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# **Explanatory Notes Relating to the Income Tax Act and to Other Legislation**

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## **Preface**

These explanatory notes describe proposed amendments to the *Income Tax Act* and other 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 Other Legislation

### Clause 2

#### Division of corporation under foreign laws

*Income Tax Act* (ITA)

15(1.4)(e)

Paragraph 15(1.4)(e) of the *Income Tax Act* (the “Act”) deems a non-resident corporation (the “original corporation”) to have conferred a benefit on its shareholder if, among other conditions, the original corporation is divided under the laws of the foreign jurisdiction that govern the original corporation and the shareholder acquires a share of another corporation as a consequence of the division of the original corporation.

Paragraph 15(1.4)(e) is repealed consequential on the introduction of new subsection 15(1.5). For more information, see the commentary on new subsection 15(1.5).

This amendment applies in respect of divisions that occur after October 23, 2012.

#### Division of corporation under foreign laws

ITA

15(1.5)

New subsection 15(1.5) of the Act provides deeming rules for certain foreign divisive reorganizations. Although paragraph 15(1.5)(a) is situated among the shareholder benefit provisions in section 15, it applies for the purposes of the Act more generally. These rules are intended to provide greater certainty with respect to various tax consequences arising from these transactions. New subsection 15(1.5) replaces paragraph 15(1.4)(e), which is repealed.

Subsection 15(1.5) generally applies to transactions in which a non-resident corporation (the “original corporation”) undergoes a division under foreign law that meets certain conditions. First, the division of the original corporation must result in all or part of its property and liabilities becoming property and liabilities of one or more other non-resident corporations (each, a “new corporation”). Second, as a consequence of the division, a shareholder of the original corporation must acquire one or more shares of a new corporation (the “new shares”). In the divisions that are contemplated by subsection 15(1.5), the new shares are at no time owned by the original corporation. An example of a transaction contemplated by subsection 15(1.5) is certain corporate “escisión” transactions under Mexican law.

The deeming rules in paragraph 15(1.5)(a) address the consequences to a shareholder of the original corporation acquiring shares of the new corporation on a division, but only to the extent that none of the exceptions (from the shareholder-benefit inclusion under subsection 15(1)) in subparagraphs 15(1)(a.1)(i) to (iii) or paragraph 15(1)(b) applies. To the extent that the rules in paragraph 15(1.5)(a) apply, they provide that a shareholder is considered to have received either a dividend-in-kind or shareholder benefit, depending on the circumstances.

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Specifically, if new shares are received by shareholders of each class of shares of the original corporation – in which a particular shareholder holds shares immediately before the division – on a *pro rata* basis in respect of all the shares of that class (the “original shares”), clause 15(1.5)(a)(i)(A) deems the original corporation to have distributed, and the particular shareholder to have received, as a dividend-in-kind in respect of the original shares, the new shares acquired by the particular shareholder as a consequence of the division. The amount of the dividend-in-kind received by the shareholder in respect of an original share is equal to the fair market value, immediately after acquisition, of the new shares acquired by the shareholder in respect of the original share as a consequence of the division. As all or part of the property of the original corporation becomes property of the new corporation as a consequence of the division, it is intended that the fair market value of the new shares acquired by the shareholder as a consequence of the division – and thus the amount of the dividend-in-kind – be determined at a time when such property of the original corporation has become property of the new corporation.

If the conditions in subparagraph 15(1.5)(a)(i) are not met (and to the extent that none of subparagraphs 15(1)(a.1)(i) to (iii) and paragraph 15(1)(b) apply), subparagraph 15(1.5)(a)(ii) deems the original corporation to have conferred a benefit on the shareholder equal to the total fair market value of the new shares acquired by the shareholder as a consequence of the division. The amount of this shareholder benefit is to be included in the shareholder’s income in accordance with subsection 15(1).

Paragraph 15(1.5)(b) deems any gain or loss of the original corporation from the distribution of new shares, as a consequence of the division, to be nil. As noted above, under the divisions contemplated by subsection 15(1.5), the new shares are at no time owned by the original corporation. This deeming rule is not intended to suggest otherwise. It simply counteracts the potential effect of the deemed disposition that could otherwise arise from the application of subsection 52(2) to the distribution that is deemed to occur under clause 15(1.5)(a)(i)(A).

Paragraph 15(1.5)(c) provides that each property of the original corporation that becomes property of the new corporation as a consequence of the division is deemed to be

- disposed of by the original corporation for proceeds of disposition equal to its fair market value; and
- acquired by the new corporation at a cost equal to the amount of those proceeds of disposition.

Deemed dispositions under paragraph 15(1.5)(c) can give rise to tax consequences under the Act (*e.g.*, where the property disposed of is taxable Canadian property or the original corporation is a foreign affiliate of a taxpayer). Consequential on these amendments and in order to ensure that appropriate consequences under the foreign affiliate surplus rules result from such dispositions, amendments are being made to the definition “designated person or partnership” in subsection 5907(1) of the *Income Tax Regulations* (the “Regulations”), and a new rule is being introduced in subsection 5907(2.011) (with consequential changes to subparagraphs 5907(2)(f)(ii) and (j)(iii)). For more information, see the commentary on those provisions.

Subsection 15(1.5) applies in respect of divisions that occur after October 23, 2012.

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**Clause 3****Definition “equity amount”**

ITA  
18(5)

Subsection 18(5) of the Act defines certain expressions, including the term “equity amount”, for the purposes of the “thin capitalization” rules in subsections 18(4) to (8).

Subparagraph (a)(ii) of the definition “equity amount” is amended to exclude any portion of a corporation’s contributed surplus that arose at a time when the corporation was non-resident.

The definition is also amended to exclude any portion of a corporation’s contributed surplus that arose in connection with a disposition to which subsection 212.1(1.1) applied because of subsection 212.1(1). Although the consequences under 212.1(1.1) would not apply to the extent contributed surplus arises, subsection 212.1(1.1) nevertheless applies where the conditions in paragraph 212.1(1) are met. As a result of this amendment, if a non-resident person disposes of shares of a subject corporation to a purchaser corporation for no consideration and the conditions in subsection 212.1(1) are met, any resulting contributed surplus will be excluded in determining the purchaser corporation’s thin capitalization “room”. In effect, this amendment puts contributed surplus on the same footing as paid-up capital (which is reduced under paragraph 212.1(1.1)(b)) for the purposes of the cross-border anti-surplus stripping rule in section 212.1.

These amendments apply in respect of transactions or events that occur after February 26, 2018.

**Clause 4****Definition**

ITA  
54 “proceeds of disposition” (k)

The definition “proceeds of disposition” in section 54 is relevant for the purpose of determining a taxpayer’s capital gain or loss from the disposition of property. Under paragraph (k) of the definition, the portion of those proceeds (otherwise determined) that is deemed to be a dividend under subsection 84.1(1), 212.1(1.1) or 212.2(2) is excluded in determining a taxpayer’s proceeds of disposition.

Consequential on the introduction of the “look-through” rules for partnerships and trusts in new subsections 212.1(5) to (7), paragraph (k) of the definition is amended to ensure that any amount that would otherwise be the proceeds of disposition of property of a partnership does not include an amount that is deemed to be a dividend paid to a member of such partnership (as determined under subsection 212.1(5)) pursuant to subsection 212.1(1.1). This amendment is intended to prevent double taxation in certain cases where paragraph 212.1(6)(b) deems a non-resident member of a partnership to dispose of shares of the capital stock of a corporation resident in Canada that are disposed of by the partnership.

For more information, see the commentaries on subsections 212.1(5) and (6).

These amendments apply in respect of dispositions that occur after February 26, 2018.

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## **Clause 5**

### **Deemed dividend**

ITA

84(1)(c.1) to (c.3)

Subsection 84(1) of the Act deems a dividend to have been paid by a corporation on the shares of a class of its capital stock where the paid-up capital of the class is increased by the corporation in circumstances other than those set out in that subsection. Paragraphs 84(1)(c.1) to (c.3) provide exceptions where the paid-up capital is increased by way of a conversion of contributed surplus in certain circumstances.

Paragraphs 84(1)(c.1) to (c.3) are amended to exclude any portion of a corporation's contributed surplus that arises at a time when the corporation is non-resident. Thus, a deemed dividend will now arise to the extent that contributed surplus created at a time when the corporation was non-resident is subsequently converted into paid-up capital at a time when the corporation is resident in Canada.

Paragraphs 84(1)(c.1) and (c.2) are also amended to exclude any portion of a corporation's contributed surplus that arises in connection with a disposition to which subsection 212.1(1.1) applies because of subsection 212.1(1). Thus, a deemed dividend will now arise to the extent that contributed surplus created in a non-arm's length sale of shares by a non-resident to which subsection 212.1(1.1) applies is converted into paid-up capital. For more information, see the commentary on the definition "equity amount" in subsection 18(5).

Paragraph 84(1)(c.3) is also amended by moving the reference to "subsection 212(1.1)" from subparagraph (i) to the portion of that paragraph before subparagraph (i). This amendment ensures that any portion of a corporation's contributed surplus that arises in connection with a disposition to which subsection 212.1(1.1) applies is excluded for purposes of paragraph 84(1)(c.3), regardless of whether the corporation issues shares in connection with the disposition.

These amendments apply in respect of transactions or events that occur after February 26, 2018.

## **Clause 6**

### **Non-resident corporation shares held by a partnership**

ITA

93.1(1.1)

Where a Canadian-resident corporation owns shares of a non-resident corporation through a partnership, subsection 93.1(1) applies in determining whether the non-resident corporation is a foreign affiliate of the Canadian-resident corporation for the purposes of certain provisions of the Act and Regulations. In those circumstances, subsection 93.1(1) provides a look-through rule that deems the Canadian corporation to own its proportionate number of the non-resident corporation's shares based on the relative fair market value of its interest in the partnership. The



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rule also applies where a foreign affiliate of the Canadian corporation owns shares of another non-resident corporation through a partnership.

Subsection 93.1(1.1) lists the purposes for which the look-through rule in subsection 93.1(1) applies. Paragraph 93.1(1.1)(d) is amended by adding a reference to subsections 95(8) to (12) so as to ensure that foreign affiliate status can flow through a partnership for the purposes of the tracking interest rules in those subsections.

This amendment applies after February 26, 2018.

## **Clause 7**

### **Trading or dealing in indebtedness**

ITA

95(2)(1)

Paragraph 95(2)(1) of the Act includes, in the income from property of a foreign affiliate of a taxpayer, the affiliate's income from a business if the principal purpose of the business is to derive income from trading or dealing in certain indebtedness (which includes the earning of interest on indebtedness). Generally, paragraph 95(2)(1) does not apply to the affiliate if two conditions are satisfied. The first condition requires that the business of the affiliate be described in subparagraph 95(2)(1)(iii) (*i.e.*, a foreign bank, a trust company, a credit union, an insurance corporation or a trader or dealer in securities, the activities of which are, in general terms, locally regulated). The second condition requires that the taxpayer be a person or partnership described in any of clauses 95(2)(1)(iv)(A) to (D) (*i.e.*, a regulated Canadian financial institution, a subsidiary wholly-owned corporation of a regulated Canadian financial institution, a corporation of which a regulated Canadian financial institution is a subsidiary wholly-owned corporation or a partnership each member of which is such a corporation).

Paragraph 95(2)(1) is amended in three respects:

- The condition that the taxpayer be a person or partnership described in any of clauses 95(2)(1)(iv)(A) to (D) is repealed and is effectively replaced with the set of conditions in paragraphs 95(2.11)(a) and (b) (which are in the analogous exception from the “investment business” definition in subsection 95(1)). The latter is effected by amending subsection 95(2.11) such that its conditions apply also for purposes of subparagraph 95(2)(1)(iii). As a result of this amendment, to qualify for the exception from paragraph 95(2)(1), the taxpayer must be a regulated Canadian financial institution that meets a minimum threshold with respect to its equity or its taxable capital employed in Canada. For more information, see the commentary on subsection 95(2.11).
- Paragraph 95(2)(1) is amended to specify that, in order for the conditions in subparagraph 95(2)(1)(iii) to be met, it must be established by the taxpayer or the affiliate that the conditions are met throughout the period in the taxation year during which the business of trading or dealing in indebtedness is carried on by the affiliate. As with the first amendment

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above, this amendment better aligns the exception from paragraph 95(2)(l) with the exception from the “investment business” definition.

- Subparagraph 95(2)(l)(iii) is amended by adding a further condition that is also present in the exception from the “investment business” definition, namely the requirement that the affiliate’s business of trading or dealing in indebtedness must be conducted principally with arm’s length persons.

These amendments apply to taxation years of a foreign affiliate of a taxpayer that begin after February 26, 2018.

### **Rule for “investment business” definition and paragraph 95(2)(l)**

ITA  
95(2.11)

Subsection 95(2.11) of the Act provides that, for the purposes of the definition “investment business” in subsection 95(1), a taxpayer or a foreign affiliate of the taxpayer, as the case may be, is deemed not to have established that the requirements in subparagraph (a)(i) of that definition have been satisfied throughout a period in a taxation year of the affiliate, unless certain additional conditions set out in paragraphs 95(2.11)(a) and (b) have been met.

Subsection 95(2.11) is amended so that the additional conditions set out in paragraphs 95(2.11)(a) and (b) apply also in respect of subparagraph 95(2)(l)(iii). As a result, a taxpayer or a foreign affiliate of the taxpayer, as the case may be, is deemed not to have established that the conditions in subparagraph 95(2)(l)(iii) have been satisfied throughout a period in a taxation year of the affiliate, unless the additional conditions set out in paragraphs 95(2.11)(a) and (b) have been met.

In general, the rules respecting investment businesses (as defined in subsection 95(1)) and those respecting businesses of trading or dealing in certain indebtedness (under subsection 95(2)(l)) ensure that income from those businesses is treated as income from property, unless certain exceptions are met. This amendment is intended to ensure consistency among the exceptions to both sets of rules.

This amendment applies to taxation years of a foreign affiliate of a taxpayer that begin after February 26, 2018.

### **Tracking interests - overview**

ITA  
95(8) to (12)

New subsections 95(8) to (12) of the Act address certain tax consequences under the foreign affiliate rules in the Act in relation to structures that use so-called “tracking arrangements” in respect of foreign affiliates of taxpayers. Tracking arrangements often involve the grouping of assets and activities of multiple shareholders in a common corporation in order to achieve certain tax benefits. In such arrangements, the assets contributed by the shareholders are not truly pooled

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or integrated within the corporation as the economic outcome for each shareholder in respect of their contributed assets is comparable to the outcome that would arise if the assets continued to be held by the shareholder directly or were contributed by each shareholder into separate, wholly-owned corporations. This “tracking” is often effected either through rights attaching to the shares of the common corporation (*e.g.*, through separate share classes) or more indirect interests (*e.g.*, contractual arrangements) with a similar effect.

Two specific measures are introduced to ensure appropriate income tax consequences in cases where there is a tracking arrangement in respect of a foreign affiliate of a taxpayer. The first (the operative rule is in subsection 95(9)) deals with the avoidance of the “investment business” rules contained in subsection 95(1) – a significant component of the “foreign accrual property income” (FAPI) regime applicable to foreign affiliates of Canadian taxpayers. The second, in subsections 95(10) to (12), deals with the avoidance of accrual-based taxation of FAPI through the avoidance of “controlled foreign affiliate” (“CFA”) status. These new rules are intended to provide greater certainty that taxpayers cannot avoid the FAPI regime within the foreign affiliate rules in the Act through the use of tracking arrangements.

### **Tracking interests – interpretation**

ITA  
95(8)

New subsection 95(8) of the Act is an interpretation rule applicable for the new rules dealing with tracking arrangements. It generally provides that, for the purposes of new subsections 95(9) to (12), a property constitutes a tracking interest in a person or partnership (referred to as the “tracked entity”) if

- all or part of the fair market value of the property, or of any payment or right to receive an amount in respect of the property, can reasonably be considered to be determined, directly or indirectly, by reference to certain criteria (enumerated in subparagraphs 95(8)(a)(i) to (iv)) in respect of property and activities (referred to as the “tracked property and activities”) of the person or partnership; and
- the tracked property and activities do not represent all of the property and activities of the person or partnership.

For example, a tracking interest will generally exist if a corporation’s assets and activities are not fully pooled together for the benefit of all of its shareholders, such that one or more shareholders holds shares of a class that derive their value from only some, and not all, of the corporation’s property and activities. The reference in paragraph 95(8)(a) to “any payment or right to receive an amount” is intended to capture cases where the value of the payment or right to receive the amount is not clearly reflected in the fair market value of the taxpayer’s rights (referred to in the legislation as the “particular property”) in respect of the corporation. For example, this could include a discretionary interest in respect of the corporation.

The reference in paragraph 95(8)(a) to the fair market value of the particular property being determined “directly or indirectly” by reference to the enumerated criteria is intended to capture not only circumstances where the tracking is embedded in the terms of shares issued by the

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tracked entity, but also where the tracking is more indirect, such as through a chain of entities that includes the tracked entity or through contractual rights.

