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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New paragraph 13(7)(i) of the *Income Tax Act* (the “Act”) provides rules relating to the capital cost and proceeds of disposition of a taxpayer’s depreciable property that is a “zero-emission passenger vehicle”, as defined in subsection 248(1) of the Act, the cost of which exceeds the prescribed amount. New subsection 7307(1.1) of the *Income Tax Regulations* (the “Regulations”) establishes the initial prescribed amount at $55,000, plus the federal and provincial sales taxes that would have been paid in respect of the acquisition of the vehicle if it had been purchased for $55,000. Where paragraph 13(7)(i) applies:

- Subparagraph 13(7)(i)(i) provides that the capital cost of the vehicle to the taxpayer is equal to the prescribed amount. The main implication of this is that the capital cost allowance (CCA) that is deductible in respect of the vehicle is limited to that amount.
- Subparagraph 13(7)(i)(ii) provides that, on a disposition of the vehicle, the taxpayer’s “proceeds of disposition” are reduced where the vehicle is disposed of to a person or partnership with which the taxpayer deals at arm’s length. Specifically, where this is the case the proceeds of disposition otherwise determined are multiplied by a fraction represented by the ratio of the capital cost of the vehicle to the taxpayer divided by the cost of the vehicle to the taxpayer.

For example, if a taxpayer acquires a zero-emission passenger vehicle for $60,000 and, in a later year disposes of the vehicle for $30,000, the proceeds of disposition to be taken into account in determining the “undepreciated capital cost” of the pool of assets to which it belongs (*i.e.*, Class 54) would be $30,000 x $55,000 / $60,000 = $27,500. Note that, unlike vehicles included in Class 10.1, dispositions of a zero-emission passenger vehicle can give rise to recaptured depreciation, under subsection 13(1), or a terminal loss, under subsection 20(16). In this regard, taxpayers are able to choose to have Class 10.1 treatment instead of Class 54 treatment under an election provided for in subsection 1103(2j) of the Regulations.

This amendment comes into force on March 19, 2019.

Clause 3

Bad debts – dispositions of depreciable property

ITA
20(4)

Subsection 20(4) of the Act provides a deduction in computing the income of a taxpayer if it is established that an amount owing to the taxpayer as or on account of proceeds of disposition of depreciable property (other than timber resource property and a passenger vehicle to which Class 10.1 applies) has become a bad debt in the taxation year. The deduction is equal to the lesser of the amount so owing to the taxpayer and the amount, if any, by which the capital cost to the taxpayer of the property exceeds the amounts realized by the taxpayer on account of the proceeds of disposition.

Subsection 20(4) is amended to exclude from its application bad debts arising in respect of a “zero-emission passenger vehicle” (as defined in subsection 248(1)) to which new paragraph 13(7)(i) applies (*i.e.*, a Class 54 zero-emission passenger vehicle the capital cost of which is limited to the prescribed amount). Because of the special proceeds of disposition rule that could apply to such vehicles, a separate rule is provided in new subsection 20(4.11).

This amendment comes into force on March 19, 2019.

Bad debts – zero-emission passenger vehicles

ITA
20(4.11)

New subsection 20(4.11) of the Act provides a deduction in computing the income of a taxpayer for a bad debt in respect of the proceeds of disposition of a "zero-emission passenger vehicle" (as defined in subsection 248(1)) to which the capital cost limitation in new paragraph 13(7)(i) applies (*i.e.*, vehicles that cost more than $55,000).

This rule is similar to the rule in subsection 20(4) except that it prorates the amount otherwise deductible based on the same fraction (set out in subparagraph 13(7)(i)(ii)) that is used to adjust the amount of the proceeds of disposition that reduces the undepreciated capital cost of the pool of assets to which the vehicle belongs (*i.e.,* Class 54).

New subsection 20(4.11) comes into force on March 19, 2019.

Clause 4

Meaning of capital gain

ITA
39(1)(a)(i.1)

A taxpayer's capital gain for a taxation year from the disposition of a property is determined under paragraph 39(1)(a) of the Act. Subparagraph 39(1)(a)(i.1) provides that no capital gain arises on the disposition of certified cultural property to designated institutions and public authorities.

Subparagraph 39(1)(a)(i.1) is amended to remove the reference to paragraph 29(3)(c) of the *Cultural Property Export and Import Act*. This removes the requirement that an object be of "national importance" in order to qualify as cultural property.

This amendment comes into force on March 19, 2019.

Clause 5

Canadian development expense

ITA
66.2

Section 66.2 of the Act provides rules relating to the deduction of "Canadian development expense", as defined in subsection 66.2(5).

ITA
66.2(2)

Subsection 66.2(2) of the Act allows a taxpayer a deduction for a taxation year in respect of its "cumulative Canadian development expense" (CCDE) at the end of the year, as determined under that definition in subsection 66.2(5). A taxpayer's CCDE represents the cumulative total of the additions to the taxpayer's CCDE (elements A to D.1, which include Canadian development expenses incurred, in element A) less reductions to the taxpayer's CCDE (elements E to O, which include deductions in respect of CCDE, in element E). A taxpayer is permitted a deduction with respect to a positive CCDE balance. A negative CCDE balance is included in a taxpayer's income under subsection 66.2(1).

Subsection 66.2(2) is amended by introducing new paragraph (d), which provides for a deduction in respect of a taxpayer's "accelerated Canadian development expense", as newly defined in subsection 66.2(5).

New paragraph 66.2(2)(d) essentially provides an additional first-year Canadian development expense deduction to a taxpayer in respect of its "accelerated Canadian development expense". The amount of the deduction for a taxation year is determined by the formula A x (B – C).

Variable A of the formula provides for deduction rates as follows:

- 15% for taxation years that end before 2024;
- 7.5% for taxation years that begin after 2023; and
- A proration of the two rates for taxation years that straddle the end of 2023, based on the amount of such expenses incurred before and after the end of 2023.

Variable B of the formula is the total of all accelerated Canadian development expenses incurred by the taxpayer in the taxation year.

Variable C is determined by the formula (D – E) – (F – G – H).

The additional amount that a taxpayer can claim in respect of CCDE for a taxation year is determined by subtracting the reductions to CCDE for the year from the additions to CCDE for the year that qualify as accelerated Canadian development expenses. The formula for variable C ensures that reductions (D – E) to CCDE in the taxation year are first applied against additions (F – G) to CCDE in the taxation year other than accelerated Canadian development expenses (H) incurred in the taxation year. It should be noted that variable E is based on CCDE at the beginning of the current taxation year rather than the end of the prior year in order to ensure that the prior year's claim is taken into account.

Definitions

ITA
66.2(5)

Subsection 66.2(5) of the Act contains the definitions "Canadian development expense" and "cumulative Canadian development expense".

Subsection 66.2(5) is amended by introducing the new definition "accelerated Canadian development expense".

"accelerated Canadian development expense"

The definition "accelerated Canadian development expense" is relevant for the purpose of calculating the deduction under new paragraph 66.2(2)(d).

The definition provides the start and end dates for expenses that can qualify for the deduction under new paragraph 66.2(2)(d). An accelerated Canadian development expense is generally a Canadian development expense of a taxpayer that is incurred after November 20, 2018 and before 2028.

An accelerated Canadian development expense does not include an expense that is a successored Canadian development expense, or that is a cost in respect of a Canadian resource property acquired by the taxpayer, or a partnership of which the taxpayer is a member, from a person or partnership with which the taxpayer does not deal at arm's length.

However, an accelerated Canadian development expense does include a Canadian development expense that has been renounced to a shareholder under a flow-through share agreement, if the flow-through share agreement has been entered into after November 20, 2018.

Clause 6

Canadian oil and gas property expense

ITA
66.4

Section 66.4 of the Act provides rules relating to the deduction of "Canadian oil and gas property expense," as defined in subsection 66.4(5).

ITA
66.4(2)

Subsection 66.4(2) of the Act allows a taxpayer a deduction for a taxation year in respect of its "cumulative Canadian oil and gas property expense" (CCOGPE) at the end of the year, as determined under that definition in subsection 66.4(5).

Subsection 66.4(2) is amended by introducing new paragraph (c), which provides for a deduction in respect of a taxpayer's "accelerated Canadian oil and gas property expense", as newly defined in subsection 66.4(5).

The amendments to this section parallel those made to section 66.2 relating to the accelerated Canadian development expense.

New paragraph 66.4(2)(c) essentially provides an additional first-year Canadian oil and gas property expense deduction to a taxpayer in respect of its "accelerated Canadian oil and gas property expense". The amount of the deduction is determined by the formula A x (B – C).

Variable A of the formula provides for the deduction rates as follows:

- 5% for taxation years that end before 2024;
- 2.5% for taxation years that begin after 2023; and
- A proration of the two rates for taxation years that straddle the end of 2023, based on the amount of such expenses incurred before and after the end of 2023.

Variable B of the formula is the total of all accelerated Canadian oil and gas property expenses incurred by the taxpayer in the taxation year.

Variable C is determined by the formula (D – E) – (F – G – H).

The additional amount that a taxpayer can claim in respect of CCOGPE for a taxation year is determined by subtracting the reductions to CCOGPE for the year from the additions to CCOGPE for the year that qualify as accelerated Canadian oil and gas property expenses. The formula for variable C ensures that reductions (D – E) to the CCOGPE in the taxation year are first applied against additions (F – G) to CCOGPE in the taxation year other than accelerated Canadian oil and gas property expense (H) incurred in the taxation year. It should be noted that variable E is based on CCOGPE at the beginning of the current taxation year rather than the end of the prior year in order to ensure that the prior year's claim is taken into account.

Definitions

ITA
66.4(5)

Subsection 66.4(5) of the Act contains the definitions "Canadian oil and gas property expense" and "cumulative Canadian oil and gas property expense".

Subsection 66.4(5) is amended by introducing the new definition "accelerated Canadian oil and gas property expense".

"accelerated Canadian oil and gas property expense"

The definition "accelerated Canadian oil and gas property expense" is relevant for the purpose of calculating the deduction under new paragraph 66.4(2)(c).

The definition provides the start and end dates for expenses that can qualify for the deduction under new paragraph 66.4(2)(c). An accelerated Canadian oil and gas property expense is generally a Canadian oil and gas property expense of a taxpayer that is incurred after November 20, 2018 and before 2028.

An accelerated Canadian oil and gas property expense does not include an expense that is a successored Canadian oil and gas property expense, or that is a cost in respect of a Canadian resource property acquired by the taxpayer, or a partnership of which the taxpayer is a member, from a person or partnership with which the taxpayer does not deal at arm's length.

Clause 7

Interest on money borrowed for certain vehicles

ITA
67.2

Section 67.2 of the Act contains restrictions on the amount that may be deducted in respect of interest expense relating to the acquisition a "passenger vehicle", as defined in subsection 248(1). Section 67.2 is amended to also apply to a "zero-emission passenger vehicle", as newly defined in subsection 248(1).

This amendment comes into force on March 19, 2019.

Clause 8

More than one owner

ITA
67.41

New section 67.41 of the Act provides a special rule which governs the maximum deductible amount of capital cost and interest where two or more persons jointly own a "zero-emission passenger vehicle", as newly defined in subsection 248(1). If such a vehicle is jointly owned by two or more persons, the capital cost restriction in new paragraph 13(7)(i) and the interest deductibility restriction in amended section 67.2 apply on a vehicle basis rather than on an individual basis. In such a case, new section 67.41 provides that the maximum deduction to which each person may be entitled in respect of the capital cost and interest is the proportion of the amount otherwise deductible had the vehicle been owned by only one person that the fair market value of the person's interest in the vehicle is of the fair market value of the interests in the vehicle of all joint owners.

