by the tax adjustment note.

Section 232.02 is amended so that it also allows a participating employer of a pension plan to issue a tax adjustment note to a pension entity of the pension plan where the participating employer is deemed under subsection 172.1(6.1) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making an actual pension supply of property or a service to a master pension entity (as defined in subsection 123(1) of the Act) of the pension plan and the participating employer has also charged tax on an actual supply of the same property or service made to the master pension entity. Section 232.02 is also amended with respect to the obligation of a pension entity to pay back a rebate that was claimable under subsection 261.01(2) and the obligation of a participating employer to pay back any deduction that it claimed in determining its net tax as a result of an election made under subsection 261.01(5), (6) or (9).

Subclause 133(1)

Tax adjustment note — subsections 172.1(6) and (6.1)

ETA
232.02(2)

Existing subsection 232.02(2) generally allows a participating employer of a pension plan to issue a note (referred to in section 232.02 as a “tax adjustment note”) in respect of employer resources that were consumed or used for the purpose of making a supply of property or service (referred to in section 232.02 as an “actual pension supply”) to a pension entity. Subsection 232.01(2) applies where subsection 172.1(6) deems the participating employer to have made one or more taxable supplies of the employer resources and where tax is also payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer on the actual pension supply.

Subsection 232.02(2) is amended to now also allow a participating employer of a pension plan to issue a tax adjustment note in respect of employer resources that were consumed or used for the purpose of making an actual pension supply to a master pension entity of the pension plan. Specifically, the amendments to subsection 232.02(2) apply where the following circumstances exist:

- a participating employer of a pension plan is deemed under paragraph 172.1(6.1)(a) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making an actual pension supply to a master pension entity of the pension plan and is deemed under paragraph 172.1(6.1)(b) to have collected tax in respect of each such deemed supply;

- a pension entity of the pension plan is deemed under subparagraph 172.1(6.1)(d)(i) to have received a supply of each of these employer resources and is deemed under subparagraph 172.1(6.1)(d)(ii) to have paid tax in respect of these supplies (note that this pension entity would be the specified pension entity of the pension plan, as determined under subsection 172.1(4)); and

- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the master pension entity to the employer in respect of the actual pension supply made to the master pension entity.

Where the amendments to subsection 232.02(2) apply, the participating employer may issue a tax adjustment note in respect of the employer resources to the pension entity specifying a federal component amount determined in accordance with amended paragraph 232.02(3)(a) and a provincial component amount determined in accordance with amended paragraph 232.02(3)(b). The issuance of this note will then allow the employer to make an adjustment to its net tax under paragraph 232.02(4)(a). The tax adjustment note must be in compliance with subsection 232.02(5).

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 133(2) and (3)

Federal and provincial component amounts

ETA
232.02(3)

Subsection 232.02(3) determines the maximum amount of both the federal component amount and the provincial component amount of a tax adjustment note that may be issued under subsection 232.02(2) on a particular day in respect of employer resources. Existing subsection 232.02(3) applies where there is a taxable supply of employer resources that is deemed to have been made under paragraph 172.1(6)(a). Subsection 232.02(3) is amended so that it also applies where there is a taxable employer resource supply (within the meaning of paragraph 172.1(6.1)(a)) that is deemed to have been made under new paragraph 172.1(6.1)(a).

Paragraph 232.02(3)(a) determines the maximum amount of the federal component amount of a tax adjustment note issued by a participating employer of a pension plan in respect of employer resources used or consumed by the participating employer to make an actual pension supply. This amount is determined by the formula: A (adjustment for GST or the federal component of HST) minus B (total of all amounts, each of which is the federal component amount of another tax adjustment note previously issued under subsection 232.02(2) in respect of employer resources used or consumed in making the actual pension supply).

Element A is amended to provide that, where there is a taxable employer resource supply that is deemed to have been made under new paragraph 172.1(6.1)(a), element A is the lesser of: (a) the total of all amounts, each of which is an amount of the federal component of the tax in respect of employer resources consumed or used to make the actual pension supply, as determined under paragraph 172.1(6.1)(c); and (b) the amount determined by the formula A_1 multiplied by A_2. Element A_1 of the formula is all amounts of the GST or the federal component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1) in respect of the actual pension supply on or before the particular day the tax adjustment note is issued. Element A_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Paragraph subsection 232.02(3)(b) determines the maximum amount of the provincial component amount of a tax adjustment note. This amount is determined by the formula: C (adjustment for provincial component of HST) minus D (total of all amounts, each of which is the provincial component amount of another tax adjustment note previously issued under subsection 232.02(3) in respect of employer resources used or consumed in making the actual pension supply).

Element C is amended to provide that, where there is a taxable employer resource supply that is deemed to have been made under new paragraph 172.1(6.1)(a), element C is the lesser of: (a) the total of all amounts, each of which is an amount of the provincial component of the tax in respect of employer resources consumed or used to make the actual pension supply, as determined under paragraph 172.1(6.1)(c); and (b) the amount determined by the formula C_1 multiplied by C_2. Element C_1 of the formula is all amounts of the provincial component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1) in respect of the actual pension supply on or before the particular day the tax adjustment note is issued. Element C_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day.

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 133(4) to (10)

Effect of tax adjustment note

ETA
232.02(4)

Existing subsection 232.02(4) of the Act provides rules that apply where a participating employer of a pension plan (as those terms are defined in subsection 123(1)) is deemed under subsection 172.1(6) to have made a taxable supply of employer resources that were consumed or used for the purpose of making a supply of property or service to a pension entity of the pension plan and has issued a note, referred to as a tax adjustment note, to the pension entity in respect of those employer resources. The rules that apply in these circumstances are set out in paragraphs 232.02(4)(a) to (d).

Subsection 232.02(4) is amended so that it also applies where a participating employer of a pension plan is deemed under new subsection 172.1(6.1) to have made a taxable supply of employer resources that were consumed or used for the purpose of making a supply of property or service to a master pension entity (as defined in subsection 123(1)) of the pension plan, has charged tax on an actual supply of the property or service to the master pension entity and has issued a note, referred to as a tax adjustment note, to a pension entity of the pension plan in respect of those employer resources. This amendment to subsection 232.02(4) is deemed to have come into force on July 22, 2016.