In determining whether a property or activity of a tracked entity is part of the tracked property and activities, what is relevant is not whether the value of the property or activity (or another criterion described in subparagraphs 95(8)(a)(i) to (iv) in respect of the property or activity) actually contributes to the fair market value of the tracking interest, but rather whether in principle it would so contribute if the particular property or activity had value. Thus, where, for example, the value of a property or activity does not contribute to the fair market value of shares of the tracked entity owned by a taxpayer because the property or activity is of nil or indeterminate value, this would not in and of itself exclude the property or activity from being part of the tracked property and activities (*i.e.*, it would not necessarily lead to the conclusion that the tracked property and activities do not represent all of the tracked entity's property and activities such that the condition in paragraph 95(8)(b) is met).

### **Tracking interests – *investment business* definition**

ITA  
95(9)

Subsection 95(9) of the Act is one of the main operative rules introduced to address tracking arrangements in the context of foreign affiliates of Canadian taxpayers. It applies for the purpose of the “investment business” definition in subsection 95(1) to deem certain properties and activities that may otherwise be considered to be part of one business to instead constitute two or more separate businesses.

Subsection 95(9) applies, in respect of a foreign affiliate of a taxpayer for a taxation year of the affiliate, if, at any time in the year, a person or partnership holds a tracking interest (within the meaning of subsection 95(8)) in respect of the affiliate or a partnership of which the affiliate is a member. Where applicable, subsection 95(9) deems the tracked properties and activities in respect of each such tracking interest – to the extent they would not otherwise be part of an investment business – to be a separate business carried on by the affiliate throughout the year (and not to be part of any other business of the affiliate). These separate businesses are deemed in respect of every taxpayer of which the tracked entity is a foreign affiliate.

As the investment business rules apply on a business-by-business basis, the intention is that the deeming of a separate business under subsection 95(9) will require, among other things, each separate business to satisfy the “more than five employees” condition in paragraph (c) of the “investment business” definition on its own in order to be excepted from the investment business rules.

In determining whether a deemed separate business meets the conditions for an exception from the “investment business” definition, the characteristics and components of the actual business are to be attributed to the separate business on a reasonable basis (*e.g.*, the necessary employees for the property and activities forming the separate business are to be allocated to the separate business). If the separate business is determined to be an investment business, then income attributable to the tracked property and activities (*i.e.*, the property and activities of the

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separate business) is to be treated as income from an investment business, which is included in the “income from property” (as defined in subsection 95(1)) of a foreign affiliate of a taxpayer.

In many circumstances, business activities that track separately to different tracking interests in a corporation would be expected to constitute separate businesses under general principles, even absent subsection 95(9); this new rule is intended to ensure this result in all cases involving tracking interests.

### **Tracking class – separate corporation**

ITA

95(10) and (11)

New subsections 95(10) and (11) of the Act, together with new subsection 95(12), are intended to prevent the avoidance of CFA status – and therefore accrual-based taxation of FAPI – through the use of tracking arrangements. Subsections 95(10) and (11) address tracking arrangements where the tracking is embedded in shares of a foreign affiliate, and subsection 95(12) applies in respect of all other tracking arrangements involving foreign affiliates.

Tracking arrangements often involve the grouping of assets and activities of multiple shareholders in a common corporation in order to achieve certain tax benefits, but with the economic outcome – and often the degree of control – for each shareholder in respect of their contributed assets and activities being comparable to a situation where the assets and activities had been contributed by each shareholder in separate, wholly-owned corporations. Where the corporation is a foreign affiliate of the shareholder, it is generally appropriate that the affiliate be treated as a CFA in these circumstances.

In general terms, where applicable, the operative rule in subsection 95(11) deems the property and activities of a foreign affiliate of a taxpayer that are tracked under the taxpayer’s tracking interest to be those of a separate, notional corporation – and any shareholders that own shares of the affiliate that track the tracked property and activities to own voting shares of the separate corporation – for certain purposes. This serves two main purposes. First, it ensures that CFA status is determined in relation to the tracked property and activities, rather than the affiliate as a whole. Generally, under these rules, CFA status will arise where the tracked portion of the affiliate would, if it had been a separate corporation, be a CFA of the taxpayer; conversely, CFA status generally will not arise if such a separate corporation would not be a CFA of the taxpayer. Second, where the application of the deemed separate corporation rules results in CFA status, the rules are intended to also ensure appropriate FAPI attribution, by requiring that the taxpayer determine its FAPI income inclusion under subsection 91(1) based on its proportionate entitlement to the income from the tracked property and activities.

Subsection 95(10) provides the conditions for the application of the operative rule in subsection 95(11). In general terms, subsection 95(11) applies in respect of a foreign affiliate of a taxpayer for a taxation year of the affiliate if, at any time in the year,

- the taxpayer holds a tracking interest in respect of the affiliate; and
- shares of a class (referred to as the “tracking class”) of the affiliate, the fair market value of which can reasonably be considered to be determined by reference to the tracked

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property and activities in respect of the taxpayer's tracking interest, are held by the taxpayer or a foreign affiliate of the taxpayer.

While the concept of a "tracking interest" – and thus the scope of application of the residual rule in subsection 95(12) that is based on that concept – is broad, the deemed separate corporation fiction under subsection 95(11) applies in more limited circumstances, namely where the tracking arrangement is effected through a tracking class. However, in order for subsection 95(11) to apply, the taxpayer does not need to own shares of a tracking class; rather, the taxpayer can own shares of an upper-tier foreign affiliate that do not track particular property or activities of the upper-tier affiliate but that nonetheless constitute a tracking interest (within the meaning of subsection 95(8), which includes indirect interests) in respect of a lower-tier foreign affiliate, where the upper-tier affiliate owns shares of a tracking class of the lower-tier affiliate.

Where applicable, subsection 95(11)

- deems the existence of a corporation (referred to as the "separate corporation") that is separate from the actual corporation (referred to as the "actual affiliate") that has issued the shares of the tracking class (paragraph 95(11)(a));
- attributes to that separate corporation the tracked property and activities, any associated rights and obligations, and any income, losses or gains in respect of the tracked property and activities (paragraphs 95(11)(a) to (c)); and
- provides for the share structure of the deemed separate corporation, for the purpose of determining CFA status and attributing the appropriate amount of FAPI to the taxpayer under subsection 91(1), by
  - deeming the separate corporation to have a single class of shares, comprising 100 issued and outstanding shares with full voting rights under all circumstances (paragraph 95(11)(d)), and
  - deeming each shareholder that owns shares of a tracking class to own a number of shares of the single class of the deemed separate corporation that is, in effect, in proportion to the shareholder's economic interest in the income, losses and gains for the year deriving from the tracked property and activities (paragraph 95(11)(e)).

Specifically, paragraph 95(11)(e) deems each shareholder of the actual affiliate to own, at the end of the year, the percentage of the shares of the single class of the deemed separate corporation equal to the shareholder's "aggregate participating percentage" (as defined in subsection 91(1.3)) in respect of the actual affiliate for the year, as determined under the following three assumptions (enumerated in subparagraphs 95(11)(e)(i) to (iii)):

- that the actual affiliate were a CFA of that shareholder at the end of the year (this assumption is necessary to ensure that an aggregate participating percentage can be determined in respect of an actual affiliate that is not in fact a CFA of the shareholder, since subsection 95(1) defines "participating percentage" in respect of an entity that is a CFA of a taxpayer at year-end);
- that the only shares of the actual affiliate at the end of the year were shares of tracking classes in respect of the tracked properties and activities ("tracking class" is defined for

- this purpose in subsection 95(10) – as a class of shares of the actual affiliate, the fair market value of which is determined by reference to the tracked property and activities – and can include classes none of the shares of which are owned by the taxpayer); and
- that the only income, losses or gains of the actual affiliate for the year were those in respect of the tracked property and activities in respect of the taxpayer’s tracking interest. This is intended to ensure that each shareholder is deemed to own shares of the deemed separate corporation in proportion to the shareholder’s entitlement to the income from the tracked property and activities.

Where, based on the deeming rules in paragraphs 95(11)(d) and (e), the deemed separate corporation is a CFA of the taxpayer and the taxpayer is therefore subject to immediate accrual taxation in respect of its FAPI, the deeming rules in subsection 95(11)

- facilitate the computation of that FAPI and the determination of the portion to be attributed to the taxpayer under subsection 91(1);
- allow for the determination of any deductions available to the taxpayer under subsection 91(4) in respect of foreign tax paid; and
- allow for the determination of the taxpayer’s reporting obligations under section 233.4, generally requiring the taxpayer to report on the separate corporation using the more detailed reporting requirements applicable to CFAs.

Otherwise, the normal rules in the Act in respect of foreign affiliates, in particular those dealing with the taxation of dividends received from a foreign affiliate, will continue to apply in respect of the actual affiliate. In order to ensure that amounts included in a taxpayer’s income under subsection 91(1) in respect of the deemed separate corporation, and any related amounts deducted under 91(4), are properly integrated with the taxpayer’s tax results in respect of the actual affiliate – and especially to avoid double taxation when amounts included in the FAPI of the separate corporation are ultimately distributed by the actual affiliate – paragraph 95(11)(f) deems such amounts to be included and deducted, respectively, by the taxpayer in respect of the tracking class of the actual affiliate. In particular, this is intended to ensure appropriate increases and deductions under subsection 92(1) to the adjusted cost base of shares of a foreign affiliate.

### **Tracking interests – controlled foreign affiliate**

ITA  
95(12)

New subsection 95(12) is one of the main operative rules introduced to address tracking arrangements in the context of foreign affiliates of Canadian taxpayers. It is intended to ensure that CFA status is not avoided where a taxpayer has a tracking interest in a foreign affiliate.

Subsection 95(12) is a residual rule that applies in cases where the “separate corporation” rule in subsection 95(11) does not apply because the conditions in subsection 95(10) are not met. More particularly, subsection 95(12) will not apply in respect of a foreign affiliate of a particular taxpayer for a taxation year of the affiliate if subsection 95(11) applies, in respect of the affiliate for the year, in respect of the particular taxpayer. Where two taxpayers have tracking interests in

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respect of an affiliate and subsection 95(11) applies in respect of one taxpayer, that does not preclude subsection 95(12) from applying in respect of the other taxpayer.

For more information, see the commentary on subsections 95(10) and (11).

Subsection 95(12) deems a foreign affiliate of a taxpayer to be a CFA of the taxpayer throughout a taxation year of the affiliate only if, at any time in the year, a tracking interest in respect of the affiliate, or a partnership of which the affiliate is a member, is held by:

- the taxpayer; or
- a person or partnership (referred to as a “holder”) that does not deal at arm’s length with the taxpayer.

Where either the taxpayer or a holder, or both, is a partnership, the rules in subparagraphs 95(12)(b)(ii) and (iii) look to the partnership(s) and members of the partnership(s) in order to determine non-arm’s length status.

The intention of subsection 95(12) is, where the conditions in that subsection are met in respect of a foreign affiliate of a taxpayer, to subject the taxpayer to immediate accrual taxation in respect of the affiliate under the FAPI regime.

New subsections 95(8) to (12) apply to taxation years of a foreign affiliate of a taxpayer that begin after February 26, 2018.

## **Clause 8**

### **Tiered partnerships**

ITA  
96(2.01)

New subsection 96(2.01) of the Act reverses the effect of a 2017 decision of the Federal Court of Appeal (*R v Green*), in which the court held that at least certain portions of section 96 do not apply to partnerships.

Subsection 96(2.01) provides that, for the purposes of section 96, a partnership is a taxpayer. This subsection is introduced to ensure that all portions of section 96 could apply to a partnership that is itself a partner of another partnership.

This amendment applies to taxation years that end after February 26, 2018.

### **Limited partnership losses**

ITA  
96(2.1)

Subsection 96(2.1) of the Act deals with the losses of limited partnerships. This subsection generally limits the deduction by a limited partner of losses to the extent of the limited partner’s “at-risk amount” in respect of a partnership at the end of the fiscal period of the partnership ending in that year.



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Paragraph 96(2.1)(e) is amended to ensure that a limited partner that is itself a partnership is not deemed to have a limited partnership loss for the amount of losses rendered non-deductible by subsection 96(2.1) and cannot carry forward a limited partnership loss under paragraph 111(1)(e).

Paragraph 96(2.1)(f) provides that for a partnership that is a limited partner of another partnership, the losses from the other partnership that can be allocated to the partnership's members is restricted by that partnership's at-risk amount in respect of the other partnership. For the purposes of the calculation of the total of the amounts of the limited partner's share of the losses from the other partnership in paragraph 96(2.1)(a), this amount is to be determined without reference to the denial of a loss in paragraph (f).

This amendment applies to taxation years that end after February 26, 2018.

### **Tiered partnerships – adjustments**

ITA  
96(2.11)

New subsection 96(2.11) of the Act provides that an ultimate partner in a tiered partnership structure cannot deduct under section 111 in a taxation year that ends after February 26, 2018 partnership losses incurred in a taxation year that ended prior to February 27, 2018 that would have been reduced if subsection 96(2.01) and paragraph 96(2.1)(f) applied.

The adjusted cost base to the ultimate partner of a partnership interest in the tiered partnership structure will be increased by the amount that was denied as a deduction under section 111 by new paragraph 96(2.11)(a) to the extent that the amount can reasonably be considered to relate to an amount that was a loss previously deducted from the adjusted cost base under subparagraph 53(2)(c)(i). This subsection applies only to taxpayers that are not partnerships.

This new subsection is intended to preclude retrospective planning to carry forward losses arising in taxation years that ended before February 27, 2018.

### **Clause 9**

#### **Deductions for payments**

ITA  
110(1)(f)(v)(A)

Subsection 110(1) of the Act provides various deductions to be claimed in computing a taxpayer's taxable income.

Subparagraph 110(1)(f)(v) provides a deduction in the computation of taxable income for employment income earned by members of the Canadian Forces and police officers serving on a deployed international operational mission as determined by the Minister of National Defence or that Minister's designate up to a maximum amount for the 2017 and subsequent taxation years.

Clause 110(1)(f)(v)(A) is amended so that, for the 2017 and subsequent taxation years, a deduction is available for members of the Canadian Forces and police officers who are serving

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on a deployed international operation mission as determined by the Minister of Public Safety and Emergency Preparedness or a designate of that Minister, in addition to missions determined by the Minister of National Defence or designate.

For taxation years prior to 2017, the amendments extend the deduction to be available (provided certain conditions are met) for members of the Canadian Forces and police officers serving on a deployed operational mission as determined by the Department of Public Safety and Emergency Preparedness.

## **Clause 10**

### **Dividend rental arrangements - exception**

ITA

112(2.31)(b)

Subsection 112 (2.31) of the Act provides an exception to the application of subsection 112(2.3) to a dividend received in a particular period if:

- the dividend rental arrangement is a dividend rental arrangement because of paragraph (c) of the definition “dividend rental arrangement” in subsection 248(1) (*i.e.*, it involves a synthetic equity arrangement)); and
- the taxpayer establishes that, throughout the particular period, no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share because of the synthetic equity arrangement or a specified synthetic equity arrangement).

A taxpayer is considered to have satisfied the conditions described in paragraph 112(2.31)(b) if it meets the requirements of paragraph (a), (b), (c) or (d) of subsection 112(2.32). Each of these paragraphs allows the taxpayer to satisfy this condition by obtaining certain specified representations from its synthetic equity arrangement counterparty or counterparties.

Paragraph 112(2.31)(b) is amended to provide that, to fall within the exception, the taxpayer must establish that, throughout the particular period, no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share.

This amendment clarifies that the exception in subsection 112(2.31) cannot be met when a tax-indifferent investor or group of tax-indifferent investors obtains all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share, in any way, including because of the synthetic equity arrangement or a specified synthetic equity arrangement in respect of the share.

This amendment applies to dividends that are paid, or become payable, after February 26, 2018.

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## Representations

ITA

112(2.32)

Subsection 112(2.32) of the Act sets out rules under which a taxpayer is able to satisfy the condition in paragraph 112(2.31)(b) by obtaining certain specified representations in writing from its synthetic equity arrangement counterparty or counterparties.

ITA

112(2.32)(a)(ii)

Paragraph 112(2.32)(a) of the Act applies to a single synthetic equity arrangement. Subparagraph 112(2.32)(a)(ii) is amended to provide that a taxpayer must obtain a representation from its synthetic equity arrangement counterparty or counterparties that all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection 112(2.31) has not been eliminated and cannot be expected by it to be eliminated. This amendment is consequential on the amendment to paragraph 112(2.31)(b).

For more information, see the commentary on paragraph 112(2.31)(b).

This amendment applies to dividends that are paid, or become payable, after February 26, 2018.

ITA

112(2.32)(b)(iii)(B)

Paragraph 112(2.32)(b) of the Act applies to back-to-back chains of agreements or arrangements where the final counterparty is either a single counterparty or an affiliated group of counterparties.