New section 67.41 comes into force on March 19, 2019.

Clause 9

Social assistance for informal care programs

ITA
81(1)

Subsection 81(1) of the Act lists various amounts that are not included in computing a taxpayer's income.

New paragraph 81(1)(h.1) specifically exempts from an individual's income social assistance payments received as part of a means, needs or income test 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). Paragraph 81(1)(h.1) applies only in respect of payments received by individuals that are parents (or who would be considered parents if they did not receive the payments) under the extended definition in section 252 solely because the child is wholly dependent on that individual and is a child of whom the individual has, in law or in fact, custody and control. This provision does not apply to payments made in respect of a foster person (which are exempt from income under paragraph 81(1)(h)).

This amendment comes into force on January 1, 2009.

Clause 10

Transfer of property to corporation by shareholders

ITA
85(1)(e.5)

Subsection 85(1) of the Act contains rules that enable a taxpayer to transfer eligible property on a tax-deferred basis to a taxable Canadian corporation in exchange for consideration that includes shares of the corporation.

Subsection 85(1) is amended to add new paragraph (e.5), which applies in certain circumstances in which a "zero-emission passenger vehicle" (as newly defined in subsection 248(1)) is transferred to a taxable Canadian corporation. Specifically, new paragraph 85(1)(e.5) will apply where the zero-emission passenger vehicle is subject to the capital cost limitation in new paragraph 13(7)(i) and the taxpayer does not deal at arm's length with the corporation.

In these circumstances, subparagraph 85(1)(e.5)(i) deems the elected amount in respect of the vehicle to be equal to the "cost amount" (as defined in subsection 248(1)) of the vehicle immediately before the disposition. Subparagraph 85(1)(e.5)(ii) deems, for the purposes of the standby charge automobile benefit rule in subsection 6(2), the cost of the vehicle to the transferee corporation to be an amount equal to the fair market value of the vehicle immediately before the disposition.

New paragraph 85(1)(e.5) comes into force on March 19, 2019.

Clause 11

Rules applicable

ITA
87(2)

Subsection 87(2) of the Act provides rules that apply where two or more corporations amalgamate to form a new corporation.

Continuing corporation

ITA
87(2)(j.6)

Paragraph 87(2)(j.6) of the Act provides continuity rules for the purposes of a number of provisions of the Act. Specifically, it provides, for certain enumerated purposes, that the corporation formed as the result of an amalgamation is considered to be the same corporation as, and a continuation of, each predecessor corporation. Because of paragraph 88(1)(e.2), these continuity rules also apply in the context of a winding-up to which subsection 88(1) applies.

Paragraph 87(2)(j.6) is amended to add a reference to subsection 127(10.2), which establishes a corporation's expenditure limit for the additional investment tax credit provided under subsection 127(10.1).

This amendment is consequential on the amendment to subsection 127(10.2) and the repeal of paragraph 87(2)(oo). This amendment ensures that an amalgamated corporation must take into account the taxable capital employed in Canada of its predecessor corporations in determining its expenditure limit under subsection 127(10.2).

For more information, see the commentary on subsection 127(10.2).

This amendment applies to taxation years that end after March 18, 2019.

Journalism organizations

ITA
87(2)(j.96)

Subsection 87(2) is amended, consequential on the introduction of the refundable labour tax credit for journalism organizations in new section 125.6, to add new paragraph 87(2)(j.6), which deems a corporation formed on an amalgamation to be a continuation of each predecessor corporation for the purposes of the refundable labour tax credit for journalism organizations set out in section 125.6. This may be relevant to, for example, the test in paragraph (c) of the definition "eligible newsroom employee" in new subsection 125.6(1). For more information, see the commentary on new section 125.6.

This amendment comes into force on January 1, 2019.

Investment tax credit

ITA
87(2)(oo)

Paragraph 87(2)(oo) of the Act provides a specific continuity rule for an amalgamated corporation in respect of the expenditure limit of the corporation under subsection 127(10.2) for the purpose of determining its investment tax credits.

Due to the amendment to subsection 127(10.2), the specific rule in paragraph 87(2)(oo) is unnecessary and is replaced with a more general reference to subsection 127(10.2) in paragraph 87(2)(j.6). As such, paragraph 87(2)(oo) is repealed. For more information, see the commentary on subsection 127(10.2).

This amendment applies to taxation years that end after March 18, 2019.

Clause 12

Winding-up

Subsection 88(1) of the Act provides various rules that apply to certain wind-ups of a subsidiary corporation into its parent corporation.

Expenditure limit for investment tax credits

ITA
88(1)(e.8)

Paragraph 88(1)(e.8) of the Act provides a continuity rule for the purpose of determining the parent corporation's expenditure limit under subsection 127(10.2) following a qualifying wind-up. For more information, see the commentary on subsection 127(10.2).

Paragraph 88(1)(e.8) is repealed consequential on the amendment to subsection 127(10.2), which eliminates the taxable income factor in the determination of a corporation's expenditure limit.

This amendment applies to taxation years that end after March 18, 2019.

Clause 13

Deduction for gifts - Gifts to institutions

ITA
110.1(1)(c)

Section 110.1 of the Act provides rules for calculating the deduction in computing the taxable income of a corporation in respect of gifts made by the corporation to registered charities and other qualified donees. Paragraph 110.1(1)(c) provides for a deduction in computing a corporation's taxable income of the eligible amount of a cultural property gift made by the corporation to a designated institution or public authority.

Paragraph 110.1(1)(c) is amended to remove the reference to paragraph 29(3)(c) of the *Cultural Property Export and Import Act*. This removes the requirement that an object be of "national importance" in order to qualify as cultural property.

This amendment comes into force on March 19, 2019.

Clause 14

Annual adjustment

ITA
117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts in the Act, based on annual increases to the Consumer Price Index.

Subsection 117.1(1) is amended to provide that the amount of $10,000 in the description of B in the formula in new subsection 122.91(2) is indexed. For more information, see the notes relating to new section 122.91.

Indexation of the $10,000 amount begins in the 2021 taxation year.

Clause 15

Digital news subscriptions tax credit

ITA
118.02

New section 118.02 of the Act provides a non-refundable 15% credit on amounts paid by individuals for eligible digital news subscriptions, up to an annual expense limit of $500.

This credit will be available in respect of eligible amounts paid after 2019 and before 2025.

ITA
118.02(1)

Definitions

New subsection 118.02(1) provides definitions that apply for the purposes of new section 118.02.

"digital news subscription"

A "digital news subscription" is an agreement entered into between an individual and a qualified Canadian journalism organization that entitles an individual (*e.g.*, the individual entering into the agreement or another individual who receives the subscription as a gift) to access content provided by the organization in digital form. To qualify, the organization must be primarily engaged in the production of original written news content and not engaged in a broadcasting undertaking (as defined in subsection 2(1) of the *Broadcasting Act*). For more information, see the commentary on the definition "qualified Canadian journalism organization" in subsection 248(1).

"qualifying subscription expense"

A "qualifying subscription expense" is the amount paid by an individual in a year for a digital news subscription. As subscriptions can provide subscribers with both print and digital content or content from partner organizations that are not themselves qualified Canadian journalism organizations, this amount is limited to the cost of a comparable stand-alone digital subscription that provides access to content of qualified Canadian journalism organizations. If there is no such comparable subscription, individuals will be limited to claiming one half of the amount actually paid. For the purpose of determining the comparable digital news subscription, it is intended that criteria such as the duration of the subscription period (*e.g.*, comparing a monthly print and digital subscription to a monthly digital only subscription) and level of access to content would be relevant.

ITA
118.02(2)

New subsection 118.02(2) of the Act provides for the calculation of the non-refundable digital news subscription tax credit. This credit is available in respect of qualifying subscription expenses paid before the end of 2024.

Individuals may claim this 15-percent tax credit on amounts up to $500 paid by them toward eligible digital subscriptions in a taxation year, for a maximum tax credit of $75 annually.

Apportionment of credit

ITA
118.02(3)

New subsection 118.02(3) provides that, where more than one individual is entitled to the digital news subscription tax credit in respect of an eligible digital news subscription, the total amounts claimed by those individuals cannot exceed the maximum amount that would be allowed if only one individual were claiming the credit. If the individuals cannot agree as to what portion of the amount each can deduct, the Minister of National Revenue may fix the portions.

Clause 16

Definitions – Charitable Donations Tax Credit

ITA
118.1(1)

Section 118.1 of the Act provides a tax credit to individuals in respect of certain gifts made to qualified donees or, in the case of certain gifts of cultural property, to certain designated institutions or public authorities. Subsection 118.1(1) contains a number of definitions that apply for purposes of section 118.1.

"total cultural gifts"

An individual's "total cultural gifts" for a particular taxation year is defined as the total of the eligible amounts of the individual's gifts of qualifying cultural property made to a designated institution or public authority. Paragraph (a) of the definition describes the criteria that must be satisfied in order for an object to be considered a cultural gift.

Paragraph (a) of the definition is amended to remove the reference to paragraph 29(3)(c) of the *Cultural Property Export and Import Act*. This removes the requirement that an object be of "national importance" in order to qualify as cultural property.

This amendment comes into force on March 19, 2019.

Clause 17

Medical cannabis

ITA
118.2(2)(u)

Subsection 118.2(2) of the Act contains a list of expenditures that qualify as eligible medical expenses for the purpose of the medical expense tax credit.

Paragraph 118.2(2)(u) relates to medical cannabis and contains a reference to the *Access to Cannabis for Medical Purposes Regulations* or section 56 of the *Controlled Drugs and Substances Act*. With the introduction of the *Cannabis Act*, possession of prescribed amounts of cannabis and cannabis products are no longer regulated under the *Controlled Drugs and Substances Act*.

Consequential on the introduction of the *Cannabis Act* and *Cannabis Regulations*, paragraph 118.2(2)(u) is amended to provide that the medical expense tax credit is available for amounts paid on behalf of the patient who is the holder of a medical document (as defined in subsection 264(1) of the *Cannabis Regulations*) to support their use of cannabis for medical purposes, for the cost of cannabis, cannabis oil, cannabis plant seeds or cannabis products purchased for medical purposes from a holder of a licence for sale (as defined in subsection 264(1) of the *Cannabis Regulations*).

This amendment comes into force on October 17, 2018.

Clause 18

Tuition credit

ITA
118.5(1)

Subsection 118.5(1) of the Act provides a tax credit in respect of tuition fees paid to certain educational institutions. The opening words of 118.5(1) are amended to add a reference to new subsection 118.5(1.2).

This amendment comes into force on January 1, 2019.

Canada training credit reduction

ITA
118.5(1.2)

New subsection 118.5(1.2) of the Act effectively provides that the portion of the tuition fees refunded through the Canada Training Credit will not qualify as eligible expenses under the tuition tax credit. This is done by reducing the amount that can be claimed under the tuition tax credit in subsection (1) in respect of tuition fees paid to certain educational institutions by the product of the appropriate percentage used for the tuition tax credit (currently 15%) multiplied by the amount of the Canada Training Credit for the year. For more information, see the commentary on new section 122.91.

This amendment comes into force on January 1, 2019.

Clause 19

Ordering of credits

ITA
118.92

Section 118.92 of the Act provides that tax credits allowed in computing an individual’s tax payable for a taxation year are to be applied in a specific order.

