Preface

These explanatory notes describe proposed amendments to the *Income Tax Act* and *Income Tax Regulations*. 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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Minister of Finance

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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Amendments to the Income Tax Act

Income Sprinkling

Clause 1

Beneficiaries' taxable capital gain

ITA
104(21.2)

Subsection 104(21.2) of the *Income Tax Act* (the "Act") sets out rules for establishing the net taxable capital gains of a trust 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 disposition by the trust of qualified farm or fishing property or a qualified small business corporation share.

Subsection 104(21.2) is amended as a consequence of changes to the tax on split income (TOSI) in section 120.4. In particular, paragraph 104(21.2)(b) is amended so that taxable capital gains of a trust from the disposition of qualified farm or fishing property or qualified small business corporation shares can be attributed to beneficiaries of the trust for the purposes of section 120.4.

For more information, see the commentary on the definition "excluded amount" in subsection 120.4(1).

Clause 2

Definitions concerning tax on split income

ITA
120.4(1)

The following definitions apply for the purpose of the TOSI rules in section 120.4 of the Act.

"excluded amount"

The definition "excluded amount" in subsection 120.4(1) describes income that is excluded from split income of an individual. The definition "excluded amount" currently includes two types of income. The first is income from property inherited by the individual from a parent of the individual. The second is income from property inherited by the individual from anyone, if the individual is, in the year in which the income is required to be reported, either a full-time student enrolled at a post-secondary institution as defined in subsection 146.1(1) or eligible for the disability tax credit.

The definition “excluded amount” is amended in a number of respects.

First, the definition is amended so that it applies in respect of income that is from gains from the disposition of property. This change reflects a separate amendment that would include certain gains in split income. For more information, see the commentary on new paragraph (e) of the definition “split income”.

Second, the definition is amended so that the existing exclusions in respect of inherited property apply to individuals who have not attained the age of 24 years before the year. If an individual has attained the age of 24 years before the year, the exclusions in respect of inherited property will not apply, even if the individual inherited the property prior to the year in which they attain the age of 25 years.

Third, paragraphs (b) to (g) of the definition are added to provide additional types of excluded amounts. The addition of these amounts is consequential on the extension of the TOSI to include individuals who attained the age of 17 years before the year.

New paragraph (b) excludes from split income amounts derived from property that is acquired by an individual under a transfer described in subsection 160(4). As a result, where a taxpayer transfers property to the taxpayer’s spouse or common-law partner pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement and, at that time, the taxpayer and spouse or common law partner were separated and living apart as a result of the breakdown of their marriage or common-law partnership, the income derived by the spouse or common-law partner from the property will be an excluded amount in respect of the spouse or common-law partner.

New paragraph (c) excludes from split income a taxable capital gain that arises because of subsection 70(5). Generally, subsection 70(5) provides for a deemed disposition of capital property owned by a taxpayer immediately before their death.

New paragraph (d) excludes from split income taxable capital gains that arise from the disposition of “qualified farm or fishing property” or “qualified small business corporation shares”. This exclusion would also apply to taxable capital gains realized by a trust that are allocated to beneficiaries of the trust in the year of the disposition. However, this exclusion does not apply to a taxable capital gain that is deemed to be dividend under subsection 120.4(4) or (5).

New paragraph (e) provides two exclusions from split income that are available to individuals who have attained the age of 17 years before the year.

Subparagraph (i) provides that an amount that is not derived directly or indirectly from a “related business” in respect of the individual for the year is an excluded amount. “Related business” is defined in subsection 120.4(1) and generally refers to a business in respect of which a Canadian-resident person related to the individual is sufficiently connected (either by being actively involved in the business or by having a significant capital interest in the entity carrying on the business). For more information, see the commentary on the definition “related business”.

Subparagraph (ii) provides that an amount that is derived directly or indirectly from an "excluded business" of the individual for the year is an excluded amount. "Excluded business" is defined in subsection 120.4(1) and generally refers to a business in respect of which the individual has made a sufficient labour contribution. For more information, see the commentary on the definition "excluded business".

New paragraph (f) provides two exclusions from split income that are available to individuals who attained the age of 17 years, but not 24 years, before the year.

Subparagraph (i) provides that an amount that is a "safe harbour capital return" of an individual for the year is an excluded amount. "Safe harbour capital return" is defined in subsection (1) and generally allows for a return on contributed capital up to a prescribed rate. For more information, see the commentary on the definition "safe harbour capital return".