Clause 112(2.32)(b)(iii)(B) is amended to provide that a taxpayer must obtain a representation from its synthetic equity arrangement counterparty or counterparties that it has obtained a representation from each of its specified counterparties that all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection 112(2.31) has not been eliminated and cannot be expected by it to be eliminated. This amendment is consequential on the amendment to paragraph 112(2.31)(b).

For more information, see the commentary on paragraph 112(2.31)(b).

This amendment applies to dividends that are paid, or become payable, after February 26, 2018.

ITA

112(2.32)(c)(iii)(B)

Paragraph 112(2.32)(c) of the Act applies to back-to-back chains of agreements or arrangements where the final counterparties deal at arm's length with each other, and generally allows a taxpayer to indirectly obtain representations in respect of certain arrangements that would not have constituted synthetic equity arrangements had they been entered into directly by the taxpayer with the final counterparties.

Clause 112(2.32)(c)(iii)(B) is amended to provide that a taxpayer must obtain a representation

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from its synthetic equity arrangement counterparty or counterparties that it has obtained a representation from each of its specified counterparties that all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection 112(2.31) has not been eliminated and cannot be expected by it to be eliminated. This amendment is consequential on the amendment to paragraph 112(2.31)(b).

For more information, see the commentary on paragraph 112(2.31)(b).

This amendment applies to dividends that are paid, or become payable, after February 26, 2018.

### **End of particular period**

ITA

112(2.33)

Subsection 112(2.33) of the Act is intended to ensure that the exception in subsection 112(2.31) is only available for the period during which the representations that have been provided remain accurate.

Subsection 112(2.33) is amended to provide that, if at a time during a particular period, a counterparty, specified counterparty, affiliated counterparty or affiliated specified counterparty reasonably expects to become a tax-indifferent investor, or if it has provided a representation described by subparagraph 112(2.32)(a)(ii) or clause 112(2.32)(b)(iii)(B) or (c)(iii)(B) in respect of the share, that all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share will be eliminated, the particular period for which it has provided a representation in respect of the share is deemed to end at that time. This amendment is consequential on the amendment to paragraph 112(2.31)(b).

For more information, see the commentary on paragraph 112(2.31)(b).

This amendment applies to dividends that are paid, or become payable, after February 26, 2018.

### **Adjustment re dividends**

ITA

112(5.2)

Subsection 112(5.2) of the Act is a stop-loss rule that applies, in certain circumstances, to the disposition of a share by a taxpayer that is a financial institution, if the share is mark-to-market property to the taxpayer.

Where subsection 112(5.2) applies, the taxpayer's proceeds from the disposition of the share are determined by the formula  $A + B - (C - D)$ .

Variable A is the taxpayer's proceeds before the application of subsection 112(5.2).

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Variable B is the lesser of

- the loss (if any) from the disposition that would be determined before the application of subsection 112(5.2) if the cost of the share were determined without regard to certain provisions that specify the cost of property to a taxpayer; and
- the total of the deductible taxable dividends and the non-taxable dividends received by the taxpayer on the share
  - in the case of a partnership, taxable dividends are included in the total to the extent that they are deductible to members of the partnership;
  - and in the case of a trust, taxable dividends are included in the total to the extent that they have been allocated to beneficiaries of the trust.

Variable C is the sum of

- amounts by which subsection 112(5.2) increased the taxpayer's proceeds on deemed dispositions of the share before the current disposition;
- where the taxpayer is a corporation or trust, amounts by which losses of the taxpayer on deemed dispositions of the share before the current disposition were reduced by the stop-loss rule in subsection 112(3), (3.2), (4) or (4.2); and
- where the taxpayer is a partnership, amounts by which losses of members of the taxpayer on deemed dispositions of the share before the current disposition were reduced by the stop-loss rule in subsection 112(3.1) or (4.2).

Variable D is the amounts by which subsection 112(5.2) decreased the taxpayer's proceeds on deemed dispositions of the share before the current disposition.

Subsection 112(5.2) is amended so that, if the taxpayer received a dividend under subsection 84(3) in respect of the share, variable B always equals the second of the two amounts in the above "lesser of" formula. In cases where the taxpayer has not received a dividend under subsection 84(3) in respect of the share, variable B remains unchanged.

In general terms, this amendment is intended to prevent a taxpayer from realizing a loss on a share repurchase that exceeds any mark-to-market income previously realized with respect to the share and taxed in the hands of the taxpayer. To the extent that the repurchased share was fully hedged, which is typically the case, any mark-to-market income realized on the share due to its increase in value would be fully offset under the hedge and the taxpayer would generally have paid no net income tax in respect of that share. In this context, the amendment generally limits a loss on the repurchase of a share to the excess, if any, of the mark-to-market cost of the share (in contrast to the original cost) over its redemption price.

Subsection 112(5.2) is also amended to correct a reference not previously updated. The existing incorrect reference in subparagraph (c) of the description of C to subsection 112(4.2) is corrected by changing the reference to subsection 112(4).

*Example 1*

*In 2009, Bank A acquired 100 shares of XYZ Corporation, which represent less than 5% of the issued shares, at a price of \$800. In January 2019, XYZ Corporation repurchased its 100 shares owned by Bank A pursuant to a private agreement for \$1,400 when their trading price was also \$1,400. At the time of the repurchase, the paid-up capital of the shares was \$200 and their market-to-market cost was \$1,400. Over the course of Bank A's holding period, the shares were hedged with a taxable Canadian counterparty and Bank A received \$200 of actual dividends on these shares.*

*The tax consequences of the share repurchase for Bank A would be as follows:*

<i>S. 84(3) Deemed Dividend Inclusion</i>	<i>S. 142.5(1) Loss</i>
<i>Redemption price: \$1,400</i>	<i>Redemption price: \$1,400</i>
<i>(minus)</i>	<i>(minus)</i>
<i>PUC: <u>\$200</u></i>	<i>S. 142.5(4) deduction: \$1,200</i>
	<i>plus</i>
<i>Deemed dividend: \$1,200</i>	<i>S. 112(5.2) adjustment: <u>\$1,200</u></i>
<i>(minus)</i>	
<i>S. 112(1) deduction: <u>\$1,200</u></i>	<i>Adjusted POD: \$1,400</i>
	<i>(minus)</i>
<i>Net dividend inclusion: nil</i>	<i>MTM cost: <u>\$1,400</u></i>
	<i>Deductible loss: nil</i>

*In particular, given that the shares were not repurchased in the “open market”, Bank A is deemed under subsection 84(3) to have received a dividend equal to the excess of the redemption price over the paid-up capital of the shares. Bank A claims an inter-corporate dividend deduction under subsection 112(1) on that deemed dividend. This inter-corporate dividend deduction would generally be available to the extent there is no “dividend rental arrangement” of Bank A in respect of the shares.*

*In calculating its proceeds, Bank A deducts the amount of the deemed dividend under subsection 84(3) from the redemption price under new subsection 142.5(4).*

*In these circumstances, amended subsection 112(5.2) will increase the proceeds otherwise determined by the amount of the deemed dividend under subsection 84(3).*

The amount of actual dividends received on the shares is not included in the adjustment made under subsection 112(5.2) because the dividends qualify as excluded dividends under subsection 112(5.21). New subsection 112(9.1) would apply to ensure that the shares meet the 365-day holding period requirement in subsection 112(5.21) even though they were hedged during the entire period they were held by Bank A.

### Example 2

Assume the same facts as Example 1 except that both the redemption price and the trading price of the shares at the time of repurchase are \$1,500.

The tax consequences of the share repurchase for Bank A would be as follows:

<i>S. 84(3) Deemed Dividend Inclusion</i>		<i>S. 142.5(1) Loss</i>	
<i>Redemption price:</i>	<i>\$1,500</i>	<i>Redemption price:</i>	<i>\$1,500</i>
<i>(minus)</i>		<i>(minus)</i>	
<i>PUC:</i>	<i><u>\$200</u></i>	<i>S. 142.5(4) deduction:</i>	<i>\$1,300</i>
		<i>plus</i>	
<i>Deemed dividend:</i>	<i>\$1,300</i>	<i>S. 112(5.2) adjustment:</i>	<i><u>\$1,300</u></i>
<i>(minus)</i>			
<i>S. 112(1) deduction:</i>	<i><u>\$1,300</u></i>	<i>Adjusted POD:</i>	<i>\$1,500</i>
		<i>(minus)</i>	
<i>Net dividend inclusion:</i>	<i>nil</i>	<i>MTM cost:</i>	<i><u>\$1,400</u></i>
		<i>Profit inclusion:</i>	<i>\$100</i>

In this example, the shares have increased \$100 in value from the last year-end of Bank A when their mark-to-market cost was determined to the repurchase date in January 2019. To the extent that the shares were hedged during that stub period, Bank A would have realized a \$100 loss under the hedge. The profit inclusion of \$100 under subsection 142.5(1) offsets that \$100 loss.

For more information, see the commentary on subsection 112(5.21) and new subsections 112(9.1) and 142.5(4).

This amendment applies in respect of dispositions that occur after February 26, 2018.

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**Subsection (5.2) – excluded dividends**

ITA

112(5.21)

Subsection 112(5.21) of the Act provides an exception to the stop-loss rule under subsection 112(5.2). This exception applies where a dividend was received on a share that the taxpayer held throughout the 365-day period that ended immediately before the disposition of the share and when the taxpayer and persons with whom the taxpayer did not deal at arm's length held in total 5% or less of the issued shares of any class of the capital stock of the dividend-paying corporation. This exception is limited to cases where the taxpayer received dividends on the share other than under subsection 84(3).

Subsection 112(5.1) is amended to replace a reference in its preamble to paragraph (b) of the description of B in subsection 112(5.2) with a reference to subparagraph (b)(ii) of the description of B in subsection 112(5.2). This amendment is consequential on an amendment to subsection 112(5.2).

For more information, see the commentary on subsection 112(5.2).

This amendment applies in respect of dispositions that occur after February 26, 2018.

**Exception**

ITA

112(9.1)

New subsection 112(9.1) provides an exception to the holding period test under subsection 112(8).

Subsection 112(8) provides that, if a synthetic disposition arrangement is entered into in respect of a property owned by a taxpayer and the synthetic disposition period in respect of the synthetic disposition arrangement is 30 days or more, then for the purposes of the listed exceptions to the stop-loss rules, the taxpayer is deemed not to own the property during the synthetic disposition period.

Subsection 112(9.1) provides that subsection 112(8) does not apply for the purpose of the 365-day ownership requirement under paragraph 112(5.21)(b) in respect of a dividend received on a share referred to in paragraph (a) of the description of B in subsection 112(5.2) during a synthetic disposition period of a synthetic disposition arrangement in respect of that share.

The exception under new subsection 112(9.1) is intended to ensure that an actual dividend received on a share prior to its repurchase, which absent the application of subsection 112(8) would qualify as an excluded dividend under subsection 112(5.21), will not increase the proceeds of disposition otherwise determined pursuant to subsection 112(5.2) unless a synthetic disposition arrangement with respect to the share was entered into after the payment of the actual dividend in order to meet the 365-day ownership requirement under paragraph 112(5.21)(b).

For more information, see the commentary on subsection 112(5.2).

This amendment applies in respect of dispositions that occur after February 26, 2018.



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## **Clause 11**

### **Definitions**

ITA  
122.6

Section 122.6 of the Act defines a number of terms which apply for purposes of the Canada Child Benefit.

#### ***“eligible individual”***

The definition “eligible individual” in section 122.6 describes certain requirements for an individual to be eligible for the Canada Child Benefit. Paragraph (b) of that definition sets out the requirement that an individual be a parent of a qualified dependant. The extended definition of “child” in section 252 of the Act includes a child who is wholly dependent on another individual and is a child of whom the individual has, in law or in fact, custody and control.

In cases where an individual (other than a legal parent of the child) receives a social assistance payment in respect of the child, a concern has been expressed that the child may no longer be considered wholly dependent on the individual thus making the individual ineligible for the Canada Child Benefit. These social assistance payments are sometimes made to an individual under a program of the Government of Canada or a provincial government for the care and upbringing, on a temporary basis, of a child in need of protection (generally known as kinship programs).

The definition of “eligible individual” is amended in order to clarify that an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of a child under a program of the Government of Canada or a government of a province. An individual will still have to meet all other eligibility requirements under section 122.6 in order to be eligible for the Canada Child Benefit. This amendment does not apply to foster arrangements whereby a special allowance under the *Children’s Special Allowances Act* is payable in respect of a foster person.

This amendment is deemed to have come into force on January 1, 2008.

## **Clause 12**

### **Definitions**

ITA  
122.7(1)

Subsection 122.7(1) of the Act defines a number of terms for purposes of the Canada Workers Benefit (CWB), which replaces the Working Income Tax Benefit.

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***“adjusted net income”***

To ensure that the CWB is available only to low-income individuals, the CWB is gradually reduced for individuals whose “adjusted net income” (or, where applicable, the combined adjusted net income of the individual and his or her cohabitating spouse or common-law partner) exceeds certain thresholds. In this respect, the definition “adjusted net income” is a key component of the computation of the CWB.

An individual’s adjusted net income for a taxation year is the individual’s net income for the year adjusted to include amounts that would otherwise be excluded from income because of paragraph 81(1)(a) (amounts exempt from income under another enactment of Parliament other than a tax treaty) or subsection 81(4) (the first \$1,000 of an allowance received as an emergency volunteer). There are also certain items that are excluded from an individual’s net income for purposes of this definition.

The definition “adjusted net income” is amended in order to remove, from the inclusion in the computation of an individual’s adjusted net income for a taxation year, income that is excluded pursuant to paragraph 81(1)(a) or subsection 81(4). However, pursuant to new subsection 122.7(1.1), an individual may choose to include these amounts in the definition of working income under this subsection, in which case the relevant amounts will also be included for the purposes of computing adjusted net income. For more information, see the commentary on subsection 122.7(1.1).

***“working income”***

The definition “working income” is relevant in determining if an eligible individual qualifies for the CWB in a taxation year.

An individual’s working income for a taxation year is the total of the individual’s income from employment (determined without reference to the deductions allowed in section 8 of the Act) and from research grants, fellowships, scholarships, bursaries or prizes included under paragraph 56(1)(n) or (o) or amounts received under the *Wage Earner Protection Program Act* and from any business carried on by the individual (otherwise than as a specified member of a partnership). An individual’s working income for a taxation year also includes any of these amounts that would, but for paragraph 81(1)(a) and subsection 81(4), be included in the individual’s income for the year. Paragraph 81(1)(a) excludes income amounts that are exempt from income under another enactment of Parliament other than a tax treaty while subsection 81(4) excludes the first \$1,000 of an allowance received by an emergency volunteer.

The definition “working income” is amended to exclude from the computation of an individual’s working income for a taxation year income that is excluded pursuant to paragraph 81(1)(a) or subsection 81(4). However, pursuant to new subsection 122.7(1.1), an individual may still include these excluded amounts in determining that individual’s working income. For more information, see the commentary on subsection 122.7(1.1).

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The amendments to the definitions “adjusted net income” and “working income” apply as of January 1, 2019.

### **Optional amounts**

ITA

122.7(1.1)

An individual’s “working income”, and if applicable, the “working income” of the individual’s co-habiting spouse or common-law partner for a taxation year, is relevant in determining the amount of the individual’s CWB entitlement, if any, for the taxation year. An individual’s working income for a taxation year is the total of the individual’s income from employment (determined without reference to the deductions allowed in section 8 of the Act) and from research grants, fellowships, scholarship, bursaries or prizes included under paragraphs 56(1)(n) or (o) or amounts received under the *Wage Earner Protection Program Act* and from any business carried on by the individual (otherwise than as a specified member of a partnership).

An individual’s “adjusted net income” is relevant to ensure that the CWB is available only to low-income individuals. The CWB is gradually reduced for individuals whose “adjusted net income” (or, where applicable, the combined adjusted net income of the individual and their cohabitating spouse or common-law partner) exceeds certain thresholds.

New subsection 122.7(1.1) allows an individual to include amounts in the individual’s working income (as defined in subsection (1)) that would normally be excluded from working income because of paragraph 81(1)(a) or subsection 81(4). Subsection 122.7(1.1) provides that an individual who chooses to include these amounts in the calculation of the individual’s working income must also include the amounts that would be excluded under paragraph 81(1)(a) or subsection 81(4) from the working income of that individual’s eligible spouse, if applicable. Furthermore, where an individual includes these amounts in working income, the individual must also include the amounts that would normally be excluded from adjusted net income (as defined in subsection 122.7(1)) because of paragraph 81(1)(a) or subsection 81(4) in calculating that individual’s and, if applicable, the eligible spouse of that individual’s, adjusted net income.

Choosing to include these amounts may increase the CWB entitlement of certain individuals, such as individuals who would otherwise have insufficient working income to qualify for the credit.