This section is amended to add a reference to new section 118.02, consequential on the introduction of the digital news subscription tax credit.

This amendment comes into force on January 1, 2020.

Clause 20

Receipt of social assistance

ITA
122.7(1.2)

The definition “eligible individual” in subsection 122.7(1) of the Act is relevant in determining if an individual may claim the Canada Workers Benefit in a taxation year and the definition “eligible dependant” in that subsection is relevant in determining if a single individual may be eligible for the family Canada Workers Benefit amount.

An eligible individual includes an individual resident in Canada who was a parent of a child with whom the individual resides. An eligible dependant must be a child of an individual.

New subsection 122.7(1.2) provides that for the purposes of the definitions “eligible individual” and “eligible dependant” in subsection (1), an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of another individual under a program of the Government of Canada or a government of a province, such as a kinship program. The amendment does not apply if the amount is a special allowance under the *Children’s Special Allowances Act* received in respect of a foster person.

This amendment comes into force on January 1, 2009.

Clause 21

Canada Training Credit

ITA
122.91

New section 122.91 of the Act provides the Canada Training Credit, a refundable tax credit, payable in respect of the 2020 and subsequent taxation years, that can be claimed on up to half of eligible tuition and fees associated with training.

ITA
122.91(1)

New subsection 122.91(1) provides for the refundable training credit. To qualify in a taxation year, an individual must be resident in Canada throughout the taxation year and make a claim on their return of income for the taxation year. An individual is entitled to claim a credit equal to one half of the eligible tuition and fees paid in respect of the taxation year, up to their training amount limit for the taxation year.

Tuition and other fees eligible for the Canada Training Credit will generally be the same as under the existing rules for the Tuition Tax Credit, except that they do not include tuition and fees with respect to educational institutions outside of Canada.

Definition of training amount limit

ITA
122.91(2)

New subsection 122.91(2) provides for the calculation of an individual’s “training amount limit” for a taxation year. An individual cannot claim an amount for the Canada Training Credit in subsection (1) in excess of that individual’s training amount limit.

An individual’s training amount limit is nil for taxation years prior to 2020 and if the individual is younger than 26 years of age or older than 65 years of age at the end of a taxation year.

Subparagraph (a)(i) provides that an individual’s training amount limit is a running balance that increases every year by $250, provided certain conditions are met, and is decreased by prior-year credits received. Subparagraph (ii) provides that individuals can accumulate up to a maximum amount of $5,000 over a lifetime.

Variable A in the formula in subparagraph (i) provides that the starting point for calculating an individual’s training amount limit for a taxation year is the individual’s training limit for the preceding taxation year. Variable B provides that $250 will be added if certain conditions are met, namely:

- the individual has filed a return of income for the preceding taxation year;
- the individual was resident in Canada throughout the preceding taxation year;
- in the preceding taxation year, the individual had a total of $10,000 or more of
    - “working income” (as defined in subsection 122.7(1)) for purposes of the Canada Workers Benefit, as if that definition included amounts that are normally exempt from income tax under paragraph 81(1)(a) (which excludes amounts exempt under another enactment of Parliament other than a tax treaty) or excluded under subsection 81(4) (which excludes the first $1,000 dollars received as payment for volunteer emergency services),
    - maternity and parental employment insurance benefits, and
    - benefits paid under Quebec’s *Act respecting parental insurance*, as if those benefits included amounts that are normally exempt from income tax under paragraph 81(1)(a), and
- the individual’s income for the preceding taxation does not exceed the threshold for the second highest tax rate bracket ($147,667 in 2019).

Variable C reduces the training amount limit by amounts received by the individual under the Canada Training Credit in the preceding taxation year.

Effect of bankruptcy

ITA
122.91(3)

New subsection 122.91(3) of the Act applies in computing the Canada Training Credit where an individual becomes bankrupt in a particular calendar year. This subsection provides that, notwithstanding subsection 128(2), any reference to the taxation year of the bankrupt individual is deemed to be a reference to the calendar year. In addition, it provides that the individual’s working income and income under Part I of the Act from both the pre-bankruptcy and post-bankruptcy periods will be taken into consideration in computing the Canada Training Credit.

Special rules in the event of death

ITA
122.91(4)

New subsection 122.91(4) of the Act provides that the Canada Training Credit rules apply in respect of an individual who dies in a calendar year as if the individual were alive at the end of the calendar year.

Clause 22

Definitions

ITA
125(7)

Subsection 125(7) of the Act provides a number of definitions that apply to the small business deduction rules in section 125.

“specified cooperative income”

The definition “specified cooperative income” allows certain income arising in connection with sales to farming or fishing cooperatives to be excluded from “specified corporate income”, with the consequence that such income remains eligible for the small business deduction.

Consequential on the introduction of the broader definition “specified farming or fishing income”, the definition “specified cooperative income” is repealed. Income that was previously specified cooperative income will now qualify as specified farming or fishing income.

“specified corporate income”

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

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

The definition “specified corporate income” is amended to replace the reference to “specified cooperative income” with a reference to “specified farming or fishing income”. Income of a corporation that is “specified farming or fishing income” is not included in the corporation’s specified corporate income. This amendment is consequential on the replacement of the definition “specified cooperative income” with the broader definition “specified farming or fishing income”.

“specified farming or fishing income”

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

To qualify as “specified farming or fishing income” of a corporation the income must be from the sale of the farming products or fishing catches of the corporation’s farming or fishing business to a purchasing corporation that deals at arm’s length with the corporation. However, an exclusion applies for amounts included in a corporation’s income under subsection 135(7) (*i.e.*, patronage payments made by a corporation out of its profits).

The repeal of “specified cooperative income”, the amendment to “specified corporate income” and the addition of “specified farming or fishing income” apply to taxation years that begin after March 21, 2016.

Clause 23

Refundable labour tax credit for journalism organizations

ITA
125.6

New section 125.6 of the Act sets out the rules that apply for the purpose of computing the refundable labour tax credit for journalism organizations. Generally, this tax credit is available at a rate of 25% of qualifying labour expenditures incurred by a qualifying journalism organization for a taxation year in respect of an eligible newsroom employee. It is subject to a cap of $55,000 per eligible newsroom employee.

Definitions

ITA
125.6(1)

Subsection 125.6(1) of the Act provides definitions that apply for the purpose of new section 125.6.

“assistance”

The definition “assistance” describes amounts that reduce the cost of qualifying labour expenditures made by qualifying journalism organizations in respect of eligible newsroom employees. This definition is based on amounts that would be included in computing income under paragraph 12(1)(x) and is the same as the “assistance” definition that applies for the purposes of the Canadian film or video production tax credit in section 125.4.

“eligible newsroom employee”

The tax credit is available only in respect of eligible newsroom employees. To qualify, an employee must, on average, work a minimum of 26 hours per week. In addition, the employee must work (or reasonably be expected to work) for a period of 40 consecutive weeks that overlaps the relevant taxation year. And so, an employee who is hired near the end of a taxation year or who ceases to be employed before the 40-week period expires could qualify in respect of the taxation year, provided that there was a reasonable expectation that they would work for more than 40 consecutive weeks.

An employee must also spend at least 75% of their time engaged in the production of news content. Eligible newsroom employees are not limited to journalists and can include various ‘newsroom’ employees, such as editors, photographers and graphic designers.

Finally, the employee must meet any conditions that may be prescribed.

“qualifying journalism organization”

A qualifying journalism organization for the purposes of the labour tax credit is a qualified Canadian journalism organization that meets certain additional conditions. For more information, see the commentary on the definition “qualified Canadian journalism organization” in subsection 248(1).

To qualify, an organization must be primarily engaged in the production of original written news content and not be a broadcaster (*i.e.*, engaged in a broadcasting undertaking, as defined in subsection 2(1) of the *Broadcasting Act*). In addition, the receipt of funding from the Canada Periodical Fund in a taxation year will preclude an organization from qualifying in that year.

Corporations having share capital will be required to meet additional ownership restrictions, incorporated from the “Canadian newspaper” definition in subsection 19(5). If it is a public corporation with shares listed on a designated stock exchange in Canada, it cannot be controlled by citizens or subjects of a country other than Canada. For other corporations, in general terms, at least ¾ of their shares must be owned by Canadian citizens or by qualifying public corporations.

“qualifying labour expenditure”

The labour tax credit is based on a qualifying journalism organization’s qualifying labour expenditures. A “qualifying labour expenditure” is defined in respect of an eligible newsroom employee and is generally the salary or wages payable by the organization to the employee. Qualifying labour expenditures in respect of an eligible newsroom employee are decreased by the amount of any assistance received in respect of the employee. These expenditures are subject to an annual cap of $55,000 (prorated for short taxation years).

Tax Credit

ITA
125.6(2)

Subsection 125.6(2) provides the refundable labour tax credit for journalism organizations. To claim the tax credit, a qualifying journalism organization must file a prescribed form containing prescribed information with its return of income for the year. The amount of the credit is equal to 25% of the organization’s total qualifying labour expenditures for the taxation year.

When assistance received

ITA
125.6(3)

Subsection 125.6(3) of the Act provides that the amount of the refundable credit under new subsection (2) for a taxation year is considered to be assistance received by the qualifying journalism organization from a government immediately before the end of the year (other than for the purpose of determining the refundable labour tax credit for journalism organizations itself).

Clause 24

Investment Tax Credit

ITA
127

Section 127 of the Act permits deductions in computing tax payable in respect of, amongst other items, an investment tax credit.

Definitions

ITA
127(9)

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

“flow-through mining expenditure”

The definition “flow-through mining expenditure” in subsection 127(9) defines the expenses (eligible expenses) that qualify for the 15% investment tax credit in respect of specified surface “grass-roots” mineral exploration. (This is often referred to as the “mineral exploration tax credit”.) Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2018 and before April 2019.

This amendment effects a five-year extension of the “mineral exploration tax credit”. Specifically, the definition “flow-through mining expenditure” in subsection 127(9) is amended to include eligible expenses incurred by a corporation after March 2019 and before 2025, where the expenses are incurred under a flow-through share agreement entered into after March 2019 and before April 2024.

This amendment applies in respect of expenses renounced under a flow-through share agreement entered into after March 2019.

Expenditure limit

ITA
127(10.2)

Subsection 127(10.2) of the Act determines a corporation’s expenditure limit for the purpose of the additional investment tax credit provided in subsection 127(10.1).

The expenditure limit of a corporation for a particular taxation year is an amount from nil to $3 million, as determined by a formula set out in subsection 127(10.2). The formula has the effect of reducing the expenditure limit to the extent that the taxable income of the corporation and any associated corporations exceeds a threshold amount and to the extent the taxable capital employed in Canada of the corporation and any associated corporations exceeds a threshold amount.

Subsection 127(10.2) is amended to remove taxable income as a factor in the determination of a corporation’s expenditure limit. As a consequence, a corporation’s expenditure limit will be reduced based only on the extent to which the taxable capital employed in Canada of the corporation (and any associated corporations) exceeds $10 million, being fully eliminated where it reaches $50 million.

This amendment applies to taxation years that end after March 18, 2019.

Expenditure limit determination in certain cases

ITA
127(10.6)

Subsection 127(10.6) of the Act provides various application rules for determining a corporation’s expenditure limit in subsection 127(10.2).

Paragraph 127(10.6)(c), which provides a special rule for determining taxable income in the event of a short taxation year, is repealed as a consequence of the removal of taxable income as a factor in determining a corporation’s expenditure limit under subsection 127(10.2).