Existing paragraph 232.02(4)(c) applies where the following conditions are met:

- any part of an amount of tax that a pension entity is deemed to have paid under subparagraph 172.1(6)(d)(ii) in respect of a supply that a participating employer is deemed to have made under paragraph 172.1(6)(a) is an eligible amount (as defined in subsection 261.01(1) of the Act) of the pension entity for a particular claim period of the pension entity;

- the pension entity is eligible to claim for the particular claim period a rebate under subsection 261.01(2) in respect of the eligible amount; and

- a tax adjustment note has been issued in respect of the deemed tax.

Existing paragraph 232.02(4)(c) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by a formula. The payment required under paragraph 232.02(4)(c) must be made by the pension entity to the Receiver General by the last

day of the pension entity's claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(4)(c) is amended in three ways.

First, paragraph 232.02(4)(c) is amended to provide that it now only applies to require a pension entity to pay back an amount as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of the deemed tax in its determination of its pension rebate amount (as defined in subsection 261.01(1)) for a claim period of the pension entity.

This first amendment to paragraph 232.02(4)(c) applies in respect of any claim period of a pension entity that begins after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(4)(c) applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.02(4)(c) by a pension entity of a pension plan in respect of a tax adjustment note issued to it,

- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,

- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and

- July 23, 2016 is after the last day of the claim period of the pension entity that immediately follows the claim period of the pension entity that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the pension entity may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(c), as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and

- under section 296, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the pension entity, solely for

the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(c).

Second, paragraph 232.02(4)(c) is amended in respect of the deadline for the pension entity to make the payment required under this paragraph to the Receiver General. This payment must now be made by the later of

- the day on which the rebate claim is filed, and
- the last day of the claim period of the pension entity that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Third, the formula in paragraph 232.02(4)(c), which determines the amount that the pension entity is required to pay, is amended in respect of elements E and F of the formula. Currently, element E of the formula is the pension rebate amount of the pension entity for the particular claim period and element F of the formula is the total determined for element B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period. Element E is amended so that it is now the amount of the rebate determined for the pension entity under subsection 261.01(2) for the particular claim period. Element F is amended so that it is now the pension rebate amount of the pension entity for the particular claim period. These amendments to elements E and F are consistent with the first amendment to paragraph 232.02(4)(c) described above.

The second and third amendments to paragraph 232.02(4)(c) apply in respect of claim periods of a pension entity that end after July 22, 2016.

Existing paragraph 232.02(4)(d) applies to a participating employer of a pension plan that made a deduction in determining its net tax as a result of being party to an election under subsection 261.01(5), (6) or (9), where the election is in respect of an eligible amount of a pension entity of the pension plan for a particular claim period of the pension entity. Paragraph 232.02(4)(d) applies where tax that the pension entity was deemed to have paid on a particular day under subparagraph 172.1(6)(d)(ii) was included in the eligible amount and where subsequently a tax adjustment note was issued in respect of that deemed tax. Paragraph 232.02(4)(d) generally requires the participating employer to add back an amount in respect of the amount deducted from its net tax. The amount required to be added back by the participating employer is determined by a formula where element F of the formula is

- where the pension entity was not a selected listed financial institution on the particular day, the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period; and

- where the pension entity was a selected listed financial institution on the particular day, the total of the pension rebate amount and the provincial pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the particular claim period.

The amount determined under paragraph 232.02(4)(d) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(4)(d) is amended in three ways.

First, paragraph 232.02(4)(d) is amended to provide that it now only applies to require a participating employer to add an amount to its net tax as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount for a claim period of the pension entity.

This first amendment to paragraph 232.02(4)(d) applies in respect of any reporting period of an employer for which the return is filed on after September 23, 2009.

A transitional rule in respect of the first amendment to paragraph 232.02(4)(d) described above applies where the following conditions are met:

- a particular amount was assessed under section 296 as an amount payable under paragraph 232.02(4)(d) by a participating employer of a pension plan in respect of a tax adjustment note that was issued to a pension entity of the pension plan,

- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,

- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and

- July 23, 2016 is after the day on which the return is filed for the reporting period of the participating employer that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the participating employer may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount payable under paragraph 232.02(4)(d) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request; and
- under section 296 of the Act, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the employer, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(d).

Second, paragraph 232.02(4)(d) is amended with respect to the reporting period of the participating employer for which it must add back an amount in computing its net tax. The participating employer must now make the addition required by paragraph 232.02(4)(d) in determining its net tax for the reporting period that includes the day that is the later of

- the day on which the tax adjustment note is issued; and
- the day on which the election under subsection 261.01(5), (6) or (9), as the case may be, is filed with the Minister of National Revenue.

Third, element F of the formula is amended so that it is now always the pension rebate amount of the pension entity, irrespective of whether the pension entity was a selected listed financial institution on the particular day or not.

The second and third amendments to paragraph 232.02(4)(d) apply in respect of any reporting period of a participating employer of a pension plan if the return for the reporting period is filed after July 22, 2016 or is required to be filed on or before a day that is after July 22, 2016.

Clause 134

Net tax if passenger vehicle leased

ETA
235(1)

The purposes of existing section 235 of the Act is to recapture input tax credits in respect of leased passenger vehicles if the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*.

The French version of subsection 235(1) is amended to correct inconsistencies with the English version of that subsection that arose when that subsection was last amended.

This amendment applies in respect of reporting periods that end after November 27, 2006 and in respect of any reporting period that ends on or before that day unless:

- an amount was added pursuant to section 235 in determining the net tax for the reporting period;
- the amount was determined on the basis that the capital cost of the passenger vehicle for the purposes of the *Income Tax Act* included federal and provincial sales tax; and
- the return for the reporting period was filed under Division V of Part IX of the Act on or before that day.

This application rule corresponds to the application rule of the last amendment to subsection 235(1).

Clause 135

Joint and several liability

ETA
252.41(3)

Section 252.41 of the Act provides for a rebate to be paid in certain specified circumstances to a non-resident person who is not registered for GST/HST purposes. The rebate is in respect of tax paid by the non-resident on the service of installing in Canada tangible personal property.