These amendments apply as of January 1, 2019.

### **Deemed payment on account of tax**

ITA

122.7(2)

Section 122.7 of the Act provides the CWB, a refundable credit for low-income individuals and families, who have earnings from employment or self-employment (“working income”). Subsection 122.7(2) provides for the calculation of the “basic” CWB and subsection (3) provides

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the CWB “disability supplement”. To receive the basic CWB for a taxation year, subsection (2) provides that an eligible individual must file a return of income for the year and apply for the CWB.

Subsection (2) is amended to remove the requirement that an individual must apply for the CWB in order to receive an amount under this subsection.

This amendment applies as of January 1, 2019.

### **Only one eligible individual**

ITA

122.7(5)

Subsection 122.7(5) of the Act provides that where an eligible individual and an eligible spouse of the eligible individual both make a claim under subsection 122.7(2) for the “basic” CWB, the amount of the basic CWB is deemed to be nil. This provision is intended to ensure that a couple does not file duplicate claims for the basic CWB. The terms “eligible individual” and “eligible spouse” are defined in subsection 122.7(1).

Consequential on the removal of the requirement that a person must apply for the basic CWB, subsection 122.7(5) is amended to introduce special rules that apply where both an individual and their spouse would otherwise qualify as an eligible individual for the purposes of the CWB.

New paragraph (a) of subsection 122.7(5) provides that where an individual and their spouse would both otherwise qualify as eligible individuals and the individual and their spouse agree which of them should qualify as the eligible individual for the taxation year, only the individual that is agreed upon as the eligible individual shall be an eligible individual for the year for the purposes of the basic CWB under subsection (2).

New paragraph (b) of subsection 122.7(5) provides that where the two individuals cannot agree, only the individual that the Minister of National Revenue designates shall be an eligible individual for the year for the purposes of the basic CWB under subsection 122.7(2).

This amendment applies as of January 1, 2019.

### **Special rules for eligible dependant**

ITA

122.7(10)

Subsection 122.7(10) of the Act deems a child not to be an eligible dependant of an individual for a taxation year if the child is also an eligible dependant of another individual for the year and both individuals identify the child as an eligible dependant for purposes of the “basic” CWB or the CWB “disability supplement”. This provision is intended to ensure that not more than one parent identifies the child as an eligible dependant in the taxation year.

Consequential on the removal of the requirement that a person must apply in order to receive the basic CWB, subsection 122.7(1) is amended to introduce special rules to provide that only one individual may claim a child as an eligible dependant for a taxation year.

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New paragraph (a) of subsection 122.7(10) provides that where there is more than one individual who would otherwise be eligible to claim a child as an eligible dependant, the individuals can agree on which of them the child will be deemed to be an eligible dependant of a taxation year.

New paragraph (b) of subsection 122.7(10) provides that where the two individuals cannot agree, the child will be deemed to be an eligible dependant only of the individual designated by the Minister of National Revenue.

This amendment applies as of January 1, 2019.

## **Clause 13**

### **Climate Action Incentive**

ITA

122.8

New section 122.8 of the Act provides a refundable tax credit for individuals in respect of certain amounts specified by the Minister of Finance for a province for a taxation year. The amount of any tax credit under this section is deemed to be a rebate in respect of charges levied under Part 1 of the Greenhouse Gas Pollution Pricing Act. For the purposes of these notes, this refundable tax credit will be referred to as the “climate action incentive credit”.

New section 122.8 applies to the 2018 and subsequent taxation years.

### **Definitions**

ITA

122.8(1)

Subsection 122.8(1) of the Act defines a number of terms for the purposes of section 122.8, which contains the climate action incentive credit.

“Cohabiting spouse or common-law partner” has the same meaning as in section 122.6 (the Canada Child Benefit). A cohabiting spouse or common-law partner of an individual is therefore the individual’s spouse or common-law partner, provided they are not living separate and apart from the individual. For the purposes of the definition, two individuals will not be considered to be living separate and apart at any time unless they were living separate and apart at that time as a result of the breakdown of their marriage or common-law partnership for a period of at least 90 days that includes that time.

An individual (other than a trust) is an “eligible individual” for a taxation year if, at the end of the taxation year, the individual is 18 years of age or older, a parent, married or in a common-law partnership. Eligible individuals can, provided certain conditions are met, claim the climate action initiative credit under subsection (4).

A “qualified dependant” of an individual for a taxation year is defined as a person who, at the end of the taxation year,

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- is the individual's child or is dependent for support on the individual or on the individual's cohabiting spouse or common-law partner;
  - resides with the individual;
  - is under the age of 18 years;
  - is not an eligible individual for the taxation year; and
  - is not a qualified relation of any individual for the taxation year.

Qualified dependants of an eligible individual factor into the climate action initiative credit formula in subsection (4) primarily in the descriptions of C and D, but may also be relevant for the purpose of subparagraph (a)(ii) of the description of B if the eligible individual is a single parent.

A "qualified relation" of an individual for a taxation year is the person, if any, who, at the end of the taxation year, is the individual's cohabiting spouse or common-law partner. Qualified relations factor into the climate action initiative credit formula in subsection (4) in the descriptions of B.

A "return of income", for a person for a taxation year, is the person's return of income (other than a return under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed, or that would be required to be filed if the person had tax payable, for the taxation year.

### **Persons not eligible individuals, qualified relations or qualified dependants**

ITA  
122.8(2)

Subsection 122.8(2) of the Act provides that the climate action incentive credit is not available in respect of certain individuals. Specifically, the climate action incentive credit is not available in relation to a taxation year in respect of

- individuals who have died before April of the following taxation year;
- prisoners confined for a period of at least 90 days during the taxation year;
- individuals who are non-residents of Canada at any time in the taxation year;
- individuals who are officers or servants of a foreign country at any time in the taxation year; and
- individuals in respect of whom an allowance is payable under the *Childrens' Special Allowances Act* at any time in the taxation year.

### **Residence**

ITA  
122.8(3)

Subsection 122.8(3) of the Act provides an interpretive rule to determine an individual's place of residence for the purposes of the climate action incentive credit in situations where the individual

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has more than one place of residence. The rule provides that an individual is considered to reside only at their principal place of residence.

For example, an individual who has a principal place of residence inside of a census metropolitan area and a cottage outside of the census metropolitan area will be considered to reside only at their principal place of residence for the purposes of determining the individual's climate action incentive credit.

### **Deemed payment on account of tax**

ITA

122.8(4)

Subsection 122.8(4) of the Act provides for the calculation of the climate action incentive credit. The amount of an individual's credit is determined by the formula in this subsection and is deemed to be a payment of tax by the individual at the end of a taxation year. To be eligible for the credit, an eligible individual (as defined in subsection (1)) must file a return of income for the taxation year and make a claim under subsection (4).

The Minister of Finance may specify amounts for eligible individuals, qualified relations and qualified dependants for a taxation year for a province. If the Minister does not specify one of these amounts, subsection (5) deems the amount to be nil. For more information, see the commentary on subsection (5).

Variable A in the formula equals the amount specified by the Minister of Finance for a taxation year for eligible individuals who reside in the province in which the eligible individual resides (referred to in subsection (4) as the "relevant province") at the end of the taxation year. As noted above, if the Minister of Finance does not specify such an amount, the amount determined for A will be nil.

Variable B of the formula is generally relevant in respect of a qualified relation (the individual's cohabiting spouse or common-law partner) of the eligible individual. If the eligible individual has a qualifying relation at the end of the taxation year, the amount determined for B will equal the amount specified by the Minister of Finance for the year for the relevant province for a qualified relation. However, if the eligible individual does not have a qualified relation but does have a qualified dependant (*i.e.*, the individual is a single parent) at the end of the taxation year, then the amount determined for B will also equal the amount specified for a qualified relation because of subparagraph (a)(ii). If an eligible individual has neither a qualifying relation nor a qualifying dependant at the end of the taxation year, the amount determined for B will be nil.

Variables C and D of the formula provide that an eligible individual is entitled to claim an amount specified by the Minister of Finance for the year for the relevant province for each qualified dependant of the eligible individual at the end of the taxation year, other than a qualified dependant in respect of whom an amount was already included in determining the amount for B because of its subparagraph (a)(ii) (*i.e.*, a qualified dependant for whom a qualified relation amount has already been added). And so, if an eligible individual has no qualifying

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dependants at the end of the taxation year (other than qualifying dependants in respect of whom an amount was included under B), the amount determined for D will be nil and the product of C and D will therefore be nil.

Variable E of the formula provides a 10% increase in the amount of the climate action incentive credit for individuals who live outside of a census metropolitan area (as determined in the last census published by Statistics Canada before the taxation year), provided the eligible individual resides in a province for which there is a census metropolitan area.

### **Authority to specify amounts**

ITA  
122.8(5)

Subsection 122.8(5) of the Act provides the Minister of Finance with the authority to specify the amounts for a province for a taxation year for an eligible individual, a qualified relation and a qualified dependant.

Subsection (5) also provides that, if the Minister does not specify an amount for an eligible individual, a qualified relation or a qualified dependant for the purposes of this section for a taxation year for a province, then the amount for an eligible individual, a qualified relation or a qualified dependant, as the case may be, for that taxation year for that province is deemed to be nil. Therefore, if the Minister does not specify such amounts for a taxation year for a particular province, then individuals in that province will not qualify for a climate action incentive credit in respect of that year.

### **Deemed rebate in respect of fuel charges**

ITA  
122.8(6)

Subsection 122.8(6) provides that the amount deemed by section 122.8 to have been paid on account of tax payable for a taxation year is deemed to have been paid in the year following the taxation year as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act*.

### **Only one eligible individual**

ITA  
122.8(7)

Subsection 122.8(7) of the Act provides that, where an individual is a qualified relation of another individual for a taxation year, only one individual may claim the climate action incentive credit in respect of the individual for a taxation year. This ensures that an individual and their cohabiting spouse or common-law partner cannot both receive the climate action incentive credit in respect of a taxation year.



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### **Exception re qualified dependant**

ITA

122.8(8)

Subsection 122.8(8) of the Act stipulates who is eligible to receive the climate action incentive credit in respect of a qualified dependant if more than one person would otherwise be eligible. Paragraph (a) allows those persons to agree as to which of them can receive the credit. If they do not agree, paragraph (b) permits the Minister of National Revenue to designate who is eligible to receive the credit.

### **Effect of bankruptcy**

ITA

122.8(9)

Subsection 122.8(9) of the Act is a special rule that applies in computing the climate action incentive credit where an individual becomes bankrupt in a taxation year. It provides that, notwithstanding subsection 128(2) (which provides a short taxation year in the event of bankruptcy), any reference to the taxation year of a bankrupt individual is deemed to be a reference to a calendar year.

## **Clause 14**

### **Immigration**

ITA

128.1

Section 128.1 of the Act sets out the income tax effects of becoming or ceasing to be resident in Canada.

Paragraph 128.1(1)(c.1) provides that if an immigrating corporation (Forco) at the time of immigration holds a share of a corporation resident in Canada (Canco), Canco is deemed to have paid a dividend to Forco immediately before the time at which Forco is deemed to dispose of its Canco shares as a result of its immigration. Generally, the deemed dividend is equal to the amount by which the fair market value of the share exceeds the paid-up capital in respect of the share, and is subject to non-resident withholding tax under Part XIII of the Act.

Section 128.1 is amended by adding new subsection 128.1(1.2), which contains a “look-through” rule for trusts and partnerships for the purpose of applying paragraph 128.1(1)(c.1). This rule is similar to the rule in new paragraph 212.1(6)(d), which is part of the new set of look-through rules being introduced to the anti-surplus stripping rules in section 212.1. For more information, see the commentary on new subsection 212.1(6).

New subsection 128.1(1.2) provides that, for the purposes of paragraph 128.1(1)(c.1), if shares of a corporation resident in Canada are owned by a trust or partnership (each referred to as a “conduit”), each person or partnership with an interest as a beneficiary under the conduit or that is a member of the conduit (each referred to as a “holder”), as the case may be, is deemed to own the shares in proportion to its interest in the conduit. More specifically, the holder is deemed to

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own the proportion of the number of shares of each class that are owned by the conduit that the fair market value of the holder's interest in the conduit is of the fair market value of all interests in the conduit.

If, for example, Forco holds a 50% interest in a conduit that owns 100 shares of Canco, subsection 128.1(1.2) will deem Forco to own 50 of the shares of Canco held by the conduit for the purpose of paragraph 128.1(1)(c.1). In certain circumstances, this could result in paragraph 128.1(1)(c.1) deeming Canco to have paid a dividend to Forco immediately before the time at which Forco is deemed to dispose of its Canco shares.

Because new subsection 128.1(1.2) applies also for purposes of itself, it will generally apply iteratively through tiers of conduits, thus ensuring that paragraph 128.1(1)(c.1) can apply in respect of tiered structures. For example, if Forco holds a 50% interest in a first conduit that holds a 50% interest in a second conduit that holds 100 shares of Canco, the first conduit would be deemed to hold 50% of the 100 shares of Canco held by the second conduit. Forco would then be deemed to hold 50% of the 50 shares of Canco that are deemed to be held by the first conduit. The end result would be that Forco would be deemed to hold 25 of the shares of Canco held by the second conduit.

This amendment applies in respect of transactions or events that occur after February 26, 2018.

## **Clause 15**

### **Part IV tax – allocation of losses**

ITA  
129

New subsections 129(4.1) and (4.2) of the Act are introduced consequential to the introduction of the eligible refundable dividend tax on hand (ERDTOH) and non-eligible refundable dividend tax on hand (NERDTOH) accounts. These new subsections provide an allocation rule for situations in which losses are claimed by a corporation to partly reduce its Part IV taxes otherwise payable and those Part IV taxes would otherwise be added to both ERDTOH and NERDTOH.

Based on the conditions set out in subsection 129(4.1), subsection 129(4.2) will apply in respect of a taxation year of a corporation if the corporation

- has an amount of tax payable for the year under Part IV;
- has claimed amounts under paragraph 186(1)(c) or (d) in respect of the year; and
- would, in the absence of paragraphs 186(1)(c) and (d), have an amount determined, at the end of the year, under both paragraph (a) of the ERDTOH definition and paragraph (b) of the NERDTOH definition in subsection 129(4).

When it applies, subsection 129(4.2) allocates a corporation's non-capital loss and farm loss claims in respect of Part IV taxes otherwise payable first to the amount otherwise added to its NERDTOH account. The excess is allocated the corporation's ERDTOH account.

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*Example 1:*

*A corporation receives a \$100 eligible dividend and a \$100 non-eligible dividend, both from non-connected corporations. In the absence of the utilization of any offsetting losses, the corporation would pay 38.33 per cent Part IV tax on each of these amounts, with \$38.33 added to its ERDTOH account and \$38.33 added to its NERDTOH account. However, if that same corporation also had a \$150 non-capital loss that it chose to utilize, its Part IV taxes would be reduced by 38.33 per cent of the loss, or \$57.50.*

*Subsection 129(4.2) will first allocate the losses claimed to reduce the amount allocated to the corporation's NERDTOH. In this example, as the tax-effected amount of the losses claimed (\$57.50) exceeds the amount that would otherwise be allocated to the corporation's NERDTOH (\$38.33), the NERDTOH addition is reduced to zero. The amount by which the losses claimed exceeds the amount that would otherwise be added to the corporation's NERDTOH ( $\$57.50 - \$38.33 = \$19.17$ ) is allocated to ERDTOH, i.e. it reduces the amount that would otherwise be added to the corporation's ERDTOH.*

*In summary, the \$150 loss claim, or its tax-effected amount of \$57.50, reduces the corporation's Part IV tax otherwise payable from \$76.66 to \$19.16. Based on the formula in subsection 129(4.2), no portion of this residual Part IV tax payable of \$19.16 is added to NERDTOH – the entire amount is added to ERDTOH.*

*Example 2:*

*A corporation receives a \$100 eligible dividend and a \$100 non-eligible dividend, both from non-connected corporations. In the absence of the utilization of any offsetting losses, the corporation would pay 38.33 per cent Part IV tax on each of these amounts, with \$38.33 added to its ERDTOH account and \$38.33 added to its NERDTOH account. However, if that same corporation also had a \$50 non-capital loss that it chose to utilize, its Part IV taxes would be reduced by 38.33 per cent of the loss, or \$19.17.*

*As in Example 1, subsection 129(4.2) will first allocate the losses claimed to reduce the amount allocated to the corporation's NERDTOH. In this example, as the tax-effected amount of the losses claimed (\$19.17) is less than the amount that would otherwise be allocated to the corporation's NERDTOH (\$38.33) the NERDTOH addition is reduced to \$19.16 and there is no excess to allocate to ERDTOH.*

*In summary, the \$50 loss claim, or its tax-effected amount of \$19.17, reduces the corporation's Part IV tax otherwise payable from \$76.66 to \$57.49. Based on the formula in subsection 129(4.2), the residual amount of Part IV tax payable of \$57.49 is allocated to ERDTOH in the amount of \$38.33 and to NERDTOH in the amount of \$19.16.*

Subsections 129(4.1) and (4.2) apply to taxation years that begin after 2018.