Subparagraph (ii) provides that an amount that is a "reasonable return" in respect of the individual having regard only to the contributions of "arm's length capital" by the individual in support of the business from which the amount is derived is an excluded amount. Contributions of labour would therefore not be taken into consideration in determining the reasonable return for this purpose. The definition "reasonable return" generally refers to a reasonable return from a business, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. "Arm's length capital" generally refers to property inherited or earned by the individual, such as salary. As a result of this exclusion, an amount will be an excluded amount to the extent that it does not exceed a reasonable return on arm's length capital contributed by the individual. For more information, see the commentary on the definitions "reasonable return" and "arm's length capital".

New paragraph (g) provides two exclusions from split income that are available to individuals who have attained the age of 24 years before the year.

Subparagraph (i) provides that income from, or a taxable capital gain from the disposition of, "excluded shares" of an individual for the year is an excluded amount. "Excluded share" is defined in subsection 120.4(1) and generally refers to an individual's shares of a corporation carrying on a non-services business if the individual owns 10% or more of the shares of that corporation's capital stock. As a result of this exclusion, dividends on an excluded share of the individual will be an excluded amount. If an individual disposes of an excluded share held on capital account, then the resulting taxable capital gain will also be an excluded amount. For more information, see the commentary on the definition "excluded shares".

Subparagraph (ii) provides that an amount that is a "reasonable return" in respect of an individual for the year is an excluded amount. "Reasonable return" is defined in subsection 120.4(1) and generally refers to a reasonable return from a business, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. For more information, see the commentary on the definition "reasonable return".

“specified individual”

A “specified individual” is generally a taxpayer who is subject to tax on their “split income”.

The definition “specified individual” in subsection 120.4(1) is repealed and replaced with a new definition. Under the new definition, an individual (other than a trust) is a specified individual for a taxation year if two conditions are met:

1. the individual is a resident of Canada at the end of the taxation year or, if the individual died during the taxation year, the individual was a resident of Canada immediately before their death; and

2. if the individual has not attained the age of 17 years before the year, the individual has a parent who is resident in Canada at any time in the year.

“split income”

“Split income” describes the types of income that are subject to the TOSI under subsection 120.4(2).

The definition “split income” is amended and expanded in several respects.

Subparagraphs (b)(ii) and (c)(ii) are amended by replacing part of their contents with a reference to amounts that can reasonably be considered to be income derived, directly or indirectly, from one or more “related businesses” in respect of the individual. Much of the previous substantive content of those subparagraphs is preserved in the new definition “related business,” with modifications relating to businesses carried on by corporations. New paragraph 120.4(1.1)(d) contains an interpretative rule relating to when income is derived, directly or indirectly, from a business. For more information, see the commentary on the definition “related business” and paragraph 120.4(1.1)(d).

New paragraph (d) extends the split income definition to apply in respect of income from indebtedness (*e.g.*, interest). In general terms, this type of income received by a specified individual from a debtor corporation, partnership or trust will be split income if other amounts (*e.g.*, dividends) received by the specified individual from the debtor would be split income.

Specifically, split income will include amounts in respect of a debt obligation of a corporation (other than a publicly listed corporation or a mutual fund corporation), partnership or trust (other than a mutual fund trust). A number of exclusions are provided in subparagraph (ii):

- certain debts of, or debts guaranteed by, governments, that are described in paragraph (a) of the definition “fully exempt interest” in subsection 212(3);

- publicly-listed or traded debt; and

- a deposit standing to the individual's credit at a bank or credit union.

New paragraph (e) extends the split income definition to include taxable capital gains and income from the disposition of property, that are not otherwise included in the definition of split income, in situations where income from the property would be split income in the hands of the specified individual.

Specifically, an amount will be split income pursuant to paragraph (e) of the definition when two conditions are met.

1. The amount must either be a gain realized by the individual from the disposition of property or income derived by the individual through a trust that is attributable to the disposition of a property.