Existing subsection 252.41(3) provides that, if an installer pays or credits the rebate to the non-resident recipient of the services and the installer knew or ought to have known that the non-resident was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the non-resident was entitled, the installer and the non-resident are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 252.41(3), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 136

Liability for amount paid or credited

ETA
252.5(c)

Existing section 252.5 of the Act provides that, if a registrant has paid or credited an amount to a person in respect of a non-resident rebate and the person was not entitled to the rebate or was paid or credited an amount in excess of the rebate, the registrant and the person are jointly and severally liable to pay to the Receiver General that amount or excess if, at the time the amount was paid or credited, the registrant knew or ought to have known that the person was not entitled to the rebate so paid or credited.

In the English version of paragraph 252.5(c), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 137

Joint and several liability

ETA
254(6)

Section 254 of the Act provides for a partial rebate of the tax paid by an individual acquiring from a builder a single-unit residential complex or residential condominium unit that has been newly constructed or substantially renovated for use as a primary place of residence of the individual, a related individual or a former spouse of the individual.

If the builder pays or credits a rebate to the individual directly, and the builder knew or should have known that the individual was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the individual was entitled, existing subsection 254(6) makes the builder and the individual jointly liable to repay the excess amount to the Receiver General.

In the English version of subsection 254(6), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”.

Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 138

Joint and several liability

ETA
254.1(6)

Section 254.1 of the Act provides for a rebate to an individual of an amount in respect of the purchase of a building that forms part of a single unit residential complex or residential condominium unit if the individual leases from the builder of the complex or unit, on a long-term basis or with an option to purchase, the land on which the complex or unit is situated.

Existing subsection 254.1(6) provides that, if a builder pays or credits a rebate to the purchaser and the builder knew or ought to have known that the individual was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the individual was entitled, the builder and the individual are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 254.1(6), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 139

Application for rebate — subsequent claim period

ETA
259(6.1)

Section 259 of the Act provides for rebates to charities, substantially government funded non-profit organizations and other public service bodies (e.g., universities, public colleges, school authorities, hospital authorities and municipalities).

Subject to the applicable rules, a rebate under section 259 in respect of property or a service for a particular claim period of a person is determined based on the amount of GST/HST in respect of the property or service that became payable during the particular claim period or that was paid during the particular claim period without having become payable. Under the requirements of existing section 259, the rebate must be claimed in an application for the particular claim period.

New subsection 259(6.1) provides that, if certain conditions are met, a person may claim a rebate under section 259 in respect of property or a service for a particular claim period of the person in an application for a claim period of the person that is subsequent to the particular claim period.

New subsection (6.1) does not change the underlying substantive requirements for claiming a rebate under section 259. As a result, if a person cannot otherwise claim a rebate under section 259 in respect of property or a service for a particular claim period in an application for the particular claim period, then the person cannot rely on new subsection (6.1) to claim the rebate in an application for a subsequent period. For example, a person cannot rely on subsection (6.1) to extend a lapsed limitation period under subsection 259(5) that prevents the person from claiming the rebate in an application for the particular claim period. Similarly, subsection (6.1) does not change the underlying rules for determining the amount of a rebate under section 259. For example, the amount of a rebate determined under section 259 is the same regardless of whether it is claimed in an application for the particular claim period or in an application for a subsequent claim period.

The first condition that a person must satisfy under new subsection (6.1) in order to be allowed to claim a rebate in respect of property or a service for a claim period in an application for a subsequent claim period is found in the preamble and in paragraph (a). This condition requires that the rebate in respect of the property or service for the particular claim period must not have been claimed in an application for the particular claim period or for any other claim period. For example, consider a person with a quarterly reporting period that seeks to claim a rebate in respect of property or a service for which tax became payable on January 27, 2019. The person does not claim the rebate in its application for the particular claim period of January to March 2019, but instead claims the rebate in its application for the subsequent claim period of April to June 2019. In this example, the person will not be able to claim the rebate in its application for the claim period of July to September 2019 even if the rebate, which was claimed in the application for the April to June claim period, was denied and thus not paid.

The second condition is found in paragraph (b). It is a time-based restriction on when a person may claim a rebate in respect of property or a service for a particular claim period in an application for a subsequent claim period. This condition provides that if the person is a GST/HST registrant, the rebate can only be claimed in the application for the subsequent claim period where the application is filed by the person within two years after the day on or before

which the person is required to file the return under Division V of the Act for the particular claim period. On the other hand, if the person is not a registrant, the application for the subsequent claim period must be filed within two years after the day that is three months after the last day of the particular claim period.

The third condition is found in paragraph (c). It requires that a person must not, at any time throughout a specified period, have become or ceased to be any of the types of public service body described in that paragraph. The specified period begins on the first day of the particular claim period and ends on the last day of the subsequent claim period. For example, consider a person that has been a charity for many years and then also becomes a hospital authority on a particular day. If the particular day is after the first day of the particular claim period and before the end of the subsequent claim period then, as result of the person's change in status, the person will not be able claim a rebate in respect of property or a service for the particular claim period in an application for the subsequent claim period. As another example, consider a person that has been a charity and a hospital authority for many years and then, on a particular day, ceases to be a hospital authority but continues to be a charity. If the particular day is after the first day of the particular claim period and before the end of the subsequent claim period then, as result of the person's change in status, the person will not be able claim a rebate in respect of property or a service for the particular claim period in an application for the subsequent claim period.

The fourth condition is found in paragraph (d). It requires that, in order for a person to claim a rebate in respect of property or a service for a particular claim period in an application for a subsequent claim period, certain percentages remain constant throughout a specified period. The specified period begins on the first day of the particular claim period and ends on the last day of the subsequent rebate claim period. The percentages — being the specified percentage, the specified provincial percentage, and any other percentage specified in section 259, or in regulations made under Part IX of the Act, that applies for the purposes of section 259 — that must remain constant are those that would be applicable in determining the amount of the rebate, if tax in respect of the property or service had become payable and had been paid by the person on each day in the specified period. This paragraph has the effect of, for example, preventing a person from claiming a rebate for a particular claim period in an application for a subsequent claim period if, during the specified period, there were a legislative or regulatory change to a rebate rate (e.g., a specified percentage or specified provincial percentage) applicable in determining the amount of the rebate.