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## **Clause 16**

### **Proceeds – mark-to-market property**

ITA  
142.5

New subsection 142.5(4) of the Act clarifies that the proceeds from the disposition of a share that is mark-to-market property of a financial institution do not include any amount that is deemed by subsection 84(2) or (3) to be a dividend received in respect of the share and that is not deemed by subparagraph 88(2)(b)(ii) not to be a dividend.

For more information, see the commentary on subsection 112(5.2).

This amendment applies in respect of dispositions that occur after February 26, 2018.

## **Clause 17**

### **Qualified Donees**

ITA  
149.1

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered status. A registered charity is exempt from tax on taxable income and can issue receipts which entitle donors to claim tax relief in respect of their donations to the registered charity.

### **Definitions**

ITA  
149.1(1)

Subsection 149.1(1) of the Act contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act. Certain definitions are amended or repealed for clarification purposes or as consequential amendments.

### **“charitable activities”**

The new definition “charitable activities” provides that charitable activities include, without limitation, public policy dialogue and development activities carried on in furtherance of a charitable purpose. Public policy dialogue and development activities generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country. Under this definition, such activities will be considered charitable activities provided they are carried on in furtherance of a charitable purpose (*e.g.*, the relief of poverty or the advancement of education). An organization could therefore, for example, meet the test in new paragraph (a.1) of the definition “charitable organization” where some or all of its activities are public policy dialogue and development activities carried on in furtherance of a charitable purpose.

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The new definition is deemed to have come into force on January 1, 2008 in respect of organizations, corporations and trusts that were registered charities on September 14, 2018. In any other case, the new definition is deemed to have come into force on September 14, 2018.

### **“charitable organization”**

The definition “charitable organization” sets out the conditions that must be met for an organization to be a charitable organization. The definition is amended to clarify that a charitable organization must be constituted and operated exclusively for charitable purposes.

This amendment is deemed to have come into force on January 1, 2008 in respect of organizations that were registered charities on September 14, 2018. In any other case, the amendment is deemed to have come into force on September 14, 2018.

### **“charitable purposes”**

The definition “charitable purposes” provides that charitable purposes include the disbursement of funds to qualified donees, other than a gift the making of which is a political activity. Consequential on the amendments to subsections 149.1(6.1) and (6.2), the definition “charitable purposes” is amended to remove the exclusion of gifts the making of which is a political activity.

As a result of the amendment to the definition “charitable organization”, the definition “charitable purposes” will be relevant to the determination of whether an organization is a charitable organization.

### **“political activity”**

The definition “political activity” is repealed consequential on the amendments to subsections 149.1(6.1) and (6.2).

The amendment to the definition “charitable purposes” and the repeal of the definition “political activity” are deemed to have come into force on June 29, 2012 in respect of organizations, corporations and trusts that were registered charities on September 14, 2018 and in respect of associations that were registered Canadian amateur athletic associations on September 14, 2018. In any other case, the amendments are deemed to have come into force on September 14, 2018.

## **Exclusions**

ITA

149.1(1.1)

Subsection 149.1(1.1) of the Act excludes certain amounts from being included in determining if a registered charity has satisfied its annual disbursement quota.

The preamble to subsection 149.1(1.1) is amended to correct a reference not previously updated. The existing incorrect reference to paragraph 149.1(21)(a) of the Act is corrected by changing that reference to subsection 149.1(21) of the Act.

This amendment comes into force on Royal Assent.

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Paragraph 149.1(1.1)(b) of the Act is repealed consequential on the amendments to subsections 149.1(6.1) and (6.2).

This amendment is deemed to have come into force on January 1, 2008 in respect of organizations, corporations and trusts that were registered charities on September 14, 2018. In any other case, the amendment is deemed to have come into force on September 14, 2018.

### **Devoting resources to charitable activity**

ITA

149.1(6)

The definition “charitable organization” in subsection 149.1(1) of the Act requires an organization to devote all its resources to charitable activities carried on by the organization itself. Subsection 149.1(6) of the Act provides that, under certain circumstances, when a charitable organization makes a disbursement to a qualified donee, the charitable organization will be considered to be devoting resources to charitable activities carried on by it.

Consequential on the amendments to subsections 149.1(6.1) and (6.2), paragraphs 149.1(6)(b) and (c) of the Act are amended to remove references to income disbursed by way of a gift the making of which is a political activity.

These amendments are deemed to have come into force on June 29, 2012 in respect of organizations that were registered charities on September 14, 2018. In any other case, the amendments are deemed to have come into force on September 14, 2018.

### **Charitable purposes**

ITA

149.1(6.1)

The Act requires a charitable foundation to be constituted and operated exclusively for charitable purposes. Subsection 149.1(6.1) of the Act provides that a charitable foundation may use its resources, within defined limits, for ancillary and incidental political activities in support of its charitable purposes, as long as those activities do not involve the direct or indirect support of, or opposition to, a political party or candidate for public office.

Subsection 149.1(6.1) is amended to remove the reference in the provision to non-partisan political activities and to the “substantially all” condition in relation to the resources a charitable foundation may devote to political activities in furtherance of its charitable purposes. The effect of this amendment is to remove the existing limits on the extent to which a charitable foundation can engage in non-partisan political activities. Where a charitable foundation carries on public policy dialogue and development activities, subsection 149.1(10.1) and the definition “charitable activities” in subsection 149.1(1) also apply. The prohibition against a charitable foundation devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office is maintained.

This amendment is deemed to have come into force on January 1, 2008, in respect of corporations and trusts that were registered charities on September 14, 2018. In any other case,

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the amendment is deemed to have come into force on September 14, 2018.

### **Charitable purposes**

ITA

149.1(6.2)

Subsection 149.1(6.2) of the Act provides that a charitable organization may use its resources, within defined limits, for ancillary and incidental political activities in support of its charitable purposes, as long as those activities do not involve the direct or indirect support of, or opposition to, a political party or candidate for public office.

Subsection 149.1(6.2) is amended to remove the reference in the provision to non-partisan political activities and to the “substantially all” condition in relation to the resources a charitable organization may devote to political activities in furtherance of its charitable purposes. The effect of this amendment is to remove the existing limits on the extent to which a charitable foundation can engage in non-partisan political activities. Where a charitable organization carries on public policy dialogue and development activities, subsection 149.1(10.1) and the definition “charitable activities” in subsection 149.1(1) also apply. The prohibition against a charitable organization devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office is maintained.

This amendment is deemed to have come into force on January 1, 2008, in respect of organizations that were registered charities on September 14, 2018. In any other case, the amendment is deemed to have come into force on September 14, 2018.

### **Activities of Canadian amateur athletic associations**

ITA

149.1(6.201)

A Canadian amateur athletic association has the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and exclusive function and is required to devote all its resources to that purpose and function. Subsection 149.1(6.201) of the Act provides that a Canadian amateur athletic association may engage in non-partisan political activities, within defined limits, that are ancillary and incidental to its promotion of amateur athletics in Canada on a nationwide basis.

Subsection 149.1(6.201) is amended to remove the reference in the provision to non-partisan political activities while maintaining the prohibition on a Canadian amateur athletic association devoting resources to the direct or indirect support of, or opposition to, any political party or to a candidate for public office.

This amendment is deemed to have come into force on January 1, 2012 in respect of Canadian amateur athletic associations that were registered on September 14, 2018. In any other case, the amendment is deemed to have come into force on September 14, 2018.

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**Deemed charitable activity**

ITA

149.1(10)

The definition “charitable organization” in subsection 149.1(1) of the Act requires an organization to devote all its resources to charitable activities carried on by the organization itself. Subsection 149.1(10) of the Act provides that when a charitable organization pays an amount that is not out of the organization’s income to a qualified donee, the charitable organization will be considered to be devoting its resources to charitable activities carried on by it, unless the amount paid is a gift the making of which is a political activity.

Consequential on the amendments to subsections 149.1(6.1) and (6.2), subsection 149.1(10) is amended to remove the reference to amounts paid by way of a gift the making of which is a political activity.

This amendment is deemed to have come into force on June 29, 2012 in respect of organizations that were registered charities on September 14, 2018. In any other case, the amendment is deemed to have come into force on September 14, 2018.

**Public policy activities**

ITA

149.1(10.1)

New subsection 149.1(10.1) of the Act provides that public policy dialogue and development activities carried on by a charity in support of its stated purposes shall be considered to be in furtherance of those purposes and not in furtherance of any other purposes. Public policy dialogue and development activities of an organization generally involve seeking to influence the laws, policies or decisions of a government, whether in Canada or a foreign country.

The purposes of a charitable foundation or a charitable organization must be exclusively charitable, as required in the definitions “charitable foundation” and “charitable organization” in subsection (1). New subsection (10.1) ensures that, where some or all of the activities of a charity are public policy dialogue and development activities carried on in support of its stated purposes, those activities will not be considered to reflect a separate political purpose (which could cause it to fail to meet the relevant “exclusively charitable purposes” test).

The subsection will not apply where a charity devotes resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.

The new subsection is deemed to have come into force on January 1, 2008 in respect of organizations, corporations and trusts that were registered charities on September 14, 2018. In any other case, the new subsection is deemed to have come into force on September 14, 2018.



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**Clause 18****Assessment**

ITA  
152(1)(b)

Subsection 152(1) of the Act lists certain refunds and deemed payments of tax that are to be determined in the course of assessing a taxpayer's tax. Paragraph (b) refers to a number of provisions under which amounts are deemed to be paid on account of tax.

Paragraph 152(1)(b) is amended to add a reference to the new climate action incentive credit in subsection 122.8(4). For more information, see the commentary on section 122.8.

This amendment applies to the 2018 and subsequent taxation years.

**Assessment and reassessment**

ITA  
152(4)(b)(iii)

The French version of 152(4)(b)(iii) of the Act is amended to eliminate any potential ambiguity in its wording and to better align the French and English versions of the Act. The relationship described in French as “between” (“entre”) taxpayers is replaced by the relationship described in French as “involving” (“impliquant”) taxpayers.

This amendment is deemed to have come into force on February 27, 2018. This amendment is superseded by the amendment to subparagraph 152(4)(b)(iii) that applies to taxation years of a taxpayer that begin after February 26, 2018. See additional commentary on subparagraph 152(4)(b)(iii).

**Assessment and reassessment**

ITA  
152(4)(b)(iii)

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 generally four years from the date of the initial notice of assessment for corporations (other than Canadian-controlled private corporations) and mutual fund trusts. For other taxpayers, it is generally three years from the date of the initial notice of assessment. Subsection 152(4) includes exceptions that apply in certain circumstances. These exceptions are described in paragraphs 152(4)(a) to (d).

Subparagraph 152(4)(b)(iii) allows the Minister to assess tax within an additional three year period, if the assessment of a taxpayer for a taxation year is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length. While this three-year extended reassessment period applies to many transactions involving foreign affiliates of a taxpayer, it does not apply in all such circumstances.

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Subparagraph 152(4)(b)(iii) of the Act is amended by dividing it into clauses and by adding a new exception in clause (B) which permits the assessment of a taxpayer for a taxation year outside of the normal reassessment period if the assessment is made in respect of any income, loss or other amount in relation to a foreign affiliate of the taxpayer. This amendment expands the circumstances under which subparagraph 152(4)(b)(iii) can apply in order to ensure that the Government has a reasonable opportunity to properly examine all activities in respect of foreign affiliates of a taxpayer that are relevant to the Canadian tax base.

This amendment applies to taxation years of a taxpayer that begin after February 26, 2018.

### **Assessment and reassessment**

ITA

152(4)(b.4)

Subsection 152(4) of the Act is also amended by adding new paragraph (b.4). New paragraph (b.4) provides that an assessment, reassessment or additional assessment may be made within six years after the end of the normal reassessment period where:

- as a consequence of a transaction involving a taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length, a reassessment of tax is made or a notice that no tax is payable for a taxation year is issued;
- the reassessment or notice that no tax is payable reduces the taxpayer's loss for the taxation year that is available for carryback; and
- all or any portion of that loss had in fact been carried back to the prior taxation year.

New paragraph 152(4)(b.4) applies in respect of a taxation year if a reassessment of tax for the year was required under subsection 152(6), or would have been so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to in that subsection, in order to take into account a deduction claimed under section 111 of the Act in respect of a loss for a subsequent taxation year that ends on or after February 27, 2018.

### **Extended period of assessment**

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), (b.3) or (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. In general terms, such a reassessment can be made only to the extent that it can reasonably be regarded as relating to a matter specified in any of paragraphs 152(4)(a), (b), (b.1), (b.3) or (c), because of which the Minister is able to reassess beyond the normal reassessment period.

Subsection 152(4.01) is amended to add a reference to new paragraph 152(4)(b.4) in its "preamble" as well as in new paragraph 152(4.01)(d).

As such, a reassessment for a taxation year made by the Minister after the normal reassessment period as a result of the conditions described in new subparagraph 152(4)(b.4) is limited by new

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paragraph 152(4.01)(b.4) to that which can reasonably be regarded as relating to the reduction in the amount of the loss.

This amendment applies in respect of a taxation year if a reassessment of tax for the year was required under subsection 152(6), or would have been so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to in that subsection, in order to take into account a deduction claimed under section 111 of the Act in respect of a loss for a subsequent taxation year that ends on or after February 27, 2018.

### **Extended period of assessment**

ITA

152(4.01)(b)(iii)

Subparagraph 152(4.01)(b)(iii) is amended consequential on the addition of the terms “income, loss and other amount” in new clause 152(4)(b)(iii)(B). This allows the Minister to assess tax outside of the normal reassessment period for a taxation year of a taxpayer, if the assessment is made in respect of any income, loss or other amount in relation to a foreign affiliate of the taxpayer. As such, the assessment for a taxation year, authorized to be made after the normal reassessment period by new clause 152(4)(b)(iii)(B), is limited by subparagraph 152(4.01)(b)(iii) to that which can reasonably be regarded as relating to the income, loss or other amount in relation to a foreign affiliate of a taxpayer.

This amendment applies to taxation years of a taxpayer that begin after February 26, 2018.

### **Reassessment with taxpayer’s consent**

ITA

152(4.2)(b)

Subsection 152(4.2) of the Act contains rules relating to the reassessment of tax, interest and penalties payable by a taxpayer and to the redetermination of tax deemed to have been paid by a taxpayer. This subsection gives the Minister of National Revenue discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by an individual (other than a trust) or a graduated rate estate.

Paragraph 152(4.2)(b) is amended consequential on the introduction of the climate action incentive credit to add a reference to new subsection 122.8(4). For more information, see the commentary on section 122.8.

This amendment applies to the 2018 and subsequent taxation years.

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**Clause 19****False statements or omissions**

ITA  
163(2)(c.4)

Subsection 163(2) of the Act imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the Act. The penalty is determined by reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax.

New paragraph 163(2)(c.4) extends the penalty to apply where false statements or omissions are made in respect of the new climate action incentive credit in section 122.8. For more information, see the commentary on section 122.8.

This amendment applies to the 2018 and subsequent taxation years.

**Clause 20****Notice of suspension - general**

ITA  
188.2(2)

Subsection 188.2(2) of the Act provides for the suspension, in certain circumstances, of the tax-receipting privileges of registered charities, registered Canadian amateur athletic associations and persons described in paragraphs (a) to (c) of the definition “qualified donee” in subsection 149.1(1), including in circumstances where the charity or association devotes resources to political activities in excess of the limits set out in subsections 149.1(6.1), (6.2) and (6.201).

Subsection 188.2(2) is amended to remove the general references in the provision to political activities while maintaining the Minister’s authority to suspend the privileges of registered charities or Canadian amateur athletic associations in cases where a registered charity or a Canadian amateur athletic association devotes any of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.

This amendment is deemed to have come into force on June 29, 2012, in respect of charities and Canadian amateur athletic associations that were registered on September 14, 2018. In any other case, this amendment is deemed to have come into force on September 14, 2018.

**Clause 21****Non-arm’s length sales of shares by non-residents**

ITA  
212.1(1)

Subsection 212.1(1) of the Act, together with the operative rule in subsection 212.1(1.1), is an anti-avoidance rule designed to prevent the removal of corporate surplus – which would

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otherwise be subject to withholding tax under Part XIII of the Act upon distribution to a non-resident shareholder – as a tax-free return of capital or as proceeds from the disposition of the corporation’s shares giving rise to a capital gain.

Subsection 212.1(1) sets out the conditions of application of subsection 212.1(1.1). In general terms, it provides that subsection 212.1(1.1) applies where shares of a Canadian corporation (the “subject corporation”) held by a non-resident person or a designated partnership are transferred to another Canadian corporation (the “purchaser corporation”) with which the transferor does not deal at arm’s length and, immediately after the disposition, the subject corporation is connected (within the meaning that would be assigned by subsection 186(4), with certain modifications) with the purchaser corporation.