2. The property referred to in the first condition must generally be property the income from which would be split income if received by the specified individual. This would be the case for shares of a corporation (other than a publicly-traded share or a share of a mutual fund corporation). It could also be the case where the property is a debt obligation or an interest in a partnership or trust (other than a mutual fund trust or a trust that is deemed to arise under subsection 143(1), which relates to certain communal organizations). For property other than shares of a corporation, the property must also be a property in respect of which

    - an amount was included in the individual's split income for the year or a previous year, or

    - all or part of its fair market value immediately before the disposition was attributable to a share of a corporation (other than a share of a publicly-traded corporation or a share of a mutual fund corporation).

This type of income will be split income for dispositions of property that occur after 2017.

"arm's length capital"

The effect of subparagraph (f)(ii) of the definition "excluded amount" is that an individual who has attained the age of 17 years, but has not attained 24 years, before the year is subject to the TOSI on an amount only to the extent that it exceeds a "reasonable return" on "arm's length capital" contributed by the individual. "Reasonable return" generally refers to a reasonable return from a business, taking into consideration the relative contributions made to the business by the individual and persons related to the individual. For more information, see the commentary on the definition "reasonable return".

In general terms, "arm's length capital" of an individual is property earned, inherited or otherwise acquired by the individual that is not acquired from a relative or from a related business (other than as salary). To qualify, the property cannot have been:

1. Acquired by the individual as income (*e.g.*, as a dividend) from another property or as a gain from the disposition of another property where the income or gain was derived directly or indirectly from a related business in respect of the individual;
2. Borrowed (including from arm's length sources); or
3. Transferred to the individual by a person who was related to the individual. For this purpose, transfers as a consequence of death of a person are excluded.

"excluded business"

An individual who has attained the age of 17 years before the taxation year will not be subject to the TOSI on income derived directly or indirectly from an excluded business of the individual for that year. This exclusion from split income is provided in subparagraph (e)(ii) of the definition "excluded amount".

An excluded business of an individual for a year means a business in which the individual is actively engaged on a regular, continuous and substantial basis in the year (paragraph (a)) or in any five previous years (paragraph (b)). Gains from the disposition of property (described in paragraph (e) of the "split income" definition) will be an excluded amount because of the excluded business exception (subparagraph (e)(ii) of the "excluded amount" definition) only if the individual satisfies the five-year test in paragraph (b) of the excluded business definition.

The five-year test is intended to ensure that individuals who have made significant labour contribution to a business over a number of years will continue to be exempt from the TOSI in respect of income derived from the business after the individual has retired from, or reduced their involvement in, the business. In order to qualify, it is not necessary that the five preceding years be continuous. These years can be before the effective date of these amendments.

A business could qualify as an excluded business of a specified individual even if that business derives income from another related business in respect of the specified individual that is not itself an excluded business. For example, if an individual receives dividends from a corporation that is an excluded business of the individual and a portion of that corporation's income is from the provision of goods or services to another corporation owned by the specified individual's parent (which would be a related business in respect of the specified individual), the dividends would still qualify as an excluded amount in respect of the specified individual.

Whether an individual has been actively engaged in the activities of a business on a "regular, continuous and substantial basis" in a year will depend on the circumstances, including the nature of the individual's involvement in the business and the nature of the business itself. Whether an individual is actively engaged in a business will generally turn on the time, work and energy that the individual devotes to the business. The more an individual is involved in the management and/or current activities of the business, the more likely it is that the individual will be considered to participate in the business on a regular, continuous and substantial basis. Likewise, the more an individual's contributions are integral to the success of the business, the more substantial they would be.

It is intended that the determination of whether a business is an excluded business of the individual will generally not be affected by reorganizations and other changes to the person or partnership carrying on the business. For example, if a business operated as a sole proprietorship is transferred to a corporation, an individual's involvement in the business before the transfer is to be taken into consideration in determining whether the business carried on by the corporation is an excluded business of the individual.

Without limiting the generality of the "regular, continuous and substantial" test described above, new paragraph 120.4(1.1)(a) contains a deeming rule that provides additional certainty in determining whether an individual is actively engaged on a regular, continuous and substantial basis in the activities of a business. This bright-line deeming rule is generally based upon an average of 20 hours per week of work throughout the portion of the year when the business operates. An average work commitment of less than 20 hours per week could qualify as regular continuous and substantial where, for example, an individual works 30 hours per week in a year-round business up to the start of July, after which they are unable to continue working throughout the remainder of the year (*e.g.*, because of injury, illness or the birth or adoption of a child). For more information, see the commentary on the definition "excluded amount" and paragraph 120.4(1.1)(a).