New subsection 259(6.1) applies in respect of subsequent claim periods ending after September 8, 2017.

Clause 140

Pension plan rebates

ETA
261.01

Existing section 261.01 of the Act provides for a GST/HST rebate for pension entities of a pension plan (as those terms are defined in subsection 123(1) of the Act) and allows a pension entity of a pension plan and qualifying employers (as defined in subsection 261.01(1)) of the pension plan to make a joint election to transfer some or all of the pension entity's rebate entitlement to some or all of the qualifying employers. These qualifying employers would then be able to claim a deduction in determining their net tax in respect of the transferred amount.

Amendments to section 261.01 amend the definitions "eligible amount" and "pension rebate amount" in subsection 261.01(1) and the requirements in respect of an application for a rebate under subsection 261.01(2) and in respect of the joint elections provided for under subsections 261.01(5), (6) and (9).

Subclause 140(1)

Eligible amount

ETA
261.01(1)

The definition "eligible amount" in subsection 261.01(1) is used to determine the pension rebate amount (as defined in subsection 261.01(1)) of a pension entity of a pension plan for a claim period (as defined in subsection 259(1) of the Act) of the pension entity so that a rebate can be claimed under subsection 261.01(2) or deductions from net tax may be claimed by qualifying employers of the pension plan under subsection 261.01(5), (6) or (9). In general, an eligible amount is an amount of tax that is not a recoverable amount (as defined in subsection 261.01(1)) and that is described in paragraph (a) or (b) of this definition.

Paragraph (b) of this definition describes amounts of tax that the pension entity is deemed to have paid under section 172.1 of the Act to a participating employer (as defined in subsection 123(1) of the Act) of a pension plan during the claim period. As a consequence of amendments to section 172.1, paragraph (b) now also describes amounts of tax that the pension entity is deemed to have paid under any of new subsections 172.1(5.1), (6.1) and (7.1), in addition to existing subsections 172.1(5), (6) and (7), to a participating employer of a pension plan.

Further, paragraph (b) is amended to also describe amounts of tax that the pension entity is deemed to have paid under new section 172.2 to a participating employer during the claim period.

The amendments to paragraph (b) are deemed to have come into force on July 22, 2016.

Subclause 140(2)

Pension rebate amount

ETA
261.01(1)

A “pension rebate amount” of a pension entity of a pension plan for a claim period of the pension entity represents the amount of a rebate for the claim period that either the pension entity, if it is a “qualifying pension entity” (as defined in this subsection), may be entitled to claim under subsection 261.01(2) or in respect of which a deduction from net tax may be claimed by participating employers of the pension plan under any of subsections 261.01(5), (6) or (9). The pension rebate amount of a pension entity of a pension plan for a claim period of the pension entity is the amount determined by the formula element A multiplied by element B, with element B being the total of all amounts, each of which is an eligible amount (as defined in subsection 261.01(1)) of the pension entity. An eligible amount is generally an amount of tax that actually became payable by the pension entity (or that was paid by the pension entity without having become payable) or an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act.

Element B of the definition pension rebate amount is amended with respect to the inclusion of amounts of tax that the pension entity is deemed to have paid so that such an amount will only be included in a pension entity’s pension rebate amount if the pension entity elects to include it.

More specifically, element B is now the amount determined by the formula element G plus element H. Element G is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (a) of the definition “eligible amount” (i.e., generally, amounts of tax that actually became payable by the pension entity during the claim period or that were paid by the pension entity without having become payable during the claim period). Element H depends on whether an application for a rebate under subsection 261.01(2) or an election under subsection 261.01 (9) is validly made (i.e., in accordance with subsection 261.01(3) or (10), as the case may be) for the claim period. If such an application or election is validly made, element H is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition “eligible amount” (i.e., an amount of tax that the pension entity is deemed to have

paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the determination of the pension rebate amount of the pension entity for the claim period under new subsection 261.01(3.1) or new paragraph 261.01(10)(c), as applicable. If no such application or election is validly made, element H is zero.

The amendments to element B apply in respect of any claim period of a pension entity beginning after September 22, 2009.

Subclause 140(3)

Application for rebate — pension rebate amount election

ETA
261.01(3.1)

New subsection 261.01(3.1) provides an application requirement in respect of a rebate under subsection 261.01(2). This application requirement is in addition to general application requirements in respect of rebates set out in section 262 of the Act.

Specifically, subsection 261.01(3.1) requires that an application for a rebate under subsection 261.01(2) for a claim period of a pension entity indicate the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition “eligible amount” in subsection 261.01(1) (i.e., an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the determination of its pension rebate amount for the claim period.

New subsection 261.01(3.1) applies in respect of any claim period of a pension entity beginning after September 22, 2009.

Subclause 140(4)

Form and manner of filing

ETA
261.01(8)

Existing subsection 261.01(8) contains requirements in respect of the joint elections provided for under subsections 261.01(5) and (6) relating to the sharing of a qualifying pension entity’s pension rebate amount for a claim period of the qualifying pension entity and its provincial pension rebate amount (as defined in subsection 261.01(1)) for the same claim period. It requires, among other requirements, that these elections be filed with the Minister of National Revenue by the qualifying pension entity at the time the qualifying pension entity’s application

for the pension plan rebate under subsection 261.01(2) for the claim period is filed by the qualifying pension entity.

Subsection 261.01(8) is amended with respect to the timing of the filing of a joint election provided for under either of subsections 261.01(5) and (6). In addition to being required to be filed at the time the qualifying pension entity's application for the pension plan rebate under subsection 261.01(2) for the claim period is filed by the qualifying pension entity, the election must also be filed by the qualifying pension entity with the Minister within two years after the day that is

- if the qualifying pension entity is a registrant, the day on or before which it is required to file a return under Division V of Part IX of the Act for the claim period; and
- in any other case, the last day of the claim period.

If the election is not filed with the rebate application within the two-year deadline specified in subsection 261.01(8), the election will not be a valid election and no qualifying employer that is a party to the election will be able to make a deduction in determining its net tax as a result of the election.

The amendments to subsection 261.01(8) apply in respect of any election made under subsection 261.01(5) or (6) other than an election that is required to be filed on or before July 22, 2016.