Subsection 212.1(1) is amended, in connection with the introduction of “look-through” rules for partnerships and trusts in new subsections 212.1(5) to (7), to delete the reference to the term “designated partnership” (the definition of “designated partnership” in paragraph 212.1(3)(e) is also being deleted consequential on this amendment). This amendment, in combination with the new look-through rules, effectively extends the application of section 212.1 to dispositions of subject shares by partnerships that are not designated partnerships (as defined under existing paragraph 212.1(3)(e)) but that have one or more non-resident members, in circumstances where the other conditions in subsection 212.1(1) are met. For example, if a partnership with only one non-resident member (that has a minority interest in the partnership) disposes of subject shares to a purchaser corporation, for the purposes of subsections 212.1(1) and (1.1), new paragraph 212.1(6)(b) will deem the non-resident member (as well as any other members) to dispose of the subject shares to the purchaser in proportion to the relative fair market value of its partnership interest. Notably, however, in order for subsection 212.1(1.1) to apply to such a disposition, the non-resident member must not deal at arm’s length with the purchaser corporation (including based on the expanded meaning of non-arm’s length under paragraph 212.1(3)(a)).

Consequential on the deletion of the “designated partnership” reference, the defined term “non-resident person” is also deleted, as subsection 212.1(1) will apply only in respect of a non-resident person.

Subsection 212.1(1) is further amended, consequential on the introduction of the “look-through” rule in new subsection 212.1(6), to provide that, for the purpose of determining whether a subject corporation is connected with a purchaser corporation, subsection 186(4) is to be read without reference to subsection 186(6). This amendment ensures that the look-through rule in paragraph 212.1(6)(d) is used instead of the rules in subsection 186(6) for this purpose.

### **Non-arm’s length sales of shares by non-residents**

ITA

212.1(1.1)(a)

Subsection 212.1(1.1) of the Act sets out the operative rule that applies if the conditions in subsection 212.1(1) are satisfied.

Consequential on the amendment to subsection 212.1(1) eliminating the defined term “non-resident person”, paragraph 212.1(1)(a) is amended to clarify that the reference in that paragraph

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to “the non-resident person” is to the non-resident person referred to in subsection 212.1(1), who disposes of (or is deemed to dispose of) the subject shares to the purchaser corporation.

### **Deemed consideration**

ITA

212.1(1.2)

Subsection 212.1(1.2) of the Act provides a deemed consideration rule for the purposes of subsections 212.1(1) and (1.1), clarifying the application of those rules in situations where it may otherwise be uncertain whether consideration has been received by a non-resident person from a purchaser corporation in respect of the disposition by the non-resident person of subject shares.

Consequential on the amendment to subsection 212.1(1), which eliminates the defined term “non-resident person”, subsection 212.1(1.2) is amended to ensure that its reference to the “non-resident person” is to the non-resident person referred to in subsection 212.1(1), who disposes of (or is deemed to dispose of) the subject shares to the purchaser corporation.

### **Relationship rules**

ITA

212.1(3)

Subsection 212.1(3) of the Act sets out certain interpretive rules for the purpose of applying section 212.1.

Paragraph 212.1(3)(a) deems certain persons to not deal at arm’s length for the purpose of applying section 212.1. Paragraph 212.1(3)(b) provides rules that, for the purposes of paragraph 212.1(3)(a), deem a non-resident person to own shares that are owned by certain other (generally, related) persons or partnerships.

Paragraphs 212.1(3)(a) and (b) are amended, consequential on the amendments to subsection 212.1(1), to remove the references to the term “designated partnership”, as this is no longer a relevant concept or defined term for the purposes of section 212.1. The defined term “taxpayer” is also eliminated in paragraph 212.1(3)(b), consequential on the removal of the “designated partnership” references.

Paragraph 212.1(3)(e) defines “designated partnership” as a partnership in respect of which a majority interest partner or every member of a majority interest group of partners is a non-resident person. Paragraph 212.1(3)(e) is repealed, consequential on the deletion of the reference to “designated partnership” in subsection 212.1(1).

Subsection 212.1(3) is also amended to generally update its structure in accordance with current legislative drafting standards.

For more information, see the commentary on subsection 212.1(1).

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### Where section does not apply

ITA

212.1(4)(b)

Subsection 212.1(4) of the Act provides a relieving exception to the rules in section 212.1 that applies in respect of a disposition by a non-resident corporation of shares of a subject corporation to a purchaser corporation that, immediately before the disposition, controlled the non-resident corporation.

Subparagraph 212.1(4)(b)(i) is amended by replacing the word “owns” with the word “held” for consistency within section 212.1.

### Tiered trusts and partnerships

ITA

212.1(5)

New subsection 212.1(5) of the Act is a “look-through” rule for tiered trusts and partnerships (*i.e.*, trusts or partnerships that are themselves beneficiaries under trusts or members of partnerships). It is intended to apply to a tiered structure that includes any combination of trusts and partnerships in any number of tiers.

Paragraph 212.1(5)(a) looks through tiers of partnerships and trusts for the purpose of determining whether a person or partnership is a beneficiary of a lower-tier trust or a member of a lower-tier partnership. It ensures that

- a beneficiary of a trust that is itself a beneficiary of another trust will be deemed to be a beneficiary of the other trust;
- a beneficiary of a trust that is a member of a partnership will be deemed to be a member of the partnership;
- a member of a partnership that is a beneficiary of a trust will be deemed to be a beneficiary of the trust; and
- a member of a partnership that is a member of another partnership will be deemed to be a member of the other partnership.

Paragraph 212.1(5)(b) looks through tiers of partnerships and trusts for the purpose of determining the interest the beneficiary of the upper-tier trust or member of the upper-tier partnership is considered to have in the lower-tier trust or partnership. In effect, it deems the upper-tier beneficiary or member to hold a direct interest in the lower-tier trust or partnership that is equivalent to the interest it actually holds indirectly through tiers.

Subsection 212.1(5) does not, however, deem the actual beneficiaries or members of the lower-tier trust or partnership not to be the beneficiaries or members of, and not to hold a direct interest in, respectively, the lower-tier trust or partnership.

The one exception to the look-through rules for trusts and partnerships in subsection 212.1(5) is that those rules will not look through a trust that is the non-resident person referred to in subsection 212.1(1) (*i.e.*, the non-resident that disposes of the subject shares to the purchaser corporation, determined having regard to the subsection 212.1(6) and (7)). Since a disposition by

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such a trust is within the scope of subsection 212.1(1) (*i.e.*, because it is a non-resident person), looking through such a trust would lead to inappropriate results under section 212.1 in certain circumstances.

While new subsection 212.1(5) applies for the purposes of section 212.1 as a whole, it is most relevant for the application of the ownership attribution rules in paragraphs 212.1(3)(b) and (c), and the look-through rules for trusts and partnerships in new subsections 212.1(6) and (7). Where a disposition or acquisition of subject shares is mediated by a tiered structure, it is intended that subsection 212.1(5) apply first, for the purposes of determining the identities and relative interests of trust beneficiaries or partnership members, and then subsection 212.1(6) be applied based on such determinations.

### **Trusts and partnerships look-through rule**

ITA

212.1(6)

New subsection 212.1(6) of the Act contains “look-through” rules for trusts and partnerships. These rules are intended to ensure that subsections 212.1(1) and (1.1) apply appropriately – and taxpayers cannot avoid, or obtain a more favourable result under, subsection 212.1(1.1) – where shares of a Canadian-resident corporation are held, disposed of or acquired through or by one or more trusts or partnerships.

Subsection 212.1(6) is, in general terms, organized as follows:

- where a trust or partnership holds shares of a corporation resident in Canada, paragraph (a) treats a disposition or acquisition of an interest in the trust or partnership as a disposition or acquisition of the shares by its beneficiaries or members;
- paragraph (b) treats a disposition of shares of a corporation resident in Canada by a trust (other than a non-resident trust) or a partnership as a disposition of the shares by its beneficiaries or members;
- where a partnership or trust acquires shares of a corporation resident in Canada, paragraph (c) treats the acquisition as an acquisition of the shares by its members or beneficiaries; and
- paragraph (d) looks through trusts and partnerships to attribute ownership of shares of a corporation resident in Canada to their beneficiaries or members.

Paragraph 212.1(6)(a) applies if a beneficiary or a member (referred to as a “holder) of a trust or partnership (referred to as a “conduit”) disposes of an interest in the conduit (referred to as the “pertinent interest”) and any portion of the fair market value of the interest is attributable to shares of a corporation resident in Canada held, directly or, under certain circumstances (discussed below), indirectly, by the conduit (referred to as the “shares held by the conduit”). If paragraph 212.1(6)(a) applies, then the holder is deemed to have:

- disposed of, and the purchaser is deemed to have acquired, the shares held by the conduit in the proportion that the portion of the fair market value of the pertinent interest that is attributable to the shares held by the conduit is of the total fair market value of the shares held by the conduit; and



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- received from the purchaser (and the purchaser is deemed to have paid to the holder) consideration for the shares that are deemed to have been disposed of by the holder. This deemed consideration is equal to the proportion of the fair market value of the consideration actually received by the holder from the purchaser for the pertinent interest that the portion of the fair market value of the pertinent interest that is attributable to the shares held by the conduit is of the total fair market value of the pertinent interest.

Paragraph 212.1(6)(a) applies not only for the purposes of subsections 212.1(1) and (1.1), but also for the purposes of subsection 212.1(6) itself. The latter is necessary to ensure that the look-through rules operate appropriately in cases where, for example, the pertinent interest is disposed of by a holder that is itself a conduit, in which case the application of paragraph 212.1(6)(a) will, in turn, engage paragraph 212.1(6)(b).

In determining whether any portion of the fair market value of the pertinent interest is attributable to the shares held by the conduit (a condition for the application of paragraph 212.1(6)(a)), any shares of a corporation resident in Canada that are held directly or indirectly by the conduit are to be taken into consideration, unless all of the shares of the corporation that are held directly or indirectly by the conduit are held indirectly through one or more non-resident corporations. The latter exception is intended to ensure that paragraph 212.1(6)(a) does not apply in circumstances where surplus-stripping opportunities are not available.

It is intended that, under paragraph 212.1(6)(a), each holder or purchaser is deemed to dispose of or acquire, as the case may be, a proportionate number of the shares held by the conduit, rather than a proportion of each such share. In this respect, the deeming rules in paragraphs 212.1(6)(b) and (c) are intended to apply with similar effect to paragraph (a).

The dispositions are deemed to occur on a class-by-class basis. And so, if a conduit holds multiple classes of shares, the formula is applied so that the holder is deemed to dispose of a portion of each such class.

The references to “interests” in subsection 212.1(6) are to interests as a beneficiary under a trust or as a member of a partnership. In addition, in the case of a structure involving tiers of trusts or partnerships (or both), the identities and interests of the beneficiaries of a trust or members of a partnership for the purposes of subsection 212.1(6) are to be determined under subsection 212.1(5). For more information, see the commentary on subsection 212.1(5).

Paragraph 212.1(6)(b) provides that if a conduit (other than a non-resident trust) disposes of shares of a corporation resident in Canada to a purchaser, then each holder of an interest in the conduit is deemed to have:

- disposed of the shares to the purchaser in the proportion that the fair market value of the holder’s interest in the conduit is of the total fair market value of all interests in the conduit; and
- received from the purchaser (and the purchaser is deemed to have paid to each holder) consideration for the shares that are deemed to have been disposed of by the holder.

This deemed consideration is equal to the proportion of the fair market value of the consideration actually received by the conduit from the purchaser for the shares that the fair market value of the holder’s interest in the conduit is of the total fair market value of all interests in the conduit.

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Paragraph 212.1(6)(b) applies for the purposes of paragraph 212.1(6)(c) in order to ensure that the look-through rules operate appropriately in cases where, for example, a conduit disposes of shares of a corporation resident in Canada to another conduit, in which case paragraph 212.1(6)(b) will apply to determine the identity of the vendor for purposes of paragraph 212.1(6)(c).

Paragraph 212.1(6)(b) applies to dispositions by any conduit, except for non-resident trusts. The latter exception is because subsections 212.1(1) and (1.1) already apply in respect of dispositions of shares of Canadian-resident corporations by non-resident trusts; looking through disposing non-resident trusts would therefore provide inappropriate results in certain cases.

Paragraph 212.1(6)(b) amends the scheme under section 212.1 that applies to dispositions of shares of Canadian-resident corporations by partnerships. Under existing subsection 212.1(1), subsection 212.1(1.1) applies only in respect of dispositions by designated partnerships (as defined in paragraph 212.1(3)(e)). By contrast, the new look-through rule in paragraph 212.1(6)(b), in combination with the elimination of the “designated partnership” concept in section 212.1, extends the application of subsection 212.1(1.1) to dispositions by partnerships that are not (under the current rules) designated partnerships but that have one or more non-resident members, in circumstances where the other conditions in subsection 212.1(1) are met. For more information, see the commentary on subsection 212.1(1).

Paragraph 212.1(6)(c) provides that if a conduit acquires shares of a corporation resident in Canada from a vendor, then each holder of an interest in the conduit is deemed to have:

- acquired the shares from the vendor in the proportion that the fair market value of the holder’s interest in the conduit is of the total fair market value of all interests in the conduit; and
- paid to the vendor (and the vendor is deemed to have received from each such holder) consideration for the shares that are deemed to have been acquired by the holder. This deemed consideration is equal to the proportion of the fair market value of the consideration actually paid by the conduit to the vendor for the shares that the fair market value of the holder’s interest in the conduit is of the total fair market value of all interests in the conduit.

### ***Example 1 – Interaction between paragraphs 212.1(6)(a) and (b)***

#### *Assumptions*

1. *NR, a non-resident corporation, is a member of a partnership (P1) which in turn is a member of another partnership (P2).*
2. *P2 owns 80% of the shares of Canco1, a corporation resident in Canada.*
3. *P2 also owns all of the shares of USCo, a corporation resident in the United States, which in turn owns the remaining 20% of the shares of Canco1.*
4. *NR also owns all of the shares of Canco2, a corporation resident in Canada.*
5. *At a particular time, P1 disposes of its interest in P2 to Canco2 for non-share consideration.*

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6. *Immediately after the particular time, Canco1 is connected with Canco2 for the purposes of subsection 212.1(1).*

#### *Analysis*

*Pursuant to paragraph 212.1(6)(a), at the particular time, P1 (i.e., the “holder” of the “pertinent interest”) is deemed to have disposed of, to the purchaser (i.e., Canco2), the shares of Canco1 held indirectly through P2 (i.e., the “shares held by the conduit”) in the proportion determined under subparagraph 212.1(6)(a)(i) and to have received, from Canco2, as consideration for those shares, the amount determined under subparagraph 212.1(6)(a)(ii).*

*For the purposes of determining, under paragraph 212.1(6)(a), the portion of the fair market value of the pertinent interest that is attributable to the shares of Canco1 held by P2, all the shares of Canco1 that are held indirectly by P1 through P2, including those held indirectly through USCo, are taken into consideration. If USCo instead owned all of the issued and outstanding Canco1 shares directly, such that all of the shares of Canco1 were held by P1 indirectly through USCo, then the conditions in paragraph 212.1(6)(a) would not be satisfied based solely on the above assumptions.*

*Because the deeming rules in paragraph 212.1(6)(a) apply for the purposes of subsection 212.1(6), paragraph 212.1(6)(b) deems NR to have, at the particular time, disposed of, to Canco2, the shares of Canco1 that are deemed by paragraph 212.1(6)(a) to have been disposed of by P1, in the proportion determined under subparagraph 212.1(6)(b)(i), and received, from Canco2, as consideration for those shares, the amount determined under subparagraph 212.1(6)(b)(ii).*

*As a result, paragraph 212.1(1.1)(a) deems Canco2 to pay a dividend to NR, to the extent the fair market value of the consideration that NR is deemed by subparagraph 212.1(6)(b)(ii) to have received from Canco2 for the shares of Canco1 exceeds the paid-up capital in respect of those Canco1 shares immediately before the disposition.*

*Pursuant to paragraph (k) of the definition proceeds of disposition in section 54, any dividend deemed to be paid to NR under subsection 212.1(1.1) is excluded in determining the proceeds of disposition of the interest in P2 disposed of by P1.*

#### ***Example 2 - Interaction between paragraphs 212.1(6)(b) and (c)***

##### *Assumptions*

*Same as Example 1, except that:*

- *Canco2 is a member of a partnership (P3); and*
- *Instead of P1 disposing of its interest in P2 directly to Canco2 at the particular time, P1 disposes of its interest in P2 to P3.*

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## Analysis

Same as under Example 1, except that:

- Paragraph 212.1(6)(b) deems NR to have, at the particular time, disposed of the Canco1 shares to P3 – and received the consideration for those shares from P3 – instead of Canco2;
- Because the deeming rules in paragraph 212.1(6)(b) apply for the purposes of paragraph 212.1(6)(c), paragraph 212.1(6)(c) deems Canco2, at the particular time, to have
  - acquired from NR (i.e., the “vendor”, as determined under paragraph 212.1(6)(b)) the shares of Canco1 acquired by P3, in the proportion determined under subparagraph 212.1(6)(c)(i), and
  - paid to NR, as consideration for those shares, the amount determined under subparagraph 212.1(6)(c)(ii); and
- The dividend Canco2 is deemed to pay to NR pursuant to paragraph 212.1(1.1)(a) is based on the consideration that NR is deemed by subparagraph 212.1(6)(c)(ii) to have received from Canco2 for the shares of Canco1.