This amendment applies to taxation years that end after March 18, 2019.

Clause 25

Communal Organizations

ITA
143(2)

Section 143 of the Act sets out rules governing the taxation of communal organizations (referred to in that section as “congregations”) that do not allow their members to own property in their own right. Paragraph 143(1)(a) deems a trust to exist and paragraph 143(1)(c) deems the property of the congregation to be the trust's property. Paragraphs 143(1)(g) and (h) deem the congregation and all of its business agencies to act as agents for the trust in all matters relating to their business and other activities. Subsection 143(2) provides an election under which the trust's taxable income is allocated to members of the congregation, provided that all of the congregation's participating members are specified, in accordance with subsection 143(5), in the election.

Paragraph 143(2)(d) is added to provide that income from a business earned by the trust that is then allocated to a member of the congregation is deemed to be income from a business carried on by that member.

This amendment applies to the 2014 and subsequent taxation years.

Clause 26

Definitions

ITA
146(1)

Subsection 146(1) of the Act sets out definitions that are relevant for the purposes of the rules applicable to registered retirement savings plans (RRSP).

"premium"

A premium is generally defined as a payment made by an individual for benefits under an RRSP. Except for specified purposes, a premium does not include a repayment of an amount that had been withdrawn pursuant to the Home Buyers' Plan (HBP). Such repayments are not deductible in computing income and not taken into account in determining if overcontributions have been made to the RRSP.

The definition is amended to also exclude, except for specified purposes, the new category of HBP repayment set out in new paragraph (d) of the definition "excluded withdrawal" in subsection 146.01(1).

For more information, see the commentary on the amendments to section 146.01.

This amendment applies to repayments made after 2019.

Clause 27

Definitions

ITA
146.01(1)

Subsection 146.01(1) of the Act sets out definitions that are relevant for the purposes of the Home Buyers' Plan (HBP).

"excluded withdrawal"

An "excluded withdrawal" is an amount received by an individual out of or under the individual's registered retirement savings plan (RRSP) as an HBP withdrawal. An excluded withdrawal is not included in computing the individual's income under subsection 146(8).

The definition is amended to add paragraph (d) consequential on the introduction of new subsection 146.01(2.1). Subsection 146.01(2.1) permits an individual to re-qualify, in certain circumstances, for the HBP following the breakdown of a marriage or common-law partnership.

Under new paragraph (d), if an individual makes an HBP withdrawal following the breakdown of a marriage or common-law partnership and the withdrawal fails to qualify as a regular eligible amount (if, for example, a qualifying home is not acquired within the specified period), the amount of the withdrawal will still be considered to be an excluded withdrawal (and therefore not included in the individual's income) as long as the individual repays that amount to an RRSP before the end of the second year after the year in which the withdrawal was made.

For more information, see the commentary on new subsection 146.01(2.1).

This amendment applies in respect of amounts received after 2019.

"regular eligible amount"

"supplemental eligible amount"

The definitions "regular eligible amount" and "supplemental eligible amount" are amended to increase the eligible HBP withdrawal limit from $25,000 to $35,000.

These amendments apply in respect of the 2019 and subsequent taxation years in respect of amounts received after March 19, 2019.

Marriage or common-law partnership

ITA
146.01(2.1)

New subsection 146.01(2.1) of the Act permits an individual to access the Home Buyers' Plan (HBP) following the breakdown of a marriage or common-law partnership, subject to the conditions and deeming rule described below, even if the individual might not otherwise qualify as a first-time homebuyer.

Subparagraph (a)(i) requires that at the time an individual makes an HBP withdrawal from a registered retirement savings plan, the individual must be currently living separate and apart from their spouse or common-law partner for a continuous period of at least 90 days because of a breakdown of the marriage or common law partnership. In addition, the individual must have begun to live separate and apart in the year the withdrawal was made or in one of the four preceding years.

Subparagraph (a)(ii) prohibits an individual from accessing the HBP if, following the breakdown of the marriage or common-law partnership, an individual subsequently begins to reside in a home owned by a new spouse or common-law partner. This rule is intended to ensure that paragraph (f) of the definition "regular eligible amount" continues to apply to the individual in respect of the new spouse or common-law partner.

Subparagraph (a)(iii) requires an individual to either dispose of their previous owner-occupied home no later than the end of the second year after the year in which the HBP withdrawal was made or buy the interest or right of their spouse or common-law partner in the home.

Paragraph (b) provides that for the purposes of paragraphs (c) and (d) of the definition "regular eligible amount" (*i.e.*, the conditions relating to the acquisition of a qualifying home), if after the breakdown of a marriage or common-law partnership an individual buys the interest or right of their spouse or common-law partner in a jointly-owned home, the individual is deemed to have acquired a qualifying home on the date the interest or right is acquired. This deeming provision will ensure that the individual can satisfy the requirements under paragraphs 146.01(2)(d) and (e) that pertain to the acquisition of a qualifying home.

This amendment applies in respect of amounts received after 2019.

Repayment of eligible amount

ITA
146.01(3)

Subsection 146.01(3) of the Act provides that amounts contributed by an individual to their registered retirement savings plan may be designated in prescribed form as a non-deductible HBP repayment. If sufficient amounts are designated, the individual will not have an income inclusion under subsection 146.01(4). Designated repayments may not include repayments described under paragraph (b) of the definition "excluded withdrawal".

Paragraph 146.01(3)(a) is amended to exclude the new category of HBP repayment described in new paragraph (d) of the definition "excluded withdrawal" in subsection 146.01(1). For more information, see the commentary on the amendment to the definition "excluded withdrawal".

This amendment applies to repayments made after 2019.

Clause 28

Definitions

ITA
146.02(1)

Subsection 146.02(1) of the Act sets out definitions that are relevant for the purposes of the Lifelong Learning Plan (LLP).

"excluded premium"

An "excluded premium" is a specified type of payment to a registered retirement savings plan that does not qualify as a designated repayment of an LLP withdrawal. An "excluded premium" includes a Home Buyers' Plan (HBP) repayment under paragraph (b) of the definition "excluded withdrawal" in subsection 146.01(1). This ensures that certain repayments under the LLP and HBP are not double-counted.

The definition is amended to add a reference to new paragraph (d) of the definition "excluded withdrawal" in subsection 146.01(1), which describes a repayment of an HBP withdrawal that was made in the context of a breakdown of a marriage or common-law partnership. For more information, see the commentary on the amendment to the definition "excluded withdrawal" in subsection 146.01(1).

This amendment applies to repayments made after 2019.

Clause 29

Carrying on a business

ITA
146.2(6.1)

Where a TFSA trust is liable for tax under 146.2(6) of the Act on income from carrying on a business, subsection 159(1) provides that the legal representative (*i.e.*, the TFSA trustee) of the TFSA trust is jointly liable with the TFSA trust to pay the tax.

New subsection 146.2(6.1) is added to extend joint and several liability for the tax on income earned from carrying on a business by a TFSA trust to the TFSA holder. In addition, it limits the joint and several liability of the TFSA issuer for this tax to the amount of property in the trust at any particular time, plus the amount of any property distributed from the trust between the sending of the notice of assessment in respect of the tax and the particular time.

This amendment applies in respect of business activities in a TFSA for the 2019 and subsequent taxation years.

Clause 30

Miscellaneous exemptions

ITA
149(1)

Subsection 149(1) of the Act provides that no tax is payable under Part I of the Act on the taxable income of certain persons for the period in a taxation year during which the person is a person listed in that subsection.

New paragraph 149(1)(h) adds "a registered journalism organization" as an entity for which no tax is payable. The amendment is consequential on amendments to section 149.1 to add a "registered journalism organization" (as defined in subsection 248(1)) as a qualified donee.

For more information, see the commentary on section 149.1 and the new definition "registered journalism organization" in subsection 248(1).

This amendment comes into force on January 1, 2020.

Clause 31

Definitions

ITA
149.1(1)

"qualified donee"

The definition "qualified donee" in subsection 149.1(1) of the Act lists the entities that are eligible to issue receipts for the purposes of the charitable donation deduction under section 110.1 and the charitable donation tax credit under section 118.1. Subsection 248(1) provides that this definition applies for all purposes of the Act.

New paragraph (b.1) adds registered journalism organizations (a new definition in subsection 248(1)) to the list of qualified donees.

"qualifying journalism organization"

The new definition "qualifying journalism organization" is added to subsection 149.1(1). A qualifying journalism organization is a qualified Canadian journalism organization (as newly defined in subsection 248(1)) that meets certain specified conditions. These include the requirement that it be constituted and operated for purposes exclusively related to journalism and that any business activities that it carries on are related to those purposes. For example, the sale of advertising would be considered to be related to journalism. These organizations will not be permitted to distribute their profits, if any, or allow their income to be available for the personal benefit of certain individuals connected with the organization.

To ensure that registered journalism organizations are not used to promote the views or objectives of any particular person or related group of persons, a registered journalism organization:

- will be required to have a board of directors or trustees, each of whom deals at arm's length with each other;
- must not be factually controlled by a person (or a group of related persons); and
- must generally not, in any given year, receive gifts that represent more than 20 per cent of its total revenues, including donations, from any one source (excluding bequests and one-time gifts made on the initial establishment of the organization).

For more information, see the commentary on the new definitions "qualified Canadian journalism organization" and "registered journalism organization" in subsection 248(1).

Revocation of a qualified donee

ITA
149.1(4.3)

Subsection 149.1(4.3) of the Act provides that the Minister of National Revenue may revoke the registration of a qualified donee listed under paragraph (a) of the definition "qualified donee" in subsection 149.1(1), for any reason described in subsection 168(1).

Subsection 149.1(4.3) is amended, consequential on amendments to the definition "qualified donee" in subsection 149.1(1), to include a reference to new paragraph (b.1) (registered journalism organizations) in that definition. Accordingly, the amendment provides the Minister the authority to revoke the registration of a registered journalism organization.

Information returns

ITA
149.1(14.1)

New subsection 149.1(14.1) of the Act requires that each "registered journalism organization" file an information return and a public information return for the year in prescribed form and containing prescribed information. Information contained in a public information return will be disclosed to the public by the Minister of National Revenue pursuant to subsection 149.1(15), including the name of each donor whose total gifts to the organization in a taxation year exceed $5,000 and the total amount of donations from each such donor.

The returns must be filed within 6 months from the end of the organization's taxation year.

Information may be communicated

ITA
149.1(15)

Subsection 149.1(15) of the Act authorizes the Minister of National Revenue to communicate certain information in respect of registered charities and registered Canadian amateur athletic associations, such as prescribed information that is required to be contained in the public information return under subsection 149.1(14).

Consequential on the addition of registered journalism organizations to the definition "qualified donee" in subsection 149.1(1) and new subsection 149.1(14.1), subsection 149.1(15) is amended to include a reference to a registered, or previously registered, journalism organization.

Refusal to register

ITA
149.1(22)

Subsection 149.1(22) of the Act provides that the Minister of National Revenue may notify a person of the decision to refuse the application of the person for registration as a registered charity, registered Canadian amateur athletic association or certain other classes of qualified donee.

Subsection 149.1(22) is amended to provide that the Minister of National Revenue may also notify a person of the decision to refuse the application of the person for registration as a registered journalism organization.

All of these amendments to section 149.1 come into force on January 1, 2020.