Subclause 140(5)

Form and manner of filing

ETA
261.01(10)

Existing subsection 261.01(10) of the Act contains requirements in respect of the joint election provided for under subsection 261.01(9) between a non-qualifying pension entity (as defined in subsection 261.01(1)) of a pension plan and the qualifying employers of the pension plan relating to the sharing of the non-qualifying pension entity's pension rebate for a claim period of the non-qualifying pension entity and its provincial pension rebate amount (as defined in subsection 261.01(1)) for the same claim period.

Subsection 261.01(10) is amended to add new paragraph 261.01(10)(c), which provides additional information requirements with respect to an election made under subsection 261.01(9) by a non-qualifying pension entity of the pension plan and the qualifying employers of the pension plan. Specifically, paragraph 261.01(10)(c) requires that an application for an election under subsection 261.01(9) for a claim period of the pension entity indicate the total of all

amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition “eligible amount” in subsection 261.01(1) (i.e., an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the its determination of its pension rebate amount for the claim period.

New paragraph 261.01(10)(c) applies in respect of any claim period of a pension entity beginning after September 22, 2009.

Clause 141

Joint and several liability

ETA
261.31(7)

Existing subsection 261.31(7) of the Act provides that, if an insurer, in determining its net tax for a reporting period, deducts an amount that the insurer paid or credited to a segregated fund of the insurer on account of a rebate of the provincial component of the HST under subsection 261.31(2) in respect of supplies made by the insurer to the segregated fund and the insurer knew or ought to have known that the segregated fund was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the segregated fund was entitled, the insurer and the segregated fund are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 261.31(7), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 142

Receivership rules

ETA
266(2)(d)

Section 266 of the Act provides GST/HST rules for receivers. Paragraph 266(2)(d) provides that the insolvent person and the receiver are jointly and severally liable for certain payment and remittance of GST/HST.

In the English version of paragraph 266(2)(d), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law. A necessary consequential amendment is also made to the English version of subparagraph 266(2)(d)(iii), which currently refer to the expression “joint liability”.

These amendments come into force on royal assent.

Clause 143

Joint and several liability

ETA
267.1(3)

Existing subsection 267.1(3) of the Act clarifies the extent of joint and several liability imposed on a trustee (or personal representative) with a trust (or estate).

In the English version of subsection 267.1(3), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law. A necessary consequential amendment is also made to the English version of paragraph 267.1(3)(b), which currently refers to the expression “joint liability”.

These amendments come into force on royal assent.

Clause 144

Joint and several liability

ETA
272.1(5)

Existing subsection 272.1(5) of the Act clarifies the extent of joint and several liability imposed on a partnership and its members (or former members).

In the English version of the preamble of subsection 272.1(5), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection in that regard as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

A necessary consequential amendment is also made to subparagraph 272.1(5)(a)(ii), which currently refer to the expression “joint liability”. Finally, the French version of that subparagraph is also amended to ensure better consistency between the English and French versions.

These amendments come into force on royal assent.

Clause 145

Non-arm’s length transactions

ETA
273.1(6)

Section 273.1 of the Act empowers the Minister of National Revenue to authorize the use of export distribution centre certificates if certain criteria are satisfied. The use of export distribution centre certificates is targeted at businesses that provide limited value added in the course of processing goods.

Existing subsection 273.1(6) provides that the supplies that factor into the determination of a person’s export revenue percentage or the value added to inventory or customers’ goods — that are relevant in determining the person’s eligibility to be authorized to use, or continue to use, an export distribution centre certificate to acquire or import certain goods on a tax-free basis — are deemed to be made for consideration equal to fair market value in the case of non-arm’s length supplies that are actually made for no consideration or for less than fair market value.

In the French version of the Act, the references to the expression “for no consideration” are references to the expression “*à titre gratuit*” in some cases and to the expression “*sans contrepartie*” in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of subsection 273.1(6) is amended to replace the expression “*à titre gratuit*” with the expression “*sans contrepartie*”.

This amendment comes into force on royal assent.

Clause 146

Judicial authorization

ETA
289(3)

Subsection 289(2) of the Act provides that the Minister of National Revenue must obtain judicial authorization from a judge of the Federal Court judge before imposing a requirement on a third party to provide any information related to an unnamed person or persons. Subsection 289(3) of the Act provides that the judge may grant a judicial authorization subject to such conditions that the judge considers appropriate if the judge is satisfied that the unnamed person or persons are ascertainable and that the requirement is made to verify compliance with Part IX of the Act.

Subsection 289(3) is amended to update a cross reference so that the reference to the term “group” only applies to subsection 289(3) as this term is not used in another subsection of section 289.

This amendment comes into force on royal assent.

Clause 147

Assessments

ETA
296(1)(d)

Existing subsection 296(1) of the Act provides the Minister of National Revenue with the authority to assess a person for net tax and other amounts payable or remittable under Part IX of the Act. Paragraph 296(1)(d) provides the Minister with the authority to assess any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d) and section 230.1 of the Act.

Paragraph 296(1)(d) is amended to also provide the Minister with the authority to assess any amount payable under paragraph 232.01(5)(c) or paragraph 232.02(4)(c) of the Act, which may

require a pension entity (as defined in subsection 123(1) of the Act) to pay an amount to the Receiver General as a result of the issuance of a tax adjustment note to the pension entity under subsection 232.01(3) or 232.02(2).

The amendment to paragraph 296(1)(d) is deemed to have come into force on September 23, 2009.

Clause 148

Period for assessment

ETA
298(1)(a.1)

Existing subsection 298(1) of the Act sets out limitation periods with respect to assessments under section 296 of the Act for net tax or certain other amounts payable under various provision of Part IX. Under paragraph 298(1)(a.1), an assessment may not be made more than four years after the day the amount referred to in paragraph 228(2.1)(b) or paragraph 228(2.3)(d) of the Act is required to be paid.

Paragraph 298(1)(a.1) is amended to also provide that an assessment may not be made more than four years after the day the amount referred to in paragraph 232.01(5)(c) or paragraph 232.02(4)(c) is required to be paid. These paragraphs may require a pension entity (as defined in subsection 123(1) of the Act) to pay an amount to the Receiver General as a result of the issuance of a tax adjustment note to the pension entity under subsection 232.01(3) or 232.02(2).