"excluded shares"

An individual's income from, or a taxable capital gain from the disposition of, "excluded shares" is excluded from the TOSI pursuant to subparagraph (g)(i) of the "excluded amount" definition. This exclusion applies to individuals who have attained the age of 24 years before the year.

"Excluded shares" of an individual are shares of the capital stock of a corporation that are owned by the individual if all of the following conditions are met:

1. less than 90% of the business income of the corporation is from the provision of services;

2. the corporation is not a professional corporation, as defined in subsection 248(1);

3. the individual owns ten per cent or more of shares of the capital stock of the corporation, determined by reference to their value and the votes that could be cast at an annual meeting of the shareholders of the corporation; and

4. the income of the corporation is not derived directly or indirectly from another related business. This limitation is intended to prevent the circumvention of the TOSI rules by splitting a services business into services and non-services parts. For example, this would apply to the use of holding companies and so-called "side car" structures (*e.g.*, where property used in a service business is leased to a corporation carrying on the services business by another corporation in which the specified individual has an interest).

Whether less than 90% of the business income of the corporation is from the provision of services is tested by reference to the last taxation year of the corporation that ends at or before

the end of the specified individual's taxation year. This aligns the relevant taxation years where both the corporation and the specified individual have calendar taxation years. If a corporation's first taxation year ends after end of the taxation year of the specified individual, no information relating to a previous year would be available and so, that first taxation year is to be used.

For the 2018 taxation year, the ten per cent or more ownership and value of the shares threshold may be met at the end of 2018.

"reasonable return"

The effect of subparagraph (g)(ii) of the definition "excluded amount" is that an individual who has attained the age of 24 years before the year is subject to the TOSI on an amount only to the extent that it exceeds a "reasonable return".

Generally, the "reasonable return" definition is intended to ensure that an individual is not subject to the TOSI on income derived from a related business if the amount is reasonable having regard to the relative contributions of the individual and their relatives who contribute to the related business.

There are two aspects to the "reasonable return" definition, both of which must be satisfied in order for an amount to be considered a "reasonable return".

First, in order to prevent circularity in the definition (*i.e.*, whether an amount is included in split income depends upon whether it is an excluded amount, which depends upon whether it is a reasonable return, which refers to whether the amount is included in split income), the definition refers to amounts that would be split income of the individual if the definition "excluded amount" were read without reference to subparagraphs (f)(ii) and (g)(ii).

Second, the amount must be reasonable having regard to a number of factors. For the purpose of testing whether a return in respect of a business is a reasonable return, what is relevant is the relative contributions to the business of the specified individual and each source individual in respect of the specified individual. In particular, the factors are the following:

- the work they performed in support of the related business;
- the property they contributed, directly or indirectly, in support of the related business;
- the risks they assumed in respect of the related business;
- the total of all amounts that were paid or that became payable, directly or indirectly, by any person or partnership to them, or for their benefit, in respect of the related business; and
- such other factors as may be relevant.

These factors look to the relative contributions of labour and capital to a business, along with amounts received from the business. If, for example, an unexpectedly high return is realized in respect of a business and a portion of that return is paid to a specified individual, the income will satisfy the test if the amount paid to them is reasonable taking into consideration the relative contributions to the business of the specified individual and each source individual in respect of the business. The test does not require a precise determination of the amount of income that would be reasonable for a specified individual in the abstract, given only their contributions to a business and without consideration of the relevant context.

"related business"

The new "related business" definition serves a number of functions throughout the TOSI rules and can generally be described as the business from which split income is derived.

The "related business" definition is perhaps most significantly relevant for determining the application of the TOSI to individuals who have attained the age of 17 years before the year. Pursuant to subparagraph (e)(i) of the "excluded amount" definition, the TOSI does not apply to such an individual in respect of an amount unless the amount is derived directly or indirectly from a "related business" in respect of the individual during the year.

A "related business" is defined in respect of a specified individual for a taxation year and refers throughout to a "source individual". In very general terms, income sprinkling arrangements seek to reduce tax by decreasing the amount of income that is derived from a business (the related business) by a higher income individual (the source individual) with a corresponding increase in the income derived from that business by a lower-income individual (the specified individual). For more information, see the commentary for the definitions "specified individual" and "source individual".