Paragraph 212.1(6)(d) provides that if shares of a corporation resident in Canada are owned by a conduit, each holder of an interest in the conduit is deemed to own the shares in proportion to its interest in the conduit. Specifically, the holder is deemed to own the proportion of the number of shares of each class that are owned by the conduit that the fair market value of the holder’s interest in the conduit is of the fair market value of all interests in the conduit.

Paragraph 212.1(6)(d) applies for the purpose of determining whether a subject corporation is connected with a purchaser corporation (within the meaning of 186(4), with certain modifications), as required under subsection 212.1(1), where the shares of the subject corporation are held by the purchaser corporation through one or more conduits. It is intended that, by deeming the holders to own, proportionately, the actual shares owned by the conduit, the holders will be considered to hold any rights attaching to those shares (e.g., the voting rights attached to the shares).

The deemed consideration rules in subparagraphs 212.1(6)(a)(ii), (b)(ii) and (c)(ii) do not apply in cases where shares of the purchaser corporation are issued as consideration for the subject shares. Rather, in such circumstances, paragraph 212.1(1.1)(b) applies to determine the amount of any paid-up capital reduction in respect of the shares of the purchaser corporation, without the need for a special deemed-consideration rule. Any use of one or more trusts or partnerships (e.g., with one or more Canadian-resident beneficiaries or members) in order to increase the paid-up capital of shares through the interaction of the new look-through rules in subsection 212.1(6) with the rule in paragraph 212.1(1)(b) that provides for a reduction of paid-up capital, would be contrary to the policy underlying subsection 212.1(6) and, more generally, section 212.1.

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## **Avoidance of subsections (5) and (6)**

ITA

212.1(7)

New subsection 212.1(7) of the Act is an anti-avoidance rule predicated on the general policy against the use of discretionary or similar interests to avoid certain tax consequences. More particularly, subsection 212.1(7) is intended to prevent taxpayers from using discretionary interests in trusts with a view to circumventing the application of the look-through rules in new subsection 212.1(5) or (6) (*e.g.*, by taking the position that the fair market value of an interest as a beneficiary under a trust is nil or nominal because it is a discretionary interest in the trust).

Subsection 212.1(7) applies if

- the share, of a beneficiary under a trust, of the accumulating income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power; and
- it can reasonably be considered that one of the reasons the discretionary power is conferred on the person is to avoid or limit the application of subsection 212.1(1.1).

The foregoing conditions of application reflect a concern that taxpayers may, in the absence of subsection 212.1(7), take discretionary interests in trusts in an attempt to mitigate or avoid certain results under the look-through rules that are based on the relative fair market value of an interest in a trust. To prevent this, new subsection 212.1(7) effectively deems a beneficiary under a trust to hold or acquire, as the case may be, all of the property held or acquired by the trust in certain circumstances. This result is achieved by effectively deeming the beneficiary to have a 100% interest in the trust for the purposes of paragraphs 212.1(5)(b) and (6)(d) and subparagraph (6)(c)(i).

*Coming-into-force*

The above amendments to section 212.1 apply in respect of dispositions that occur after February 26, 2018.

## **Clause 22**

### **Definitions**

ITA

231

Section 231 of the Act provides definitions for the purposes of sections 231.1 to 231.7, the provisions that set out the rules relating to the powers of the Canada Revenue Agency to audit and examine taxpayers' books and records.

Section 231 is amended to provide that the section also provides definitions for the purposes of new section 231.8, which applies to extend the reassessment period when taxpayers challenge requirements for information or compliance orders. For more information, see the commentary on section 231.8.

This amendment comes into force on Royal Assent.

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**Clause 23****Time period not to count**

ITA  
231.6(7)

Section 231.6 of the Act provides rules which enable the Minister to obtain such foreign-based information or documentation as is necessary to permit a proper assessment for Canadian tax purposes. Under subsection 231.6(2) a person resident in Canada or a non-resident person carrying on business in Canada must provide, when required by notice of the Minister, any foreign-based information or document. Under subsection 231.6(4) a person served with a notice under subsection (2) is permitted within 90 days of service thereof to apply to a judge for a review of the requirement to provide the foreign-based information or document.

Subsection 231.6(7) provides that the period of time that elapses between the application for review and its final disposition does not count toward the six-year statutory limit for making tax assessments relating to foreign transactions between non-arm's length taxpayers under subparagraph 152(4)(b)(iii), nor in the time permitted for the production of the information or document.

To ensure consistency with the wording of new section 231.8, which extends the statutory limitation period on taxpayer challenges to compliance orders and requirements for information that do not involve foreign-based information, subsection 231.6(7) is amended to clarify that the period of time that does not count towards the statutory limit or in the time permitted to produce the information or document, lasts until the application is finally disposed of. For further information, see the commentary on section 231.8.

This amendment comes into force on Royal Assent.

**Clause 24****Time period not to count**

ITA  
231.8

New section 231.8 of the Act extends the reassessment period when a taxpayer makes an application for judicial review of a requirement for information (other than a requirement for foreign-based information under section 231.6) or when a taxpayer files a notice of appearance or otherwise challenges a compliance order. Section 231.8 provides that the period of time that elapses between the filing of the application for review of a requirement for information or the filing of a notice of appearance (or otherwise challenging the application for a compliance order) and the time either the application for judicial review or the application to obtain the compliance order is finally disposed of, does not count toward the statutory limit for making tax assessments.

This new section comes into force on Royal Assent.

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## Clause 25

### Returns respecting foreign affiliates

ITA  
233.4(4)

Section 233.4 of the Act establishes reporting requirements in respect of foreign affiliates. In general terms, it provides that taxpayers resident in Canada (or certain partnerships), of which a non-resident corporation is a foreign affiliate, must file an information return in respect of the affiliate. The entity required to file this information return is defined by the expression “reporting entity” for the purposes of section 233.4.

Subsection 233.4(4) requires a reporting entity for a taxation year or fiscal period to file an information return in prescribed form (T1134) in respect of each foreign affiliate of the entity in the year or period. The filing deadline for the information return is 15 months after the end of the reporting entity’s taxation year or fiscal period.

Subsection 233.4(4) is amended to provide that the new filing deadline for this prescribed information return is:

- for taxation years or fiscal periods of a reporting entity that begin in 2020, within 12 months after the end of a reporting entity’s taxation year or fiscal period; and
- for taxation years or fiscal periods of a reporting entity that begin after 2020, within 10 months after the end of a reporting entity’s taxation year or fiscal period.

## Clause 26

### Where taxpayer information may be disclosed

ITA  
241(4)

Subsection 241(4) of the Act authorizes the communication of taxpayer information to government officials for limited purposes.

New subparagraph 241(4)(e)(xiii) is added to permit an official to provide taxpayer information, or allow the inspection of or access to taxpayer information, for the purposes of an order made under the *Mutual Legal Assistance in Criminal Matters Act*, with respect to an investigation or prosecution relating to an act or omission that, if it had occurred in Canada, would constitute an offence for which an order could be obtained under subsection 462.48(3) of the *Criminal Code*, in response to a request made pursuant to

- an administrative arrangement entered into under section 6 of the *Mutual Legal Assistance in Criminal Matters Act*; or
- a bilateral agreement for mutual legal assistance in criminal matters to which Canada is a party.

This amendment comes into force on Royal Assent.

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**Clause 27****Definitions**

ITA  
260(1)

**“SLA compensation payment”**

An SLA compensation payment is an amount paid pursuant to a securities lending arrangement as compensation for an underlying payment.

This definition is amended so that an SLA compensation payment means an amount paid pursuant to a securities lending arrangement or a specified securities lending arrangement, as compensation for an underlying payment. An SLA compensation payment includes an amount paid pursuant to a specified securities lending arrangement as compensation for a taxable dividend paid on a share described in subparagraph (a)(i) of the definition “specified securities lending arrangement” if the property transferred or lent is described in subparagraph (a)(ii) of that definition.

The broadening of the definition to include an amount paid pursuant to a specified securities lending arrangement results in certain provisions in section 260 of the Act, including its subsections (5) and (5.1), applying to this amount.

For more information, see the commentary on the definition “specified securities lending arrangement”.

This amendment applies in respect of amounts paid or payable, or received or receivable, as compensation for dividends after February 26, 2018 (or after September 2018 if they are pursuant to a written arrangement entered into before February 27, 2018).

**“specified securities lending arrangement”**

The definition “specified securities lending arrangement” is added to subsection 260(1). A specified securities lending arrangement means an arrangement, other than a securities lending arrangement, under which:

- a particular person (referred to in the definition as a “transferor”) transfers or lends at any particular time a property to another person (referred to in the definition as a “transferee”) and the property is:
  - a particular share described in paragraph (a) of the definition “qualified security”; or
  - an interest in a partnership or trust where all or any part of its fair market value, immediately before the transfer or loan, is derived, directly or indirectly, from a share described in paragraph (a) of the definition “qualified security”;
- it may reasonably be expected, at the particular time, that the transferee – or a person that does not deal at arm’s length with, or is affiliated with, the transferee – will transfer or return after the particular time to the transferor – or a person that does not deal at arm’s length with, or is affiliated with, the transferor (referred to in the definition as a “substitute transferor”) –



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a property that is identical or substantially identical to the particular property so transferred or lent; and

- the transferor's (together with any substitute transferor's) risk of loss or opportunity for gain or profit with respect to the particular property is not changed in any material respect.

This definition is intended to ensure that arrangements that are substantially similar to those that fall within the definition "securities lending arrangements" are subject to certain provisions normally applicable to those arrangements.

In particular, when a counterparty receives a compensation payment under such a substantially similar arrangement, subsection 260(5.1) will apply, which, in turn, will generally result in subsection 112(2.3) applying by virtue of paragraph (b) of the definition "dividend rental arrangement" to the person making the compensation payment. Therefore, in these circumstances, this person will be denied the inter-corporate dividend deduction on dividends received on the borrowed shares, resulting in a dividend income inclusion that will offset the available deduction in subsection 260(6.1) for the amount of the corresponding dividend compensation payments made to the counterparty under the arrangement.

Depending on the circumstances, subsection 112(2.3) could have already denied the inter-corporate dividend deduction in respect of an arrangement that is a specified securities lending arrangement because it is a synthetic equity arrangement, as defined in subsection 248(1).

For more information, see the commentary on the definition "SLA compensation payment".

This amendment applies in respect of amounts paid or payable, or received or receivable, as compensation for dividends after February 26, 2018 (or after September 2018 if they are pursuant to a written arrangement entered into before February 27, 2018).

### **Where subsection (5.1) applies**

ITA  
260(5)

Subsection 260(5) of the Act describes the circumstances under which the compensation payment deeming rule, found in subsection 260(5.1), applies. This deeming rule generally applies where an amount is received under one of these circumstances:

- as an SLA compensation payment, from a person resident in Canada;
- as an SLA compensation payment, from a person not resident in Canada where the amount was paid in the course of carrying on business in Canada through a permanent establishment;
- or
- as a dealer compensation payment.

Subsection 260(5) provides that the compensation payment deeming rule under subsection 260(5.1) does not apply where the amount is received by a person under an arrangement and one of the main reasons for the person entering into the arrangement was to enable it to receive an SLA compensation payment or a dealer compensation payment that would be deductible in computing the taxable income, or not included in computing the income of the person.

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Subsection 260(5) is amended to ensure that the compensation payment deeming rule under subsection 260(5.1) will apply where the amount is received by a person under an arrangement and one of the main reasons for the person entering into the arrangement was to enable it to receive an SLA compensation payment pursuant to a specified securities lending arrangement.

This amendment is intended to ensure that the above anti-avoidance rule is not used to avoid the application of subsection 260(5.1) and, in turn, the application of paragraph (b) of the definition “dividend rental arrangement” in subsection 248(1) to the person making the compensation payment.

For more information, see the commentary on the definition “specified securities lending arrangement” in subsection 260(1).

This amendment applies in respect of amounts paid or payable, or received or receivable, as compensation for dividends after February 26, 2018 (or after September 2018 if they are pursuant to a written arrangement entered into before February 27, 2018).

### **Deductibility**

ITA  
260(6)

Subsection 260(6) of the Act sets out rules regarding the deductibility of compensation payments made under securities lending arrangements.

Paragraph 260(6)(a) denies a deduction for any dividend compensation payment made by persons other than registered securities dealers, and provides that registered securities dealers may deduct up to 2/3 of the dividend compensation payments they make.

Paragraph 260(6)(a) is amended to clarify that the deduction of up to 2/3 of the dividend compensation payment is not available to a registered securities dealer to the extent that the payment may be deducted by it under subsection 260(6.1).

For more information, see the commentary on subsection 260(6.1).

This amendment applies in respect of amounts paid or payable, or received or receivable, as compensation for dividends after February 26, 2018 (or after September 2018 if they are pursuant to a written arrangement entered into before February 27, 2018).

### **Deductible amount**

ITA  
260(6.1)

Subsection 260(6.1) of the Act provides a deduction for dividend compensation payments made pursuant to certain dividend rental arrangements. The amount deductible is the lesser of the amount the corporation is obligated to pay as compensation under the arrangement and the amount of the dividends received by the corporation under the arrangement that were identified in its return of income as amounts which are not deductible because of subsection 112(2.3).

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Subsection 260(6.1) is amended to remove the “notwithstanding” reference at the beginning of its preamble, in order to more clearly describe its interaction with subsection (6).

For more information, see the commentary on subsection 260(6).

This amendment applies in respect of amounts paid or payable, or received or receivable, as compensation for dividends after February 26, 2018 (or after September 2018 if they are pursuant to a written arrangement entered into before February 27, 2018).

## **Clause 28**

### **Disclosure Provisions**

#### *Criminal Code*

##### 462.48(2)

Paragraph 462.48(2)(c) of the *Criminal Code* provides that the Attorney General may make an application under subsection 462.48(1.1) in respect of “the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of the *Income Tax Act*,” for the purpose of investigating and prosecuting the criminal offences set out in paragraphs 462.48(1.1)(a) to (d).

Under the amendment, an order for similar information (“information or book, record, writing, return or other document”) obtained by or on behalf of the Minister of National Revenue for the purposes of the *Income Tax Act*, Part IX of the *Excise Tax Act* and the *Excise Act, 2001* may be sought for an investigation of the offences in paragraphs 462.48(1.1)(a) to (d). This amendment adds confidential tax information (GST/HST and excise tax information) to the information that can be gathered under section 462.48 of the *Criminal Code*.

## **Clause 29**

### **Interpretation**

#### *Mutual Legal Assistance in Criminal Matters Act (MLACMA)*

##### 2(1)

Subsection 2(1) of the MLACMA defines an “agreement” for the purposes of the Act to mean “a treaty, convention or other international agreement that is in force, to which Canada is a party and that contains a provision respecting mutual legal assistance in criminal matters”. This provision delineates the type of agreement that triggers the application of the Act.

This amendment maintains the previous definition of “agreement” in new paragraph (a) of the definition of “agreement” in subsection 2(1). However, the definition of “agreement” is amended by adding paragraph (b) in subsection 2(1) in order to enable international cooperation, relating to a criminal investigation or prosecution, under the *Convention on Mutual Administrative Assistance in Tax Matters* (the Convention), concluded at Strasbourg, on January 25, 1988, as amended from time to time by a protocol, or other international instrument, as ratified by Canada, and comprehensive tax information exchange agreements and tax treaties that have

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effect and to which Canada is a party. This amendment does not apply for the purposes of Part II and III of MLACMA.

### **Clause 30**

#### **Publication of Agreements in Canada Gazette**

MLACMA

5(1)

Section 5 of the MLACMA addresses requirements to publish “an agreement - or the provisions respecting mutual legal assistance in criminal matters contained in a convention or other international agreement”, within the meaning of the Act, in the *Canada Gazette* or the *Canada Treaty Series*. Once published, subsection 5(3) provides that these agreements are to be judicially noticed.

This amendment is consequential to the addition of new paragraph (b) to the existing definition of “agreement” in subsection 2(1) and ensures that the provision continues to apply to the previous definition of agreement (now in paragraph (a)) expressly dealing with mutual legal assistance in criminal matters.