The amendment to paragraph 298(1)(a.1) is deemed to have come into force on September 23, 2009.

Clause 149

When application to be granted

ETA
304(5)(b)(iv)

Section 304 of the Act allows a person to apply to the Tax Court of Canada for an extension of time to file an objection or request an adjustment under subsection 274(6) of the Act, if the person has previously applied to the Minister of National Revenue for such an extension and that application was refused or not responded to within 90 days.

Existing subsection 304(5) sets out the conditions for an application made under section 304 to be granted.

In order to correct an inconsistency between the French and English versions of the Act, the French version of subsection 304(5) is amended to repeal subparagraph (b)(iv) as the condition set out in that subparagraph never existed in the English version of subsection 304(5).

This amendment comes into force on royal assent.

Clause 150

Compliance by unincorporated bodies

ETA
324(1) and (3)

Section 324 of the Act provides the obligations and liabilities under Part IX of the Act in the case of unincorporated bodies and the circumstances under which the Minister of National Revenue may make an assessment.

In the English versions of subsections 324(1) and (3), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

These amendments come into force on royal assent.

Clause 151

Transfer not at arm's length

ETA
325(1) to (3)

Section 325 of the Act provides rules under which a transferee of property may be liable for unpaid taxes, interest and penalties of the transferor when the two parties are not dealing at arm's length.

In the English versions of subsections 325(1) and (3), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection in that regard as it uses the term "*solidairement*". This term is appropriate for both civil law and

common law. In addition, necessary consequential amendments to the English version and an amendment to correct a misspelled word in the French version are also made in subsection 325(3).

The French version of subsection 325(2) does not specify when the Minister of National Revenue may assess a transferee in respect of any amount payable by reason of section 325 while the English version of that provision clearly states that the Minister may make such assessment at any time. Consequently, the French version of subsection 325(2) is amended to explicitly provide that an assessment under section 325 may be made at any time consistent with the English version of that subsection.

These amendments come into force on royal assent.

Clause 152

Evidence and procedure

ETA
335(6), (7), (10) and (10.1)

Section 335 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX of the Act.

Subsections 335(6) and (7) are amended to replace the term “Agency” with the term “Canada Revenue Agency” as a consequence of the repeal of the definition “Agency” in subsection 123(1) of the Act.

Also, the French versions of subsections 335(10) and (10.1) are amended to replace the term “*réputée*” with “*présumée*” to correct inconsistencies with the English version of these subsections that uses “presumed” and not “deemed”. Additionally, a time reference is added to the French version of subsection 335(10.1) to ensure better consistency with the English version.

These amendments come into force on royal assent.

Clause 153

Definitions

ETA
Sch. V, Pt.VI, section 1
Municipal transit service

Under section 24 of Part VI of Schedule V to the Act, certain supplies of municipal transit services are exempt. Under the existing definition “municipal transit service” in section 1 of that

Part, a public passenger transportation service (except a charter service or service that is part of a tour) is considered a municipal transit service if it is supplied by a transit authority (as defined in section 1 of that Part). Additionally, all or substantially all of that transit authority's supplies must be supplies of public passenger transportation services provided within a particular municipality and its environs. Under the existing definition, this all or substantially all condition is a characterization of the transit authority itself, even though the condition is described in the definition "municipal transit service" instead of in the definition "transit authority".

Therefore, to improve clarity and for ease of reference within amended section 24 and new section 24.1 of Part VI of Schedule V to the Act, the definition "municipal transit service" is amended by removing the all or substantially all condition, which is instead incorporated directly into the amended definition "transit authority". Additionally, the definition "municipal transit service" is amended to explicitly include circumstances where a transit authority supplies a right that exclusively entitles an individual to use a public passenger transportation service. Therefore, this amendment explicitly clarifies that a supply of a public passenger transportation service made by a transit authority is considered a municipal transit service regardless of whether the supply to the transit user is made as a supply of a service or a supply of a right to use the service (for example, through the sale of a pass).

This amendment applies to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Transit authority

The existing definition "transit authority" includes a division, department, or agency of a government, municipality, or school authority the primary purpose of which is to supply public passenger transportation services. It also includes non-profit organizations in receipt of government funding to support the supply of public passenger transportation services, as well as non-profit organizations (whether or not in receipt of government funding) that are established and operated for the purpose of providing public passenger transportation services to individuals with a disability. In addition to these conditions, for an entity to be considered to be providing exempt municipal transit services under existing section 24 of Part VI of Schedule V to the Act, it must meet certain requirements described under the existing definition "municipal transit service". More specifically, for an entity to provide exempt municipal transit services, that entity must be a transit authority and all or substantially all of its supplies must be supplies of public passenger transportation services within a particular municipality and its environs. This condition is a characterization of the transit authority itself, even though the condition is described in the existing definition "municipal transit service".

The definition “transit authority” is amended in order to make it consistent with the amended definition “municipal transit service”, amended section 24 and new section 24.1 of Part VI of Schedule V to the Act. Therefore, the amended definition “transit authority” directly incorporates the all or substantially all condition that was removed from the definition “municipal transit service”. As a result of this amendment, all of the conditions that an entity must satisfy in order to be considered a transit authority under amended section 24 and new section 24.1 are described directly in the amended definition “transit authority”.

Additionally, the all or substantially all condition in the amended definition “transit authority” is amended to explicitly contemplate supplies of rights to use a public passenger transportation service. Therefore, under the amended definition “transit authority”, an entity can be considered a transit authority if all or substantially all of that entity’s supplies are supplies of public passenger transportation services provided within a particular municipality and its environs or supplies of rights for individuals to use those services.

This amendment applies to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Clause 154

Supply by government, municipality, etc.

ETA
Sch. V, Pt. VI, paras. 20(f) to (i)

Existing section 20 of Part VI of Schedule V to the Act sets out a number of supplies relating to regulatory and administrative functions that are exempt when made by a government, municipality, or a board, commission or other body established by a government or municipality.

The French versions of paragraphs 20(f) to (i) are amended to ensure better consistency with the English version of that section and to correct a grammatical error.

This amendment comes into force on royal assent.