Clause 32

Assessment

ITA
152(1)(b)

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

Consequential on the introduction of the new Canada Training Credit and refundable labour tax credit for journalism, this paragraph is amended to add a reference to new subsection 122.91(1) and new subsection 125.6(2). For more information, see the commentary on new section 122.91 (Canada Training Credit) and new section 125.6 (refundable labour tax credit for journalism).

This amendment comes into force on January 1, 2019.

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) of this subsection refers to the specific provisions under which amounts are deemed to be paid on account of tax. This paragraph is amended to add a reference to new subsection 122.91(1), the new Canada Training Credit. For more information, see the commentary on new section 122.91.

This amendment comes into force on January 1, 2019.

Clause 33

Amounts paid in error

ITA
153(3.1)

Section 153 of the Act requires the withholding of income tax from certain payments described in paragraphs 153(1)(a) to (t). The person making such a payment is required to remit the amount withheld to the Receiver General on behalf of the payee. Paragraph (a) requires withholdings with respect to salary, wages and other remuneration paid to an employee. Subsection (3) provides that when an amount is deducted or withheld under subsection (1), it is deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid.

Where salary, wages or other remuneration is erroneously overpaid by an employer to an employee, the Minister of National Revenue would, under the current income tax rules, reimburse withholdings in respect of the overpayment to the employee who would, in turn, be responsible for reimbursing the employer.

New subsection (3.1) will, if its conditions are met, allow the Minister to directly reimburse an employer for amounts of income tax that have been withheld and remitted by the employer in respect of an erroneous overpayment of salary, wages or other remuneration to an employee. In particular, it provides that an amount (referred to as the “excess amount”) is deemed to not have been deducted or withheld under subsection (1) by a person if the conditions in paragraphs (a) to (e) are met. This effectively overrides subsection (3), which provides that if an amount has been deducted or withheld under subsection (1), the amount is deemed to have been received at that time by the person to whom the remuneration, benefit, etc. were paid. Where subsection (3.1) applies, since the employee will not be deemed to have received the withheld amount, the Minister will be able to return the withheld amount to the employer.

For subsection (3.1) to apply, there must be an excess payment by a person (generally, the employer) to an individual of salary, wages or other remuneration that was paid as a result of a clerical, administrative or system error. This is referred to as the “total excess payment.” A portion of this total excess payment (referred to as the “excess amount”) must have been deducted or withheld by the employer under subsection (1). At this point, the individual is assumed to have received the total excess payment, less the excess amount (which was withheld by the employer).

The individual must then repay (or make an arrangement to repay) the total excess payment, less the excess amount, to the employer. In addition, the employer must elect in prescribed form to have subsection (3.1) apply in respect of the excess amount. These two conditions must be met before the end of the third year after the calendar year in which the excess amount is deducted or withheld. In addition, an information return correcting for the excess payment cannot have been issued prior to making the election, because the Minister would reassess the employee and make corrective refunds (if any) to the employee upon the issuance of the information return.

Lastly, paragraph (e) provides that the Minister may specify additional conditions that must be met in order for subsection (3.1) to apply.

Example: In 2018, XCo overpays Joan’s salary by $10,000. On this $10,000, XCo withheld and remitted $2,000 in respect of income taxes on behalf of Joan. In 2020, XCo discovers the error and elects to have new subsection 153(3.1) apply. Joan makes arrangements to return $8,000 to XCo and new subsection 153(3.1) will allow the Minister to reimburse the excess withholding of $2,000 directly to XCo.

This amendment applies in respect of excess payments of salary, wages or other remuneration made after

2015.

Clause 34

Reduced instalments

ITA
157(3)(e)

Section 157 of the Act requires a corporation to pay monthly instalments of its total tax payable under Parts I, I.3, VI, VI.1 and XIII.1 of the Act. Subsection 157(3) allows certain corporations to reduce their monthly tax instalment payments by certain refundable amounts under the Act.

Paragraph 157(3)(e) is amended to add a reference to new subsection 125.6(2) (the refundable labour tax credit for journalism organizations).

This amendment comes into force on January 1, 2019.

Amount of payment − three-month period

ITA
157(3.1)(c)

Subsection 157(1.1) of the Act allows small Canadian-controlled private corporations that meet certain conditions to pay their annual tax liability by quarterly instalments instead of monthly. Subsection 157(3.1) allows small Canadian-controlled private corporations to reduce each quarterly instalment by ¼ of the amount of certain tax refunds. Paragraphs 157(3.1)(b) and (c) list these tax refunds.

Paragraph 157(3.1)(c) is amended to add a reference to new subsection 125.6(2) (the refundable labour tax credit for journalism organizations).

This amendment comes into force on January 1, 2019.

Clause 35

False statements or omissions

ITA
163(2)

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.

This subsection is amended to add new paragraph 163(2)(c.6), consequential on the introduction of the Canada Training Credit in new section 122.91. Paragraph (c.6) is intended to ensure that the penalty is imposed in the case where a false statement or omission is made in respect of the Canada Training Credit in subsection 122.91(1).

This subsection is also amended to add new paragraph 163(2)(h), consequential on the introduction of the refundable labour tax credit for journalism organizations in subsection 125.6(2). Paragraph (h) is intended to ensure that the penalty is imposed in the case where a false statement or omission is made in respect of the refundable labour tax credit for journalism organizations in subsection 125.6(2).

These amendments come into force on January 1, 2019.

Clause 36

Refunds

ITA
164(1)(a)(ii)

Subsection 164(1) of the Act provides rules governing refunds of overpayments of tax. Subparagraphs (a)(i) and (ii) set out circumstances where the Minister of National Revenue may, before mailing the notice of reassessment for the year, refund all or part of an amount claimed in the taxpayer’s return as an overpayment for the year.

Subparagraph 164(1)(a)(ii) is amended to authorize the Minister of National Revenue to refund all or part of a taxpayer’s claim for a taxation year of a qualifying journalism organization under section 125.6 before having issued an assessment in respect of the taxpayer for the year.

This amendment comes into force on January 1, 2019.

Clause 37

Revocation of registration

ITA
168

Several amendments are made to section 168 of the Act, consequential on the amendments to section 149.1 that add registered journalism organizations to the class of qualified donees. For more information, see the commentary on the amendments to section 149.1 and the new definition “registered journalism organization” in subsection 248(1).

Subsection 168(1) describes the circumstances under which the Minister of National Revenue may give notice of the Minister’s intention to revoke the registration of a registered charity or registered Canadian amateur athletic association.

Paragraphs (c) and (f) of subsection 168(1) are amended to include a reference to a registered journalism organization.

Subsection 168(2) outlines the process that the Minister of National Revenue must undertake in order to revoke the registration of a charity or Canadian amateur athletic association, including that such a notice be published in the Canada Gazette.

Subsection 168(2) is amended to include a reference to a registered journalism organization.

Subsection 168(4) provides that the objection process in respect of assessments under Part I also applies to certain notices of decisions of the Minister regarding registered charities, registered Canadian amateur athletic associations and other qualified donees.

Paragraph 168(4)(c) is amended by adding a reference to paragraph (b.1) (a registered journalism organization) of the definition “qualified donee” in subsection 149.1(1).

These amendments come into force on January 1, 2020.

Clause 38

Appeal from refusal to register or revocation of registration

ITA
172(3)(a.2)

Paragraph 172(3)(a.2) generally provides that a decision of the Minister of National Revenue to confirm a decision in respect of which a notice was issued, and an objection was filed under subsection 168(4) regarding a person described under paragraph (a) of the definition "qualified donee" in subsection 149.1(1), may be appealed to the Federal Court of Appeal.

Paragraph 172(3)(a.2) is amended to add a reference to paragraph (b.1) (registered journalism organizations) of the definition "qualified donee" in subsection 149.1(1). This amendment is consequential on the amendments to section 149.1 that add registered journalism organizations to the class of qualified donees

This amendment comes into force on January 1, 2020.

Clause 39

Failure to file information returns

ITA
188.1(6)

Subsection 188.1(6) of the Act provides that a charity or Canadian amateur athletic association is liable to a penalty equal to $500 if it fails to file a return for a taxation year as and when required by subsection 149.1(14).

Subsection 188.1(6) is amended, consequential on amendments to new subsection 149.1(14.1), to require that a registered journalism organization annually file an information return and a public information return in prescribed form and containing prescribed information. For more information, see the commentary on subsection 149.1(14.1).

Incorrect information

ITA
188.1(7) to (9)

Subsections 188.1(7) to (9) provide that a registered charity or registered Canadian amateur athletic association is liable for various penalties related to reporting incorrect or false information on official donation receipts.

Subsections 188.1(7) to (9) are amended to provide that a registered journalism organization will also be liable for penalties under subsections 188.1(7) to (9) in the same way that a registered charity or registered Canadian amateur athletic association is liable for those penalties.

These amendments come into force on January 1, 2020.

Clause 40

Notice of suspension

ITA
188.2(1)

Subsection 188.2(1) of the Act provides for the suspension of a registered charity or registered Canadian amateur athletic association's tax-receipting privileges following the assessment of certain penalties under section 188.1 by the Minister of National Revenue.

Subsection 188.2(1) is amended so that it may also apply to a registered journalism organization, consequential on the addition of registered journalism organizations to the class of qualified donees in subsection 149.1(1).

Suspension – failure to report

ITA
188.2(2.1)

Subsection 188.2(2.1) of the Act provides for the suspension of the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association if the charity or association fails to report information that is required to be filed annually under subsection 149.1(14).

Subsection 188.2(2.1) is amended to apply to a registered journalism organization that fails to report information required to be included in a return filed under new subsection 149.1(14.1). New subsection 149.1(14.1) requires that a registered journalism organization annually file an information return and a public information return in prescribed form and containing prescribed information.

These amendments come into force on January 1, 2020.

Clause 41

Records and books

ITA
230(2)

Subsection 230(2) of the Act requires that a registered charity, a registered Canadian amateur athletic association or any other qualified donee listed in paragraph (a) of the definition "qualified donee" in subsection 149.1(1) keep books and records in Canada that contain specified information.

Subsection 230(2) is amended by adding a reference to new paragraph (b.1) (registered journalism organizations) in the definition "qualified donee" in subsection 149.1(1). Accordingly, the requirements under subsection 230(2) will apply to registered journalism organizations.

This amendment comes into force on January 1, 2020.

Clause 42

Certain qualified donees

ITA
241(3.2)

Subsection 241(3.2) of the Act permits an official to release, to any person, certain information relating to an organization that was at any time a registered charity or a registered Canadian amateur athletic association.

Subsection 241(3.2) is amended to also apply to certain information relating to a registered journalism organization, consequential on the amendments to section 149.1 of the Act that add registered journalism organizations to the class of qualified donees.

This amendment comes into force on January 1, 2020.

Information may be communicated

ITA
241(3.4)

Section 241 of the Act prohibits the use or communication of taxpayer information by any official or other representative of the government, except as authorized.

New subsection 241(3.4) is added to provide authority to the Minister of National Revenue to publish certain information relevant to the digital news subscription tax credit program. The information includes the names of qualified Canadian journalism organizations with respect to which a taxpayer can be entitled to a deduction under new subsection 118.02(2), and the start (and, if applicable, end) of the period when a taxpayer will be entitled to such a deduction in respect of a particular organization.

This amendment comes into force on Royal Assent.

Where taxpayer information may be disclosed

ITA
241(4)(d)(xvi.1) and (xvi.2)

Paragraph 241(4)(d) authorizes the communication of information obtained under the Act to specific persons for specific purposes.