In order for a business to be a related business in respect of a specified individual, a source individual in respect of the specified individual must be sufficiently connected to the business. Paragraph (a) of the definition applies where the source individual is actively involved in the business. Paragraphs (b) and (c) apply where the source individual has a sufficient interest in the partnership or corporation, respectively, carrying on the business.

Under paragraph (a) of the definition, a "related business" includes a business carried on by a "source individual" in respect of the specified individual. It also includes a business carried on by a partnership, corporation or trust if a "source individual" in respect of the specified individual is actively engaged in the business.

Under paragraph (b) of the definition, a "related business" includes a business of a partnership, if a "source individual" in respect of the specified individual has an interest (including directly or indirectly through one or more partnerships) in the partnership.

Under paragraph (c) of the definition, a “related business” includes a business carried on by a corporation in which the following conditions are met:

- a source individual in respect of the specified individual owns shares of the capital stock of the corporation or property that derives, directly or indirectly, all or part of its fair market value from shares of that capital stock, and

- the total fair market value of the shares and property described above that is owned by the source individual equals at least ten per cent of the total fair market value of the capital stock of the corporation.

“safe harbour capital return”

Subparagraph (f)(i) of the “excluded amount” definition exempts from the TOSI a return on a capital investment in support of a related business made by an individual aged 18 to 24 years that is a “safe harbour capital return”.

A “safe harbour capital return” of a specified individual for a taxation year means a return up to a prescribed rate based upon the fair market value of property contributed by the specified individual in support of a related business (pro rated according to the number of days in the year that the property substituted therefor is used in support of the related business). The prescribed rate used for this purpose is set out in paragraph 4301(c) of the *Income Tax Regulations*. The highest prescribed rate in effect for a quarter in the year is to be used.

“source individual”

A “source individual” in respect of a specified individual means an individual (other than a trust) who, at any time in a year, is both resident in Canada and related to the specified individual.

For more information, see the commentary on the definitions “related business” and “specified individual”.

Additional rules – specified individual

ITA
120.4(1.1)

New subsection 120.4(1.1) of the Act contains interpretative rules for the purpose of applying the TOSI rules in respect of a specified individual.

ITA
120.4(1.1)(a)

New subparagraph (e)(ii) of the definition “excluded amount” excludes from a specified individual’s split income for the year amounts received by the specified individual directly or indirectly from an excluded business of the individual in the year.

In order to determine whether a business is an “excluded business” of a specified individual for a year, it is necessary to determine whether the individual was actively engaged on a regular, continuous and substantial basis in the activities of the business in the year or in any five prior years.

Paragraph 120.4(1.1)(a) deems an individual to be actively engaged on a regular, continuous and substantial basis in the activities of a business in a taxation year of the individual if the individual works, on average, 20 hours per week or more in the business during the portion of the taxation year of the individual that the business operates. An individual does not need to work every week that the business operates in a year in order to satisfy the condition for the year. For example, the test would be satisfied in respect of an individual who works 30 hours per week for 20 weeks in a year in respect of a business that operates for 25 weeks out of the year (30 x 20 / 25 ≥ 20).

This deeming rule is intended to provide certainty for qualifying taxpayers and is not intended to limit the generality of the test in the “excluded business” definition. For example, a taxpayer may be considered to meet the “regular, continuous and substantial” test even if they work less than 20 hours per week on average if the business, by its nature, does not demand a higher number of hours worked and the individual’s labour contributions are integral to the success of the business.

ITA
120.4(1.1)(b)

Paragraph 120.4(1.1)(b) provides a continuity rule for inherited property. It applies to amounts that would, absent the application of this rule, be split income of a specified individual who has attained the age of 17 years before the year in respect of property that was acquired by or for the benefit of the specified individual as a consequence of the death of another person.

In these circumstances, subparagraph (i) allows the specified individual to avoid the application of the TOSI to the extent that an amount, had it been received by the deceased person, would have been a “reasonable return” for the purposes of subparagraph (g)(ii) of the excluded amount definition.

Subparagraph (ii) provides that an individual’s income on inherited property will qualify as an “excluded amount” to the extent that the amount, had it been received by the deceased person, would have been from an “excluded business” for the purposes of subparagraph (e)(ii) of the “excluded amount” definition because the deceased person was actively engaged on a regular, continuous and substantial basis in the activities of the related business in any five previous taxation years.