Clause 155

Exempt municipal transit services

ETA
Sch. V, Pt.VI, sections 24 and 24.1

Existing section 24 of Part VI of Schedule V to the Act exempts a supply of a municipal transit service, as defined in section 1 of Part VI of Schedule V to the Act, if that supply is made to a member of the public. Additionally, existing section 24 gives the Minister of National Revenue the authority to designate a particular public passenger transportation service to be an exempt municipal transit service. However, existing section 24, in conjunction with the existing definition "municipal transit service" in section 1 of that Part, does not explicitly exempt a supply of a right for an individual to use these services.

Section 24 is amended and new section 24.1 of Part VI of Schedule V to the Act is enacted to clarify that supplies of rights to use certain public passenger transportation services, and not just supplies of the services themselves, are exempt. The preamble of amended section 24 specifies that the exemption does not apply to supplies that are made to transit authorities; however, such supplies may meet the requirements for exemption under new section 24.1. This new condition replaces the condition under existing section 24 that provides that only supplies made to members of the public are exempt. Therefore, as under the existing condition, a supply of a right or service is not exempt under section 24 if it is simply an input acquired by a transit authority for use in making supplies of public passenger transportation services. For example, if a transit authority pays consideration to a third party organization for a supply of a public passenger transportation service that is an input to the transit authority's overall mandate, then the supply made by that organization to the transit authority for the provision of these services is intended to be taxable. However, in that scenario, the supply of the service to a member of the public, whether made by the organization or the transit authority, is intended to be exempt.

Paragraph (a) of amended section 24 exempts a supply of a municipal transit service. As a result of the amendments made to the definition "municipal transit service", this exemption includes a supply made by a transit authority of a public passenger transportation service (other than a charter service or a service that is part of a tour) or a right that exclusively entitles an individual to use such a service.

Paragraph (b) of amended section 24 exempts a supply of a right that exclusively entitles an individual to use a public passenger transportation service (other than a charter service or a service that is part of a tour) that is operated by a transit authority. The supply of such a right is exempt regardless of the identities of the supplier and the recipient (except if the recipient is a transit authority), provided that the underlying service is operated by a transit authority. For

example, if a transit authority supplies to a third party vendor that is not a transit authority a quantity of transit passes, each of which exclusively entitles an individual to use the transit authority's services, and if each pass is subsequently supplied to an individual transit user then, as a result of the amendments to section 24, both of those supplies are exempt, provided that the underlying service satisfies the conditions of the exemption. Similarly, as a further example, if a transit authority supplies a university with the right for the university's students to use its public passenger transportation service, then the supply of the right to the university and the subsequent supplies to the students are both exempt supplies provided that the underlying service is operated by a transit authority.

Paragraph (c) of amended section 24 provides that a supply of a public passenger service is exempt if the service is designated by the Minister to be a municipal transit service. Similarly, paragraph (d) of amended section 24 exempts a supply of a right exclusively entitling an individual to use a service designated by the Minister to be a municipal transit service.

Under amended section 24, supplies of municipal transit services and supplies of rights to use public passenger transportation services are not exempt if they are made to transit authorities. However, under new section 24.1 of Part VI of Schedule V to the Act, a supply made to a transit authority of a right to use a public passenger transportation service may be exempt in certain circumstances.

New section 24.1 only applies to supplies of intangible personal property that is a right evidenced by a ticket, pass, voucher, or other similar physical or electronic media that meet either the criteria in paragraph (a) or paragraph (b).

Under paragraph (a) of new section 24.1, a supply will be exempt if, in addition to the condition in the preamble, two conditions are satisfied. First, the property must exclusively entitle an individual to use a public passenger transportation service (other than a charter service or a service that is part of a tour) that is operated by a transit authority other than the transit authority receiving the supply. Alternatively, this first condition is also satisfied if the property exclusively entitles an individual to use a public passenger transportation service designated by the Minister to be a municipal transit service under paragraph (c) of amended section 24. Second, the transit authority receiving the supply must acquire the property exclusively for the purpose of making a supply of the property. As an example, if a first transit authority supplies a quantity of transit passes, each of which exclusively entitles an individual to use the first transit authority's services, to another transit authority for the purpose of re-sale, then the supply from the first transit authority to the other transit authority will be an exempt supply under paragraph (a) of new section 24.1.

Under paragraph (b) of new section 24.1, a supply will be exempt if, in addition to the condition in the preamble, the property being supplied exclusively entitles an individual to use a public passenger transportation service (other than a charter service or service that is part of a tour) that is operated by the transit authority that is receiving the supply. Furthermore, the transit authority must have previously supplied that property. For example, if a transit authority supplies a quantity of transit passes, each of which exclusively entitles an individual to use the transit authority's services, to a third party vendor, new section 24.1 will exempt the supply of any unsold passes that are returned back to the transit authority.

These amendments apply to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Clause 156

Labour organizations

ETA
Sch. V, Pt. VI, s. 26

Existing section 26 of Part VI of Schedule V to the Act provides that supplies of property or services between a non-profit organization that is established for the benefit of organized labour and any of its members or affiliated trade unions are exempt.

The French version of section 26 is amended to replace the references to "*organisme sans but lucratif*" with "*organisme à but non lucratif*", which is a defined term in subsection 123(1) of the Act. The corresponding reference in the English version of section 26 is a reference to the defined term.

This amendment comes into force on royal assent.

Clause 157

Tourist literature

ETA
Sch. VII, para. 3(b)

Section 3 of Schedule VII to the Act allows tourist literature of governments or other organizations described in the section to be imported free of GST/HST when such literature is for public distribution without charge.

In the French version of the Act, the references to the expression “for no consideration” are references to the expression “*à titre gratuit*” in some cases and to the expressions “*sans contrepartie*” in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 3(b) is amended to replace the expression “*à titre gratuit*” with the expression “*sans contrepartie*”.

This amendment comes into force on royal assent.

Clause 158

Imported goods under a warranty

ETA
Sch. VII, ss. 5 and 5.1

Schedule VII to the Act enumerates a short list of goods of different classes that are not taxable upon importation into Canada.

In the French version of the Act, the references to the expression “for no consideration” are references to the expression “*à titre gratuit*” in some cases and to the expression “*sans contrepartie*” in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of sections 5 and 5.1 are amended to replace the expression “*à titre gratuit*” with the expression “*sans contrepartie*”.