New subparagraph 241(4)(d)(xvi.1) permits information in respect of qualified Canadian journalism organizations to be communicated to officials of an office or agency of the government of Canada or of a province that provides a program of assistance for such organizations. The information may be communicated only for the purpose of administration or enforcement of the program.

New subparagraph 241(4)(d)(xvi.2) permits information to be communicated to a body prescribed for the purpose of determining eligibility as a “qualified Canadian journalism organization” (as defined in subsection 248(1) of the Act) solely for the purpose of determining eligibility for such designation.

These amendments come into force on Royal Assent.

Clause 43

Definitions

ITA
248(1)

Subsection 248(1) of the Act defines terms that apply for the purposes of the Act.

Subsection 248(1) is amended in a number of respects. First, the definition “passenger vehicle” is amended. Second the definitions “qualified Canadian journalism organization”, “registered journalism organization”, “zero-emission passenger vehicle” and “zero-emission vehicle” are added.

“passenger vehicle”

A “passenger vehicle” is defined, in general terms, as an automobile that is acquired or leased after June 17, 1987. “Automobile” is defined in this subsection.

Consequential on the introduction of the new definition “zero-emission vehicle” in this subsection, the definition “passenger vehicle” is amended to exclude such a vehicle. However, as there are no special leasing rules for zero-emission vehicles, this exclusion applies only to passenger vehicles that are owned by a taxpayer.

This amendment comes into force on March 19, 2019.

“qualified Canadian journalism organization”

Subsection 248(1) is amended to add the new definition “qualified Canadian journalism organization”, which is relevant for a number of provisions in the Act. For more information, see the commentary on the definition “qualifying journalism organization” in subsection 149.1, section 125.6 (the refundable tax credit for journalism organizations) and section 118.02 (the non-refundable tax credit for subscriptions to Canadian digital news).

The definition contains a number of conditions in paragraph (a) that must be met for an organization to be a qualified Canadian journalism organization as well as a requirement in paragraph (b) that the organization must be designated by a prescribed body. An independent panel will be established to recommend eligibility criteria and once the panel has made its recommendations, eligibility of organizations will be evaluated and a designation process will be put in place.

A qualified Canadian journalism organization can be a corporation, partnership or trust. Subparagraphs (a)(i) to (iii) provide conditions for each of these types of entities to qualify:

- Corporations must be resident in, and incorporated under the laws of, Canada and the chairperson or other presiding officer, and at least ¾ of the directors or other similar officers, must be citizens of Canada;
- Partnerships must be formed under the laws of a province and at least ¾ of the interests in the partnership must be held by qualifying entities or Canadian citizens; and
- Trusts must be resident in Canada, formed under the laws of a province and at least ¾ of the interests in the partnership must be held by qualifying entities or Canadian citizens.

Subparagraphs (a)(iv) to (viii) contain conditions that must be met regardless of the type of entity. Subparagraph (iv) provides that the organization must operate in Canada. This includes the editing and design of its content, as well as its publishing (other than in the case of digital content, where it may be difficult to determine where publishing occurs).

It must also be primarily engaged in the production of original news content. This news content must be primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes. It may not be primarily focused on a particular topic, such as industry-specific news, sports, recreation, arts, lifestyle or entertainment.

It must regularly employ two or more journalists who deal at arm's length with the organization. For example, if an organization regularly employs two arm's length journalists but one leaves, resulting in a temporary period where there is only one such journalist before a replacement is hired, that would not disqualify the organization.

Subparagraph (vii) requires that the organization not be significantly engaged in the production of certain types of content. This includes the promotion of the interests of an organization, an association or its members and reporting on the activities of an organization, an association or its members. For example, this would include a magazine published by a professional association for its members. It must also not be significantly engaged in the production of content for a government, Crown corporation or government agency or to promote goods or services. This last condition is not intended to preclude organizations that are primarily engaged in the production of original news content from earning revenues from advertisements placed by advertisers.

Lastly, the organization must not be a Crown corporation, municipal corporation or government agency.

This amendment comes into force on January 1, 2019.

"registered journalism organization"

Subsection 248(1) is amended to add the definition "registered journalism organization", which is a qualifying journalism organization (as newly defined in subsection 149.1(1)) that has applied to the Minister of National Revenue in prescribed form for registration, that has been registered and whose registration has not been revoked. This definition is relevant to a number of provisions in the Act, but in particular to the amendments to section 149.1 of the Act that add registered journalism organizations to the class of qualified donees.

This amendment comes into force on January 1, 2020.

"zero-emission passenger vehicle"

A "zero-emission passenger vehicle" of a taxpayer is an "automobile" (as also defined in subsection 248(1)) that is included in new Class 54 of Schedule II to the Regulations. Class 54 generally includes "zero-emission vehicles" that are not included in Class 16, or new Class 55, of Schedule II.

Not all properties included in Class 54 are automobiles. For example, a school bus that is a "zero-emission vehicle" would not be an automobile if its seating capacity exceeds 9, and it would also not generally be included in new Class 55 or in Class 16. Thus, not all Class 54 assets of a taxpayer would necessarily be "zero-emission passenger vehicles". However, when they are, limitations may apply in respect of capital cost allowance claims and the deductibility of interest relating to their acquisition. For more information, see the commentary on paragraph 13(7)(i) and section 67.2, respectively.

The definition "zero-emission passenger vehicle" comes into force on March 19, 2019.

"zero-emission vehicle"

A "zero-emission vehicle" of a taxpayer is a "motor vehicle", as also defined in subsection 248(1), that is acquired and becomes available for use after March 18, 2019 and before 2028 and that meets certain other conditions, as follows:

- it must be a plug-in hybrid with a battery capacity of at least 15 kWh (the condition prescribed in paragraph 1102(26)(a) of the Regulations) or it must be fully electric, fully powered by hydrogen or fully powered by a combination of electricity and hydrogen;
- it must be new (*i.e.*, it cannot have been used, or acquired for use, for any purpose before it is acquired by the taxpayer and no person can have claimed capital cost allowance or a terminal loss in respect of the vehicle); and
- it cannot be a vehicle in respect of which assistance has been paid by the Government of Canada under the federal purchase incentive announced in the March 19, 2019 budget (the program prescribed in paragraph 1102(26)(b) of the Regulations).

In addition, since taxpayers may elect out of the special treatment afforded to "zero-emission vehicles", the definition will not apply to a vehicle in respect of which the election set-out in subsection 1103(2j) of the Regulations is made.

This new category of assets is generally being created in order to provide a temporary enhanced first-year capital cost allowance (CCA) rate of 100%, subject to a phase-out starting in 2024. The applicable rates are set-out in the Regulations through a combination of the "base" rates for the appropriate CCA classes (30% for Class 54 and 40% for Class 55) and the multipliers set-out in paragraphs (e) and (f) of variable A in the formula contained in amended subsection 1100(2) of the Regulations. (Further details are provided below.)

CCA will be deductible on any remaining balances in the new classes on a declining-balance basis at the "base" rates for those classes.

It is important to note that "zero-emission vehicles" that are also "zero-emission passenger vehicles" are subject to certain restrictions, as discussed elsewhere in these notes.

The definition "zero-emission vehicle" comes into force on March 19, 2019.

Application of subsection 248(16) to certain vehicles and aircraft

ITA
248(17)

Subsection 248(17) of the Act applies in the case of an input tax credit in respect of a passenger vehicle or aircraft claimable by an individual or partnership under Part IX of the *Excise Tax Act* where the credit is determined by reference to capital cost allowance in respect of the vehicle or aircraft (*i.e.*, where there is less than exclusive use in a commercial activity).

Subsection 248(17) is amended to also apply to an input credit in respect of a "zero-emission passenger vehicle", as newly defined in subsection 248(1).

This amendment comes into force on March 19, 2019.

Application of subsection 248(16.1) to certain vehicles and aircraft

ITA
248(17.1)

Subsection 248(17.1) of the Act applies in a case of an input tax refund of Quebec sales taxes in respect of a passenger vehicle or aircraft claimable by an individual or partnership where the credit is determinable by reference to capital cost allowance in respect of the vehicle or aircraft (*i.e.*, where there is less than exclusive use in a commercial activity).

Subsection 248(17.1) is amended to also apply to an input tax refund in respect of a “zero-emission passenger vehicle”, as newly defined in subsection 248(1).

This amendment comes into force on March 19, 2019.

Clause 44

Investments in limited partnerships

ITA
253.1(2)

Subsection 253.1(2) of the Act provides that where a registered charity or registered Canadian amateur athletic association holds an interest as a limited partner in a limited partnership, it will not be considered, solely because of its acquisition or holding of the limited partnership interest, to carry on any business or other activity of the partnership if certain conditions are met. Subsection 253.1(2) applies for the purposes of section 149.1 (rules for charities and Canadian amateur athletic associations to obtain and keep registered status) and subsections 188.1(1) and (2) (which, in general terms, determine the liability of certain registered charities or registered Canadian Amateur athletic associations for penalties related to carrying on a business).

Subsection 253.1(2) is amended to also apply to a registered journalism organization, consequential on the amendments to section 149.1 of the Act that add registered journalism organizations to the class of qualified donees.

This amendment comes into force on January 1, 2020.

Clause 45

Excess payment – amount deemed not deducted

Canada Pension Plan (CPP)
21.01(1)

Subsection 21(1) of the *Canada Pension Plan* requires an employer paying remuneration to an employee to withhold and remit prescribed amounts in respect of the employee’s pensionable employment. Subsection (5) provides that an amount deducted under subsection (1) is deemed to have been received by the employee.

New subsection 21.01(1) provides that, subject to new subsection 21.01(2), an amount that was deducted by an employer under subsection 21(1), for a year after 2015, in respect of an excess payment that was paid as a result of a clerical, administrative or system error to an employee as remuneration in respect of pensionable employment, is deemed not to have been deducted if the following conditions are met.

- Before the end of the third year after the calendar year in which the amount was deducted,
    - the employer elects to have new subsection 21.01(1) apply in respect of the amount, and
    - the employee has repaid, or made arrangements to repay, the employer.
- The employer has not filed an information return correcting for the total excess payment prior to the making of the above referenced election.
- Any additional conditions specified by the Minister have been met.

New subsection 21.01(1) operates in conjunction with new subsections 21.01(2) and 38(3.3).

New subsection 21.01(1) will, subject to the limitation set out in new subsection 21.01(2), allow the

Minister of National Revenue to directly reimburse an employer (under new subsection 38(3.3)) for amounts of an employee's contribution that have been deducted and remitted by the employer in respect of an erroneous overpayment of remuneration to the employee. In the absence of this new subsection (and new subsection 38(3.3)), the Minister would reimburse such excess deducted and remitted amounts to the employee who would, in turn, be responsible for reimbursing the employer.

Determination of amount

CPP
21.01(2)

New subsection 21.01(2) of the *Canada Pension Plan* operates in conjunction with new subsection 21.01(1).

New subsection 21.01(2) accounts for the fact that CPP contributions are paid in respect of earnings up to a maximum amount. Consequently, not all excess payments of remuneration will result in an overpayment of an employee's contribution. This new subsection provides that the amount deemed not to have been deducted under new subsection (1) is the amount that was deducted by the employer, or the amount determined by the formula (A – B), if that amount is less.

Variable A of the formula is the aggregate of all amounts that were deducted by the employer as the employee's contributions for the year. Variable B of the formula is the aggregate of all amounts that would have been deducted by the employer as the employee's contributions for the year had the employer not made the excess payment.