Subparagraph (iii) provides that, for the purposes of the “excluded shares” and “reasonable return” tests in paragraph (g) of the definition “excluded amount” (which generally apply only to

specified individuals aged 25 years and older), if the deceased had attained the age of 24 years before the taxation year in which they died, the specified individual will be deemed to have attained the age of 24 years before the taxation year. This deeming rule applies only for the purpose of determining whether the TOSI applies to amounts derived from the inherited property that was acquired by or for the benefit of the specified individual. This allows a specified individual who has attained the age of 17 years before the year, but not the age of 24 years, to potentially qualify for these exclusions from the TOSI if the deceased qualified before their death.

ITA
120.4(1.1)(c)

Paragraph 120.4(1)(c) applies to amounts received by a specified individual in a taxation year of the individual, if the spouse or common law partner of the specified individual attained the age of 64 years before the year, or died before the end of the year. In the latter case, it is not necessary that the spouse or common law partner have attained the age of 64 years before their death.

If paragraph (c) applies, an amount will be an excluded amount in the hands of a specified individual if the amount would have been an excluded amount in the hands of the specified individual's spouse or common law partner, if it had been received by the spouse or common law partner as income in the year (or in their last taxation year, if applicable). For the purpose of determining whether an amount would have been an excluded amount in the last taxation year of an individual for a taxation year prior to the coming into force of these amendments, the definition "excluded amount" (and related provisions) in these amendments are to be used.

ITA
120.4(1.1)(d)

Paragraph 120.4(1.1)(d) clarifies that certain amounts are included, for the purposes of the TOSI rules, in what is an amount derived, directly or indirectly, from a business.

First, an amount will be considered to be derived from a business where it is derived from the provision of property or services to, or in support of, the business. This is based upon the previous subparagraphs (b)(ii) and (c)(ii) of the definition "split income" in subsection (1). Second, an equity return on an interest in a partnership, corporation or trust carrying on a business will also be considered to be an amount derived from that business. Lastly, subparagraph (iii) contains an iterative rule so that income derived from income derived from a business is income derived, directly or indirectly, from the business.

Tax payable by a specified individual

ITA
120.4(3)

Subsection 120.4(3) ensures that the Part I tax payable by a specified individual is not less than the individual's split income for the year multiplied by the highest individual tax rate for the year reduced only by the dividend tax credit and the foreign tax credit.

This subsection is amended to provide that the TOSI does not eliminate a specified individual's ability to deduct an amount under section 118.3 (the disability tax credit).

Taxable capital gain

ITA
120.4(4)

Subsection 120.4(4) of the Act generally provides that a capital gain of a specified individual from a disposition of certain shares, that are transferred to a person that does not deal at arm's length with the individual, is subject to the TOSI. Twice the amount that would otherwise have been the individual's taxable capital gain in respect of the disposition is deemed to be a taxable dividend received by the taxpayer in the year and included in the individual's split income.

Subsection 120.4(4) is amended consequential on other changes to the TOSI rules. The amendments ensure that subsection 120.4(4) will not apply to specified individuals who have attained the age of 17 years before the taxation year.

Taxable capital gain of trust

ITA 120.4(5)

Subsection 120.4(5) of the Act generally applies in a manner similar to subsection 120.4(4) in respect of certain amounts if a specified individual would otherwise be required under paragraph 104(13)(a) or subsection 105(2) to include the amount in computing their income for a taxation year.

Subsection 120.4(5) is amended consequential on other changes to the TOSI rules. The amendments ensure that subsection 120.4(5) will not apply to specified individuals who have attained the age of 17 years before the taxation year. In addition, the references to "paragraph 104(13)(a)" are changed to "subsection 104(13)".

Clause 3

Joint and several, or solidary, liability – tax on split income

ITA
160(1.2)

Subsection 160(1.2) of the Act, which applies in respect of tax owing on split income, is amended consequential on changes to the TOSI rules in section 120.4.

The application of joint and several, or solidary, liability in respect of a specified individual differs depending on whether the specified individual has attained the age of 17 years before the year. If they have not, they will be jointly and severally, or solidarily, liable with their parents.