### **Clause 31**

#### **Functions of Minister**

MLACMA

7

Under subsection 7(1) of the MLACMA, the Minister of Justice is responsible for the implementation of every agreement and the administration of the MLACMA. This amendment is consequential to the addition of new paragraph (b) to the existing definition of “agreement” in subsection 2(1). Subsection 7(1) is amended to ensure that the Minister of Justice continues to be responsible for the implementation of agreements, set out in the existing definition of “agreement” that deal with mutual legal assistance in criminal matters, while continuing her responsibilities for the administration of the MLACMA as a whole.

Subsection 7(2) ensures that when a request is presented to the Minister, the Minister shall deal with the request in accordance with the agreement and the Act. This amendment is consequential to the addition of new paragraph (b) to the existing definition of “agreement” in subsection 2(1). It ensures that when requests are made to Canada by a state or entity or a competent authority as defined in the MLACMA, the Minister of Justice will continue to deal with the request under the current mutual legal assistance process, in accordance with the relevant agreement as defined in the existing definition of “agreement” (in new paragraph (a)) dealing with mutual legal assistance in criminal matters.

Under new subsection 7(3), the Minister of National Revenue, who receives a request for assistance under a tax treaty, comprehensive tax information exchange agreement or the Convention from a foreign state or entity for the purposes of a criminal investigation or prosecution, may present the foreign request to the Minister of Justice, who shall deal with the

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request in accordance with the relevant tax treaty, comprehensive tax information exchange agreement or the Convention, and the MLACMA.

## **Clause 32**

### **Limitation — requests under agreements**

MLACMA

8(1)

Subsection 8(1) of the MLACMA limits mutual legal assistance requests so that the Minister may not give effect to a request for mutual legal assistance unless the agreement that Canada has entered into provides for “mutual legal assistance with respect to the subject matter of the request”. This amendment is consequential to the addition of new paragraph (b) to the existing definition of “agreement” in subsection 2(1) and expands the application of the MLACMA.

## **Clause 33**

### **Orders to gather tax information**

MLACMA

22.06

New section 22.06 of the MLACMA is added to provide an order for the production of tax information relating to certain serious criminal offences (“an act or omission that, if it had occurred in Canada, would have constituted an offence under subsection 462.48(1.1) of the *Criminal Code*”) being investigated or prosecuted by an entity or state as defined in MLACMA.

Subsection 22.06(1) permits a judge (as defined in section 2) to whom an application is made to issue a production order to gather tax information in certain circumstances. The order may be made only with respect to “an investigation or prosecution relating to an act or omission that, if it had occurred in Canada, would have constituted an offence under subsection 462.48(1.1) of the *Criminal Code*”. The order will be limited to gathering the information or documents referred to in paragraph 462.48(2)(c).

Subsection 22.06(2) clarifies that, subject to subsection 22.06(3), the production order to gather tax information may be obtained and made in accordance with subsections 462.48(1) to (5) of the *Criminal Code* and the order is to be executed in the manner set out in the *Criminal Code*, with any necessary modifications.

Subsections 462.48(1) to (5) of the *Criminal Code* address such issues as the type of offence that may be investigated or prosecuted, the application before the judge and the threshold for issuing the production order.

Subsection 22.06(3) provides that where there is an inconsistency between the *Criminal Code* provisions and the provisions in MLACMA, the MLACMA provisions specified for dealing with a foreign request, with necessary modifications, will prevail. In particular:

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- The reference to paragraphs 18(2) (b) and (c) is intended to clarify that a production order can only be obtained to gather information and to produce copies but not to examine any person;
  - The reference to subsections 18(3) to (7) are intended to make clear that:
    - A judge may designate a person to whom copies may be produced;
    - An order may be executed anywhere in Canada;
    - The order may include terms and conditions the judge considers desirable to protect the interests of persons named in it or third parties;
    - The terms and conditions of the order may be varied;
    - A person named in the order may refuse to produce a record or thing if:
      - producing the record or thing would disclose information that is protected by the Canadian law of non-disclosure of information or privilege;
      - producing the record or thing would constitute a breach of a privilege recognized by a law in force in the state or entity that presented the request; or
      - producing the record or thing would constitute the commission by the person of an offence against a law in force in the state or entity that presented the request.
    - The reference to subsections 18(8) and (9) applies the MLACMA process for dealing with refusals to produce records or things on the above grounds.
  - Subsection 22.06(3) also provides that sections 19 to 22 of MLACMA (except for paragraph 19(1)(a)) apply to a production order under section 22.06, with any necessary modifications, and prevail over any provision of the *Criminal Code* that is inconsistent with them. In particular,
    - Subsections 19(1) and (2) provide for a report to the judge who made the order or a judge of the same court, and to the Minister of Justice, generally describing the records or things produced, or if required, the record or thing itself.
    - Paragraph 19(1)(a), which refers to transcripts of examinations, does not apply as the order relates only to the production of records or things.
    - Under paragraph 19(1)(c) and subsection 19(3), a copy of the reasons for refusals to produce any record or thing under subsection 18(9) shall also be provided to the judge and the Minister. Under subsections 19(3) and (4), a judge determines whether the refusals are well-founded. If not, the judge may order the information to be produced. Subsections 20(1) to (4) provide for a sending hearing in which a judge determines whether or not to send the information to the foreign state making the request and the judge can impose any terms and conditions that they consider desirable, to give effect to the request; the preservation and return to Canada of any record or thing so produced; and for the protection of third parties.

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- Under section 21, information that is ordered sent to the requesting state or entity cannot be sent until the Minister is satisfied that the state or entity has agreed to comply with any terms or conditions imposed.
  - Section 22 applies contempt of court provisions in the event a person who has been ordered to produce information fails to comply with that order.

Related amendments to the *Income Tax Act*, the *Excise Tax Act* and the *Excise Act, 2001* permit taxpayer and other confidential tax information to be provided pursuant to a production order under section 22.06 made pursuant to an administrative arrangement under section 6 of the MLACMA or a bilateral agreement for mutual legal assistance in criminal matters to which Canada is a party.

## Clause 34

### Enhanced QPP contributions

Section 66(1) of *An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act* (Bill C-26, 2016) is amended to permit a tax deduction for employee contributions (as well as the employee share of contributions by self-employed persons) to the enhanced portion of the Québec Pension Plan, consistent with the tax treatment that applies to contributions to the enhanced portion of the Canada Pension Plan.

The following amendments to section 60 of the Act apply to the 2019 and subsequent taxation years.

ITA

60(e)(ii)

Subparagraph 60(e)(ii) of the Act provides a deduction for a taxpayer's first additional contribution and second additional contribution under the Canada Pension Plan made in respect of the taxpayer's self-employed earnings for the year.

Subparagraph (ii) is amended to permit a deduction for "a like contribution under a provincial pension plan" (*i.e.*, additional contributions to the Québec Pension Plan).

ITA

60(e.1)

Paragraph 60(e.1) of the Act provides a deduction for a taxpayer's first additional contribution and second additional contribution under the Canada Pension Plan made in respect of the taxpayer's employment income other than self-employed earnings.

Subparagraph (i) is amended to permit a deduction for "a like contribution under a provincial pension plan" (*i.e.*, additional contributions to the Québec Pension Plan).

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**Clause 35****Requirement to file***Income Tax Regulations (ITR)*

203

New section 203 of the Regulations imposes a requirement on designated educational institutions included in paragraph (a) of the definition of “designated educational institution” in subsection 118.6(1) of the Act to provide an annual information return, called a Tuition and Enrollment Certificate, to the Canada Revenue Agency.

This will facilitate the provision of the Canada Workers Benefit in situations where an individual has not applied for it.

This amendment applies to the 2019 and subsequent taxation years.

**Clause 36****Date returns to be filed**

ITR

205(3)

The Act and the Regulations impose various reporting obligations, including the requirement for certain taxpayers to file information returns with the Canada Revenue Agency by a specific date. The Act provides, with some exceptions, that when a person fails to file an information return on time, a penalty equal to \$25 per day may apply, subject to a \$100 minimum and a \$2,500 maximum. The penalty is applicable to each information return that is filed late.

Recognizing that this penalty could be excessive in cases where a large number of returns of the same type are required to be filed, subsection 162(7.01) of the Act provides for a separate, lower, graduated penalty that would be applicable where information returns prescribed in subsection 205(3) of the Regulations, were filed late.

Subsection 205(3) is amended to add the Tuition and Enrollment Certificate to the list of prescribed returns for purposes of subsection 162(7.01).

This amendment applies as of January 1, 2019.

**Clause 37****Electronic Filing**

ITR

205.1

The Act and the Regulations impose various reporting obligations, including the requirement for certain taxpayers to file information returns with the Canada Revenue Agency in a specified manner. Section 205.1 of the Regulations provides that where an information return is prescribed



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and where over 50 of one type of a prescribed information return is filed in a taxation year, the return must be filed electronically through the internet.

Subsection 205(3) of the Regulations is amended to add the Tuition and Enrollment Certificate to the list of prescribed returns for purposes of this subsection.

This amendment applies as of January 1, 2019.

## **Clause 38**

### **Distribution of taxpayers' portions of returns**

ITR  
209(1)

Subsection 209(1) of the Regulations requires issuers of T4 slips and other specified information returns to provide two copies of the relevant portion of the return to the taxpayer to whom the return relates.

Subsection 209(1) is amended to add a reference to section 203 of the Regulations consequential on the introduction of that section, which imposes a requirement on designated educational institutions (as defined in subsection 118.6(1) of the Act) that are located in Canada to provide the Tuition and Enrollment Certificate to the Canada Revenue Agency.

### **Distribution of taxpayers' portions of returns**

ITR  
209(5)

Subsection 209(5) of the Regulations permits the issuer of a T4 slip to provide the T4 slip to a taxpayer electronically, without having received the taxpayer's express consent to receive the T4 slip in this format.

An issuer can provide a T4 slip electronically only if

- the issuer meets the criteria specified by the Minister of National Revenue pursuant to section 221.01 of the Act;
- the taxpayer has not requested that they be provided with a paper copy of the T4 slip; and
- the taxpayer is a current employee, is not on extended leave and can reasonably be expected to have access to their T4s.

Subsection 209(5) is amended to also permit designated educational institutions to provide Tuition and Enrollment Certificates to students electronically without having received the taxpayer's express consent to receive the Certificate in that format.

Most of the conditions that allow an issuer to provide an information return under this subsection will also apply to a Tuition and Enrollment Certificate. However, subparagraph 209(5)(c)(ii) is amended in order to clarify that the condition that an information return can be provided

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electronically only if the taxpayer is a current employee and is not on extended leave, applies only in respect of the T4.

The amendments to section 209 apply as of January 1, 2019.

## **Clause 39**

### **Interpretation**

ITR  
5907

Section 5907 of the Regulations provides definitions and rules of interpretation for the purposes of Part LIX of the Regulations and also prescribes certain rules for particular foreign affiliate provisions of the Act.

### **Definitions**

ITR  
5907(1)

#### ***“designated person or partnership”***

The definition “designated person or partnership” generally identifies certain non-arm’s length persons or partnerships in relation to a taxpayer. This definition is amended consequential on the introduction of new subsection 15(1.5) of the Act.

Subsection 15(1.5) provides rules that apply if, among other conditions, a non-resident corporation (the “original corporation”) governed by the laws of a foreign jurisdiction undergoes a division under those laws that results in all or part of its property and liabilities becoming property and liabilities of one or more other non-resident corporations (each, a “new corporation”). For more information, see the commentary on new subsection 15(1.5).

The definition “designated person or partnership” is amended to explicitly include a new corporation in respect of a division under subsection 15(1.5), to ensure that the definition is met in the case of every foreign divisive reorganization to which subsection 15(1.5) applies.

The definition “designated person or partnership” supports various provisions in section 5907 of the Regulations. For example, in general terms, under the anti-avoidance rule in existing subsection 5907(2.02) of the Regulations, if a disposition of property (other than money) by a foreign affiliate of a taxpayer to a “designated person or partnership”, in respect of the taxpayer, is an “avoidance transaction” (as defined in subsection 245(3) of the Act), any resulting increase in “exempt earnings” is reclassified to “taxable earnings”. In this context, the purpose of the disposition may be relevant. In applying subsection 5907(2.02) in relation to a division described in new subsection 15(1.5), because the deemed disposition of property under subparagraph 15(1.5)(c)(i) by the original corporation to a new corporation (which, under this amendment, is a designated person in respect of the taxpayer) occurs in the context of the division, the purpose of the deemed disposition would be expected to be determined by reference to the purpose of the division – and, in particular, to the purpose of property and liabilities of the original corporation becoming property and liabilities of the new corporation in the course of the division.

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This amendment comes into force on July 27, 2018.

ITR

5907(2)(f)(ii)

In general terms, paragraph 5907(2)(f) of the Regulations provides for additions to “earnings” (as defined in subsection 5907(1) of the Regulations) of certain items of revenue, income or profit that are not otherwise included in earnings under the relevant foreign tax law. Existing subparagraph 5907(2)(f)(ii) provides an exception to this addition in certain circumstances in which, generally, a foreign tax rollover rule applies on a disposition to a “designated person or partnership” (as defined in subsection 5907(1) of the Regulations) in respect of a taxpayer.

Subparagraph 5907(2)(f)(ii) is amended, consequential on the introduction of new subsection 5907(2.011), to make it subject to subsection 5907(2.011) so that the exception in subparagraph 5907(2)(f)(ii) does not apply in the case of a deemed disposition of property under subparagraph 15(1.5)(c)(i) by an original corporation to a new corporation (both within the meaning of subsection 15(1.5)) to which subsection 5907(2.011) applies. For more information, see the commentary on subsection 5907(2.011).

This amendment applies in respect of dispositions that occur after October 23, 2012.

ITR

5907(2)(j)(iii)

In general terms, paragraph 5907(2)(j) of the Regulations provides for reductions to “earnings” (as defined in subsection 5907(1) of the Regulations) of certain amounts that are otherwise included (or not deducted) in computing earnings under the relevant foreign tax law. Existing subparagraph 5907(2)(j)(iii) provides an exception to this reduction in certain circumstances in which, generally, a foreign tax rollover rule applies on a disposition to a “designated person or partnership” (as defined in subsection 5907(1) of the Regulations) in respect of a taxpayer.

Subparagraph 5907(2)(j)(iii) is amended, consequential on the introduction of new subsection 5907(2.011), to make it subject to subsection 5907(2.011) so that the exception in subparagraph 5907(2)(j)(iii) does not apply in the case of a deemed disposition of property under subparagraph 15(1.5)(c)(i) by an original corporation to a new corporation (both within the meaning of subsection 15(1.5)) to which subsection 5907(2.011) applies. For more information, see the commentary on subsection 5907(2.011).

This amendment applies in respect of dispositions that occur after October 23, 2012.

ITR

5907(2.011)

New subsection 5907(2.011) of the Regulations is added, in connection with the introduction of new subsection 15(1.5), to override the tax rollover exceptions in subparagraphs 5907(2)(f)(ii) and (j)(iii) and subsection 5907(5.1), in certain specified circumstances. These circumstances (which are outlined below) are similar to the circumstances in which existing subsection 5907(2.01) overrides those rollover exceptions.

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Generally, subsection 15(1.5) provides rules that apply if, among other conditions, a non-resident corporation (the “original corporation”) governed by the laws of a foreign jurisdiction undergoes a division under those laws that results in all or part of its property and liabilities becoming property and liabilities of one or more other non-resident corporations (each, a “new corporation”). Among other consequences of such a division, subparagraph 15(1.5)(c)(i) deems each property of the original corporation that becomes property of a new corporation as a consequence of the division to be disposed of by the original corporation to the new corporation for proceeds of disposition equal to its fair market value.

New subsection 5907(2.011) ensures that any unrealized value in the properties that are deemed to be disposed of by the original corporation to a new corporation under subparagraph 15(1.5)(c)(i) will be eligible for surplus recognition provided, among other conditions, the shares of the new corporation are owned, within 180 days after the day that includes the time when property of the original corporation becomes property of the new corporation, by a person or partnership that is not a designated person or partnership (as defined in subsection 5907(1)) in respect of the taxpayer.

This new rule is intended to apply to transactions that would otherwise be structured as direct asset sales but that are instead, for foreign commercial reasons, structured as share sales. Where such transactions are so structured primarily for Canadian tax reasons, they could be subject to the anti-avoidance rule in subsection 5907(2.02). For more information, see the commentary on the amendment to the definition “designated person or partnership” in subsection 5907(1).

This amendment applies in respect of dispositions that occur after October 23, 2012.

## **Clause 40**

### **Coordinating amendment**

This coordinates the amendments in clause 34 of this Act and clause 66 of *An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act*. It ensures that, regardless of whether this Act receives Royal Assent before the other Act comes into force, the amendments relating to the deduction for employee contributions (as well as the employee share of contributions by self-employed persons) to the enhanced portion of the Québec Pension Plan are made to section 60 of the *Income Tax Act*.

For more information, see the commentary in clause 34 on the amendments to paragraphs 60(e) and (e.1) of the Act.