Example 1: Joan is an employee of XCo. Her annual salary for 2018 was $100,000. In February of 2018, XCo made a clerical error and overpaid Joan $1,000 in a pay period. This resulted in Joan being paid $101,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.

XCo deducted and remited $49.50 in respect of the $1,000 overpayment as Joan's employee's contribution. The maximum pensionable earnings for 2018 was $55,900. XCo deducted and remitted $2,593.80 in total in respect of Joan's employee's contribution for 2018. This is the same amount that XCo would have deducted and remitted in the absence of the February overpayment error. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being zero.

Example 2: Joan is an employee of XCo. Her annual salary for 2018 was $50,000. In February of 2018, XCo made a clerical error and overpaid Joan $1,000 in a pay period. This resulted in Joan being paid $51,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.

XCo deducted and remitted $49.50 in respect of the $1,000 overpayment as Joan's employee's contribution. The maximum pensionable earnings for 2018 was $55,900. XCo deducted and remitted $2,351.25 in total in respect of Joan's employee's contribution for 2018. In the absence of the February error, XCo would have deducted and remitted in total $2,301.75 in respect of Joan's employee's contribution for 2018. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being $49.50.

New subsection 38(3.3) will allow the Minister to reimburse the excess deduction and remittance of $49.50 directly to XCo.

Example 3: Joan is an employee of XCo. Her annual salary for 2018 was $50,000. In February 2018, because of a system error, XCo overpaid Joan by $10,000 in one pay period. With the excess $10,000, Joan was paid $60,000 which is higher than the maximum pensionable earnings, which was $55,900 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.

XCo deducted and remitted $495.00 in respect of the $10,000 overpayment as Joan's employee contribution. XCo deducted and remitted $2,593.80 in total in respect of Joan's employee's contribution for 2018. In the absence of the February system error, XCo would have deducted $2,301.75 in total, in respect of Joan's employee's contribution for 2018. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being $292.05.

New subsection 38(3.3) will allow the Minister to reimburse the excess deduction and remittance of $292.05 directly to XCo.

Clause 46

Refund – section 21.01 amounts

CPP
38(3.3)

New subsection 38(3.3) of the *Canada Pension Plan* operates in conjunction with new subsections 21.01(1) and (2).

New subsection 38(3.3) allows the Minister to refund an amount to an employer if the amount has been remitted and subsection 21.01(1) deems the amount to not have been deducted. The employer must apply for the refund no later than four years from the end of the year in which the amount has been remitted.

Non-application – subsection (7)

CPP
38(8)

New subsection 38(8) of the *Canada Pension Plan* provides that interest is not payable on amounts refunded pursuant to new subsection 38(3.3)

Clause 47

Clauses 45 and 46 will come into force by Order in Council. For more information, see the commentary on those clauses.

Clause 48

Request for determination of Review Board

Cultural Property Export and Import Act
32(1)

Consequential on the amendments to subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c) and paragraph (a) of the definition "total cultural gifts" in subsection 118.1(1) of the Act, subsection 32(1) of the *Canadian Cultural Property Export and Import Act* is amended to remove the reference to its paragraph 29(3)(c). For more information, see the commentary on these provisions of the Act.

This amendment comes into force on March 19, 2019.

Clause 49

Income tax certificate

Cultural Property Export and Import Act
33(1)

Consequential on the amendments to subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c) and paragraph (a) of the definition "total cultural gifts" in subsection 118.1(1) of the Act, subsection 33(1) of the *Canadian Cultural Property Export and Import Act* is amended to remove the reference to its paragraph 29(3)(c). For more information, see the commentary on these provisions of the Act.

This amendment comes into force on March 19, 2019.

Clause 50

Excess payment – amount deemed not deducted

Employment Insurance Act (EIA)
82.01(1)

Subsection 82(1) of the *Employment Insurance Act* requires an employer paying remuneration to an employee to deduct and remit prescribed amounts in respect of the employee's insurable employment. Subsection (7) provides that an amount deducted under subsection (1) is deemed to have been received by the insured person.

New subsection 82.01(1) provides that, subject to new subsection 82.01(2), an amount that was deducted by an employer under subsection 82(1) for a year after 2015 in respect of an excess payment that was paid, as a result of a clerical, administrative or system error to an insured person as remuneration, is deemed not to have been deducted if the following conditions are met:

- Before the end of the third year after the calendar year in which the amount was deducted,
    - The employer elects to have new subsection 82.01(1) apply in respect of the amount, and
    - The insured person has repaid, or made arrangements to repay, the employer.
- The employer has not filed an information return correcting for the total excess payment prior to the making of the above referenced election.
- Any additional criteria specified by the Minister have been met.

This new subsection operates in conjunction with new subsections 82.01(2) and 96(3.1).

This new subsection will, subject to new subsection 82.01(2), allow the Minister to directly reimburse an employer (under new subsection 96(3.1)) for amounts of employee's premiums that have been deducted and remitted by the employer in respect of an erroneous overpayment of remuneration to an insured person. In the absence of this new subsection (and new subsection 96(3.1)), the Minister of National Revenue would reimburse such excess deducted and remitted amounts to the employee who would, in turn, be responsible for reimbursing the employer.

This amendment will come into force on Royal Assent.

Determination of amount

EIA
82.01(2)

New subsection 82.01((2) of the *Employment Insurance Act* operates in conjunction with new subsection 82.01(1).

New subsection 82.01(2) accounts for the fact that EI premiums are paid in respect of earnings up to a maximum amount. Consequently, not all excess payments of remuneration will result in an overpayment of an employee's premiums. This new subsection provides that the amount deemed not to have been deducted under new subsection (1) is the lesser of the amount that was deducted by the employer and the amount determined by the formula (A – B).

Variable A of the formula is the aggregate of all amounts that were deducted by the employer as the employee's premiums for the year. Variable B of the formula is the aggregate of all amounts that would have been deducted by the employer as the employee's premiums for the year had the employer not made the excess payment.

Example 1: Joan is an employee of XCo. Her annual salary for 2018 was $100,000. In February of 2018, XCo made a clerical error and overpaid Joan $1,000 in a pay period. This resulted in Joan being paid $101,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.

XCo deducted and remitted $16.60 in respect of the $1,000 overpayment as Joan's employee's premium. The maximum yearly insurable earnings for 2018 was $51,700. XCo deducted and remitted $858.22 in respect of Joan's employee's premiums for 2018. This is the same amount that XCo would have deducted and remitted in the absence of the February error. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being zero.

Example 2: Joan is an employee of XCo. Her annual salary for 2018 was $50,000. In February of 2018, XCo made a clerical error and overpaid Joan $1,000 in a pay period. This resulted in Joan being paid $51,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.

XCo deducted and remitted $16.60 in respect of the $1,000 overpayment as Joan's employee's premium. The maximum yearly insurable earnings for 2018 was $51,700. XCo deducted and remitted $846.60 in respect of Joan's employee's premium for 2018. In the absence of the February error, XCo would have deducted and remitted in total $830.00 in respect of Joan's employee's premium for 2018. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being $16.60.

New subsection 96(3.1) will allow the Minister to reimburse the excess deduction and remittance of $16.60 directly to XCo.

Example 3: Joan is an employee of XCo. Her annual salary for 2018 was $50,000. In February of 2018, because of a system error, XCo overpaid Joan by $10,000 in one pay period. With the excess $10,000, Joan was paid $60,000, which was higher than the maximum insurable earnings of $51,700 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.

XCo deducted and remitted $166.00 in respect of the $10,000 overpayment as Joan's employee contribution. XCo deducted and remitted $858.22 in total in respect of Joan's employee's premium for 2018. In the absence of the February system error, XCo would have deducted $830.00 in respect of Joan's employee's premium for 2018. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being $28.22.

New subsection 96(3.1) will allow the Minister to reimburse the excess deduction and remittance of $28.22 directly to XCo.

This amendment will come into force on Royal Assent.

Clause 51

Refund – section 82.01 amounts

EIA
96(3.1)

New subsection 96(3.1) of the *Employment Insurance Act* operates in conjunction with new subsections 82.01(1) and (2).

New subsection 96(3.1) allows the Minister of National Revenue to refund an amount to an employer if the amount has been remitted and subsection 82.01(1) deems the amount to not have been deducted. The employer must apply for the refund no longer than three years from the end of the year in which the amount has been remitted.

This amendment will come into force on Royal Assent.

No interest payable

EIA
96(13.1)

Subsection 96(13.1) of the *Employment Insurance Act* is amended to provide that interest is not payable on amounts refunded pursuant to new subsection 96(3.1).

This amendment will come into force on Royal Assent.

Clause 52

Capital cost allowance

Income Tax Regulations (ITR)
1100

Section 1100 of the Regulations provides rules relating to the deduction of capital cost allowance (CCA) in respect of the capital cost of depreciable capital property.

Section 1100 is amended to introduce various accelerated CCA measures, as follows:

- accelerated CCA for electric vehicle charging stations and electrical energy storage equipment, by expanding eligibility for their inclusion in Classes 43.1 and 43.2;
- the Accelerated Investment Incentive (AII) for a broad range of depreciable property; and
- accelerated CCA for “zero-emission vehicles”.

Rates

ITR
1100(1)(a)

Subsection 1100(1) of the Regulations sets out various rules applicable in determining the amounts that taxpayers may deduct under paragraph 20(1)(a) of the Act with respect to specified classes of depreciable property that are available for use.

Paragraph 1100(1)(a) provides various rates applicable to declining balance classes of depreciable property and is amended to add Classes 54 and 55, which apply to “zero-emission vehicles”, as defined in subsection 248(1) of the Act.

New subparagraph 1100(1)(a)(xl) provides a 30% CCA rate for property included in new Class 54. New subparagraph 1100(1)(a)(xli) provides a 40% CCA rate for property included in new Class 55. Amendments to subsection 1100(2) provide an additional first-year allowance in respect of property in these classes. For more information, see the commentary on that subsection.

This amendment comes into force on March 19, 2019.

Class 13 - Leasehold interest

ITR
1100(1)(b)

Paragraph 1100(1)(b) of the Regulations provides for a deduction in respect of the capital cost of property that is a leasehold interest and included in Class 13 of Schedule II. Schedule III of the Regulations provides for the determination of the amount that may be deducted in respect of the leasehold interest of a taxpayer each year.

Subparagraph 1100(1)(b)(i) is amended to provide an enhanced first-year CCA in respect of accelerated investment incentive property of a taxpayer that is included in Class 13. In particular, it is amended to provide the following three rates in respect of Class 13 property the capital cost of which is incurred in a taxation year:

> (a) 150% of the amount calculated in accordance with Schedule III (up to the undepreciated capital cost), for “accelerated investment incentive property”, as defined in new subsection 1104(4), the cost of which is incurred before 2024;
>
> (b) the amount calculated in accordance with Schedule III, for accelerated investment incentive property the cost of which is incurred after 2023 (such property is not mentioned in clause (A) or (B) and so, the general rate set out in subparagraph 1100(1)(b)(ii) applies); and
>
> (c) 50% of the amount calculated in accordance with Schedule III for property that is not accelerated investment incentive property and is not described in any of subparagraphs (b)(iii) to (v) of the description of F in subsection (2).

For more information on accelerated investment incentive property, see the commentary on new subsection 1104(4).

Class 14 – Patent, franchise, concession or licence for a limited period

ITR
1100(1)(c)

Paragraph 1100(1)(c) of the Regulations provides for a deduction in respect of the capital cost of property that is included in Class 14 of Schedule II. This category includes certain patents, franchises, concessions and licences for a limited period.