If a specified individual has attained the age of 17 years before the year, they will be jointly and severally, or solidarily, liable in respect of income derived from a related business (as defined in subsection 120.4(1)) with each source individual (as defined in subsection 120.4(1)) in respect of the specified individual who is sufficiently connected with the related business. The requisite level of connection between the source individual and the related business is determined by reference to the conditions in paragraphs (a) to (c) of the "related business" definition in subsection 120.4(1).

Paragraph 160(1.2)(b) limits a particular individual's liability under this subsection to amounts included in a specified individual's split income in respect of the particular individual.

Paragraph 160(1.2)(c) clarifies that this subsection does not limit a specified individual's liability under other sections of the Act, and does not limit the particular individual's liability for interest on amounts payable by the particular person as a result of this subsection.

Clause 4

Age credit

ITA
118(2)

Subsection 118(2) of the Act provides an age tax credit for individuals who are over 65 years of age or who reach age 65 years in the year. The credit is calculated as a percentage (15 per cent for 2017) of an indexed base amount ($7,225 for 2017). The base amount upon which an individual's age tax credit is calculated is reduced by 15 per cent of the amount by which the individual's income for the year exceeds an indexed income base amount ($36,430 for 2017).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

Subsection 118(2) is amended to exclude amounts deductible under paragraph 20(1)(ww) from the income base upon which the reduction in the age tax credit is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.,* income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Limitations re subsec. (1)

ITA
118(4)

Subsection 118(4) of the Act provides rules governing the tax credits available under subsection 118(1).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

New paragraph 118(4)(a.2) provides that, for the purpose of calculating the age tax credit in subsection 118(2), references to income for the year are to be read as references to income determined as if no amount were deductible under paragraph 20(1)(ww). This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 5

GST/HST credit – definitions

ITA
122.5(1)

Subsection 122.5(1) of the Act defines a number of terms for the purpose of the goods and services tax credit (GSTC).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in subsection 122.5(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the GSTC is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 6

Canada Child Benefit – definitions

ITA

122.6

Section 122.6 of the Act defines a number of terms for the purpose of the Canada Child Benefit (CCB).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in section 122.6 is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the CCB is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 7

Working Income Tax Benefit – definitions

ITA
122.7(1)

Subsection 122.7(1) of the Act defines a number of terms for the purpose of the Working Income Tax Benefit (WITB).

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted net income" in subsection 122.7(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the WITB is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (*i.e.*, income is computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 8

Tax on Old Age Security Benefits – definitions

ITA
180.2(1)

Subsection 180.2(1) of the Act defines a number of terms for the purpose of the special recovery tax on old age security (OAS) benefits.

Paragraph 20(1)(ww) provides for the deduction, in computing a taxpayer's income for a taxation year, of an amount equal to the taxpayer's split income for the year. Paragraph 20(1)(ww) ensures that income that is taxed as split income is not also taxed as regular income.

The definition "adjusted income" in subsection 180.2(1) is amended to exclude amounts that are deductible in calculating a taxpayer's income under paragraph 20(1)(ww) from the income base upon which the tax on OAS benefits is calculated. This provision is consequential on the expansion of the TOSI rules to individuals over the age of 17 years. This amendment ensures that the ordinary rule for computing income (i.e., income computed without reference to the deduction on account of split income) is used for purposes of this provision.

Clause 9

Failure to provide identification number

ITA
162(6)

Subsection 162(6) of the Act provides a penalty for failure by any person or partnership to provide their Social Insurance Number, their business number or their U.S. federal taxpayer identification number as required under the Act or a regulation.

Subsection 162(6) is amended to add a reference to trust account numbers to the information subject to a penalty if not provided in accordance with the Act or a regulation. This amendment is consequential on the introduction of the "trust account number" definition.

Clause 10

Regulations respecting information returns

ITA
221(1)(d.1)

Paragraph 221(1)(d.1) of the Act enables the Governor in Council to make regulations requiring any person or partnership to provide certain information to any class of persons who are required to make an information return containing that information.

Paragraph 221(1)(d.1) is amended to extend this regulatory power to require a trust to provide its trust account number to any class of persons required to make an information return containing that information. This amendment is consequential on the introduction of the "trust account number" definition.

Clause 11

Production of Number

ITA
237(1.1)

Subsection 237(1.1) of the Act provides that an individual's Social Insurance Number or a person's or partnership's business number (as applicable) must be provided in any return filed under the Act or at the request of any person required to make an information return in which either number is required.