These amendments come into force on royal assent.

Clause 159

Tourist literature

ETA
Sch. X, Pt. I, para. 12(b)

Section 12 of Part I of Schedule X to the Act allows tourist literature of governments or other organizations described in the section to be brought into a participating province without a requirement to self-assess tax under section 220.05 or 220.06 of the Act when such literature is for public distribution without charge.

In the French version of the Act, the references to the expression “for no consideration” are references to the expression “*à titre gratuit*” in some cases and to the expression “*sans contrepartie*” in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 12(b) is amended to replace the expression “*à titre gratuit*” with the expression “*sans contrepartie*”.

This amendment comes into force on royal assent.

Clause 160

Goods supplied under warranty and brought into a participating province

ETA
Sch. X, Pt. I, s. 14

Section 14 of Part I of Schedule X to the Act provides that if a person brings into a participating province property that is supplied to the person for no consideration, other than shipping and handling fees, as a replacement part or as replacement property under a warranty, no tax is payable under section 220.05 or 220.06 of the Act in respect of the bringing in.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of section 14 is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 161

Definition "Agency"

ETA
276(1), 291(1), 295(5)(d)(ix), 303(3), 332(1) and 335(1) to (5) and (14)

Consequential amendments are made to subsections 276(1) and 291(1), subparagraph 295(5)(d)(ix) and subsections 303(3), 332(1) and 335(1) to (5) and (14) of the Act to replace the term "Agency" with the term "Canada Revenue Agency" following the repeal of the definition "Agency" in subsection 123(1) of the Act.

These amendments come into force on royal assent.

Clause 162

Definition "specified Crown agent"

ETA
123(1), 200(4)(a)(i)(A), 209(2) and 273(1.1)(a)

The term "specified Crown agent", as defined in subsection 123(1) of the Act, refers to an agent of Her Majesty in right of a province that pays tax because of an agreement under section 32 of

the *Federal-Provincial Fiscal Arrangements Act* or to an agent of Her Majesty in right of Canada or of a province that is prescribed by regulations. The term is relevant for purposes of special rules contained in the Act.

To remove potential ambiguities, the French version of the Act is amended to replace the relevant references to "*mandataire désigné*" in the Act, including in the label of the definition "*mandataire désigné*" in subsection 123(1), by references to "*mandataire de la Couronne désigné*".

These amendments come into force on royal assent.

Clause 163

Definition "specified Crown agent"

Public Service Body Rebate (GST/HST) Regulations
2.1

Consequential to the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act, section 2.1 of the French version of the *Public Service Body Rebate (GST/HST) Regulations* is amended to reflect the new label of the definition "*mandataire de la Couronne désigné*".

This amendment comes into force on royal assent of the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act.

Clause 164

Definition "specified Crown agent"

Specified Crown Agents (GST/HST) Regulations

Consequential to the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act, the French version of the *Specified Crown Agents (GST/HST) Regulations* is amended to reflect the new label of the definition "*mandataire de la Couronne désigné*".

These amendments come into force on royal assent of the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act.

Part 3 – Amendments to the Excise Act

Excise Act

Clause 165

Non-application – transformation of beer concentrate

EA
1.2

New section 1.2 of the *Excise Act* (the Act) provides that the Act does not apply to the process of transforming beer concentrate into beer (other than beer concentrate) for consumption on the premises where it is transformed if the transformation is done in a manner approved by the Minister.

This amendment is deemed to have come into force on June 5, 2017.

Clause 166

Definitions

EA
4

Section 4 of the Act defines terms used in Part III of the Act and in the Schedules to the Act relating to breweries.

Subclause 166(1)

Definition “beer” or “malt liquor”

EA
4

The existing definition “beer” or “malt liquor” in section 4 of the Act means all fermented liquor that is brewed in whole or in part from malt, grain or any saccharine matter without any process of distillation and that has an alcoholic strength not in excess of 11.9% absolute ethyl alcohol by volume, which is not wine as defined in section 2 of the *Excise Act, 2001*.

The definition “beer” or “malt liquor” is amended to include beer concentrate as a type of beer.

This amendment is deemed to have come into force on June 5, 2017.

Subclause 166(2)

Definition "beer concentrate"

EA
4

The new definition "beer concentrate" in section 4 of the Act defines a type of beer that is subject to duties of excise as set out in new subsection 170(1.1) of the Act. A product is beer concentrate if

- it has an alcoholic strength in excess of 11.9% absolute ethyl alcohol by volume;
- it is made by dehydrating beer (other than beer concentrate) or is intended, before being offered for consumption as a beverage, to be transformed by dilution or hydration into beer (other than beer concentrate);
- it is not intended or marketed for consumption as a beverage without being further transformed where it is to be consumed as a beverage; and
- the manner of further transformation is approved by the Minister.

This amendment is deemed to have come into force on June 5, 2017.

Clause 167

Duties – beer or malt liquor and beer concentrate

EA
170

Existing subsection 170(1) imposes the duties of excise set out in Part II of the schedule on every hectolitre of beer or malt liquor. Subsection 170(1) is amended to exclude beer that is beer concentrate from the application of subsection 170(1).

New subsection 170(1.1) imposes duties of excise on beer concentrate according to the maximum quantity of beer (other than beer concentrate) that can be transformed, in a manner approved by the Minister, from that concentrate. The rate of duties of excise applied to that quantity of beer (other than beer concentrate) is the applicable rate set out in Part II of the schedule.

This amendment is deemed to have come into force on June 5, 2017.

Clause 168

Exclusion – beer concentrate

EA
170.1(1.1)

Existing subsection 170.1(1) applies the reduced duties of excise in Part II.1 of the schedule to the first 75,000 hectolitres of beer or malt liquor brewed in Canada per year by a licensed brewer.

Subsection 170.1(1.1) excludes beer concentrate and beer transformed from beer concentrate from the application of the reduced rates referred to in subsection 170.1(1). Also, subsection 170.1(1.1) provides that beer concentrate and beer transformed from beer concentrate do not count towards the first 75,000 hectolitres referred to in subsection 170.1(1).

This amendment is deemed to have come into force on June 5, 2017.