Subsection 237(1.1) is amended so that the obligation to provide information applies to any "designated number", as defined in new subsection 237(1.2). Subsection (1.1) is also amended so that the obligation to provide a designated number extends to requests by partnerships that are required to make a return in which a designated number is required. This amendment is consequential on the introduction of the "trust account number" definition.

"designated number"

ITA
237(1.2)

New subsection 237(1.2) of the Act defines designated number for the purpose of subsection 237(1.1) as:

- in the case of an individual, their Social Insurance Number;

- in the case of a trust, its trust account number; and
- in any other case, the person's or partnership's business number.

This amendment is consequential on the introduction of the "trust account number" definition.

Number required in information returns

ITA
237(2)

Subsection 237(2) of the Act provides that any person making an information return must make a reasonable effort to obtain the Social Insurance Number or business number of the person or partnership to which the return relates, and cannot release this information, except as set out in the subsection.

Subsection 237(2) is amended in two respects. First, subsection 237(2) is amended to add a reference to partnerships required to make an information return. Second, subsection 237(2) is

amended to apply to situations where a person or partnership is required to make an information return requiring a trust account number. This amendment is consequential on the introduction of the "trust account number" definition.

Authority to communicate number

ITA
237(3)

Subsection 237(3) of the Act permits a person to release information set out in subsection 237(2) to a related person, where the related person is required to make an information return that requires this information. This subsection is of significance in the context of demutualization, as it permits an insurance corporation to release this information to its holding corporation in connection with the holding corporation's responsibility to report dividends and other amounts payable to persons who were policyholders in respect of the insurance corporation.

Subsection 237(3) is amended to add a trust account number to the types of information that can be released to a related person. This amendment is consequential on the introduction of the "trust account number" definition.

Authority to communicate number

ITA
237(4)

Subsection 237(4) of the Act provides further circumstances in which information set out in subsection 237(2) may be released to another person in the context of a demutualization of an insurance corporation.

Subsection 237(4) is amended to add a trust account number to the types of information that can be released under this provision. This amendment is consequential on the introduction of the "trust account number" definition.

Clause 12

Information return

ITA
237.1(7)

Subsection 237.1(7) of the Act imposes an obligation on promoters to make an information return in respect of tax shelters.

Paragraph 237.1(7)(a) is amended to add a reference to trust account numbers of investors to the information that must be included in the tax shelter information return. This amendment is consequential on the introduction of the "trust account number" definition.

Clause 13

Offence with respect to an identification number

ITA
239(2.3)

Subsection 239(2.3) of the Act provides that it is a criminal offence for a person who has been provided with an individual's Social Insurance Number or a taxpayer or partnership's business number pursuant to the Act or regulations to use or communicate the number for other purposes.

Subsection 239(2.3) is amended to add the trust account number to the type of information the improper use of which will constitute a criminal offence. It is also amended so that a person is permitted to use the trust account number of a trust for a purpose for which the person has been authorized in writing by the particular trust. These amendments are consequential on the introduction of the "trust account number" definition.

Clause 14

Definitions

ITA
248

"business number"

The definition "business number" is amended to explicitly exclude a trust account number.

"trust account number"

A "trust account number" means the number (other than a business number) used by the Minister to identify a trust, and of which the Minister has notified the trust.

Clause 15

Investment income

Regulations
201(1)

Subsection 201(1) imposes a requirement on certain persons to provide annual information returns to the Minister of National Revenue and taxpayers in respect of interest and dividend payments. Subparagraph 201(1)(b)(ii) requires a person who makes a payment on account of interest in respect of money on loan to, money on deposit with, or property of any kind deposited or placed with a corporation, association, organization or institution to make an information return.

Subparagraph 201(1)(b)(ii) is amended so that information returns must also be made in respect of interest payments on account of money on loan to, money on deposit with, or property of any kind deposited or placed with a trust. This amendment also clarifies that a partnership is subject to the rule.

Clause 16

Partnership return

Regulations
229(1)

Subsection 229(1) of the Act requires that every member of a partnership that carries on business in Canada, or that is a Canadian partnership or SIFT partnership, file a partnership return. This return must contain certain prescribed information including, for certain individuals who are members of the partnership, their Social Insurance Numbers. This subsection is amended so that the partnership return must also include the business number or trust account number of a partner, as the case may be. This amendment is consequential on the introduction of the "trust account number" definition.