The deduction under paragraph 1100(1)(c) in respect of a property of Class 14 is calculated as the lesser of the subparagraph (c)(i) and (ii) amounts. The amount under subparagraph (c)(i) is determined by apportioning the capital cost of the property over the life of the property remaining at the time the cost was incurred. The subparagraph (c)(ii) amount is the undepreciated capital cost of property of the class at the end of the taxation year.

Subparagraph (c)(i) is amended to provide the following additional first-year CCA deductions (in subclauses (B)(I) and (II)) in respect of accelerated investment incentive property included in the class:

- 50%, for “accelerated investment incentive property”, as defined in new subsection 1104(4), that becomes available for use before 2024; and
- 25%, for accelerated investment incentive property that becomes available for use after 2023.

Clause (c)(i)(A) preserves the existing general rule.

In all cases, because of subparagraph (c)(ii), CCA deducted cannot exceed the undepreciated capital cost of Class 14 property.

For more information on accelerated investment incentive property, see the commentary on new subsection 1104(4).

Classes 24, 27, 29 and 34

ITR
1100(1)(ta)

Paragraph 1100(1)(ta) provides for straight line depreciation over three years for property of certain classes (including Class 29) in taxation years commencing after November 12, 1981.

Under these rules, “designated property” receives more favourable treatment. Subparagraphs 1100(1)(ta)(iii) to (v) provide a meaning of the term “designated property”.

Consequential on the restructuring of subsection 1100(2), as discussed below, subparagraph 1100(1)(ta)(v) is amended by replacing the reference to property described in subparagraphs 1100(2)(a)(v), (vi) or (vii) with a reference to property described in any of subparagraphs (b)(iii) to (v) of the description of F in subsection 1100(2).

Canadian vessels

ITR
1100(1)(v)

Paragraph 1100(1)(v) of the Regulations provides for a deduction in respect of the capital cost of certain vessels.

Currently, the annual CCA rate applicable to such vessels is 33 1/3% of the capital cost of the vessel, subject to a reduced rate of 16 2/3% for the year in which the vessel first becomes available for use by the taxpayer. These rates are set out in subparagraph 1100(1)(v)(iv).

Subparagraph 1100(1)(v)(iv) is amended to provide an enhanced first-year CCA where the vessel qualifies as “accelerated investment incentive property”, as defined in new subsection 1104(4). This amendment provides the following three rates in respect of vessels acquired in a taxation year:

- 50% for “accelerated investment incentive property”, as defined in new subsection 1104(4), acquired before 2024;
- 33 1/3% for accelerated investment incentive property acquired after 2023 (such property is not mentioned in clause (A) or (B) and so, the general rate in clause (C) applies); and
- 16 2/3% for property that is not accelerated investment incentive property and is not described in any of subparagraphs (b)(iii) to (v) of the description of F in subsection 1100(2).

For this purpose, property is deemed to be acquired when it becomes available for use to the taxpayer. In subsequent years, the taxpayer may deduct 33 1/3% of the capital cost of the property to the taxpayer, up to the undepreciated capital cost of property of the class.

For more information on accelerated investment incentive property, see the commentary on new subsection 1104(4).

Property acquired in the year

ITR
1100(2)

Subsection 1100(2) of the Regulations is the general provision relating to the "half-year rule". This rule provides that the capital cost allowance (CCA) allowed in the first year that a taxpayer's capital property is available for use is generally limited to half the amount that would otherwise be available in respect of that property. The half-year rule generally applies to the amount by which the capital cost of any depreciable property of a prescribed class acquired by a taxpayer in a taxation year exceeds the lesser of the capital cost of each property of the class disposed of in the year and its proceeds of disposition.

Subsection 1100(2) is amended to provide an enhanced first-year CCA in respect of "accelerated investment incentive property" (AII property) of a taxpayer, as defined in new subsection 1104(4), and "zero-emission vehicles" of a taxpayer, as newly defined in subsection 248(1).

The opening words of subsection 1100(2) are amended to provide that the amount that a taxpayer may deduct in respect of a class under subsection (1) is to be determined as if the undepreciated capital cost of property of the class were adjusted by adding the positive or negative amount determined by the formula (*i.e.*, if the formula provides a negative result, that amount would be subtracted).

The following formula, which contains the existing half-year rule and provides for the new enhanced first-year allowances, is introduced to subsection 1100(2):

$$A(B) – 0.5(C)$$

The formula is comprised of two main components: the accelerated CCA component, reflected in elements A and B, and the existing half-year rule, reflected in the multiplication of 0.5 by element C.

<u>Element A</u>

Element A provides the relevant factors for determining the first-year accelerated CCA for a class.

Paragraph (a) of element A provides the factor for the enhanced first-year CCA for AII property currently included in most classes in Schedule II. The factor is

- 50%, in respect of property that becomes available for use before 2024; and
- 0%, in respect of property that becomes available for use after 2023.

Because the half-year rule (see element C) does not apply in respect of AII property, the 0% rate applicable in the post-2023 period generally provides a doubling of the otherwise claimable CCA in respect of these properties.

Classes 12, 13, 14, 15, 43.1, 43.2, 53, 54 and 55, or Class 43, in certain circumstances, are excluded from paragraph (a). "Canadian vessels", which are addressed in paragraph 1100(1)(v), are also excluded. Additional allowances are provided elsewhere in respect of Canadian vessels and property in these classes, except in the case of Class 12, which is already eligible for a 100% CCA rate.

Paragraph (b) of element A provides the following factors for AII property included in Class 43.1:

- 2 1/3, in respect of property that becomes available for use before 2024 (which effectively results in a 100% CCA rate),
- 1 1/2, in respect of property than becomes available for use in 2024 or 2025, and
- 5/6, in respect of property that becomes available for use after 2025.

Paragraphs (c) to (f), which apply for classes 43.2, 53 (and, after 2025, class 43), 54 and 55, respectively, are structured similarly to paragraph (b) and mainly differ in that the base rates for the classes require different factors to achieve the desired CCA claim (which is 100% for the pre-2024 period).

<u>Element B</u>

Element B is common to all AII and zero-emission vehicle properties and, in general terms, computes the net capital cost additions to the relevant class, expressed as the formula D – E.

Element D is generally the amount added to the undepreciated capital cost of the relevant class in respect of AII or zero-emission vehicle properties that become available for use in the year.

Element E is computed as the amount by which the amount determined for G exceeds the amount determined for F. It, together with the formula F – G in the description of element C (*i.e.*, the half-year rule), generally provides that where the undepreciated capital cost of a class is increased in a year by both the cost of AII property and non-AII property and an amount (*e.g.*, a disposition) reduces the undepreciated capital cost of the class, the reduction first offsets non-AII property before reducing the amount available for the enhanced CCA deduction. In the case of Classes 54 and 55 in respect of zero-emission vehicles, the amount determined for F will always be nil as those properties are never subject to the half-year rule.

<u>Element C</u>

The multiplication of element C by 0.5 is a reformulation of the existing half-year rule.

AII property is excluded from the half-year rule because of the parenthetical exclusion in subparagraph (a)(i) of the description of F. Zero-emission vehicles included in Class 54 or 55 are excluded because they are added to the list of excluded classes in subparagraph (b)(ii) of the description of F. It should be noted that the definitions of both AII property and zero-emission vehicles contain an end date of 2027. Thus, what would otherwise be AII property that becomes available for use after 2027 will revert to the usual half-year rule treatment. In the case of zero-emission vehicles, that definition and Classes 54 and 55 will not be relevant in respect of any property that is acquired or becomes available for use after 2027.

Example 1:

If a taxpayer incurs $100 in respect of AII property included in Class 10 (30% CCA rate) in 2019 and it becomes available for use in that year (assume no reductions in the class for the year), the taxpayer may deduct $45 instead of the $15 that would normally be available in the first year because of the half-year rule, as calculated below:

Undepreciated capital cost at the end of the year		*$100*
A(B) addition (0.5($100))		*$50*
Adjusted undepreciated capital cost		*$150*
CCA rate		*30 %*
Enhanced first year CCA deduction	*($150 x 30%)*	*$45*
Undepreciated capital cost after CCA deduction		*$55*

In the following year, assuming there are no new acquisitions, the taxpayer may deduct 30% of the $55 UCC and no additional amount for AII property.

Example 2:

If a taxpayer incurs $100 in respect of AII property included in Class 43.1 in 2019 and it becomes available for use in that year (assume no reductions in the class), the taxpayer may deduct:

Undepreciated capital cost at the end of the year		*$100*
A(B) addition (2 1/3($100))		*$233*
Adjusted undepreciated capital cost		*$333*
CCA rate		*30 %*
Enhanced first year CCA deduction	*($333 x 30%)*	*$100*
Undepreciated capital cost after CCA deduction		*$0*

The result is the taxpayer is entitled to fully deduct the capital cost of eligible Class 43.1 property in the first year.

Straddle years

ITR
1100(2.01)

New subsection 1100(2.01) of the Regulations provides a special rule for determining the factor in element A of subsection 1100(2) applicable to “accelerated investment incentive property” and “zero-emission vehicles” for certain non-calendar taxation years.

The rule contemplates two potential straddle periods: taxation years with days in the 2023 and 2024 calendar years and taxation years with days in the 2025 and 2026 calendar years. In these straddle situations, the formulas in paragraphs (a) and (b) establish the factor to be used for element A in subsection (2) as a blended factor weighted based on the relative amount of eligible property acquisitions in each calendar year that is included in the relevant taxation year.

Expenditures before November 21, 2018

ITR
1100(2.02)

New subsection 1100(2.02) of the Regulations reclassifies expenditures incurred before November 21, 2018 that would otherwise be treated as being in respect of accelerated investment incentive property solely as a result of the application of subparagraph 1104(4)(b)(i). In general terms, that subparagraph allows certain unused property acquired from a non-arm’s length person to qualify as accelerated investment incentive property. Subsection 1100(2.02) ensures that any such transfers cannot give rise to an inappropriate amount of enhanced CCA deductions and aligns the CCA treatment of expenditures made before the effective date of the accelerated investment incentive amendments to the rules that existed when the expenditures were incurred. It does so by removing expenditures incurred before November 21, 2018 (the day of the announcement of the “accelerated investment incentive”) from element D of subsection 1100(2) and by adding them to element F. However, the addition of such amounts to element F will occur only where that property would otherwise be subject to the half-year rule.

There is an exception from this reclassification rule for certain inventory purchases. This exception addresses situations where, for example, a corporation sells inventory to an arm’s length retailer and then a corporation related to the taxpayer buys the inventory from the retailer for the purposes of leasing the property to a customer of the retailer.

Exceptions to the half-year rule

ITR
1100(2.2)

Subsection 1100(2.2) of the Regulations sets out exceptions to the half-year rule in subsection 1100(2), generally in respect of certain non-arm's length transfers.

Paragraph 1100(2.2)(h) is amended as a consequence of the restructuring of subsection 1100(2). It now refers to element F in subsection 1100(2).

Paragraph 1100(2.2)(k) is amended to modernize its language.

Exceptions to the half-year rule – dispositions

ITR
1100(2.3)

Subsection 1100(2.3) of the Regulations applies to a vendor of property in situations where the purchaser of the property is excepted from the half-year rule because of paragraph 1100(2.2)(h). In such a case, subsection 1100(2.3) provides that the vendor is not able to use the proceeds of the disposition to reduce its exposure to the half-year rule for any of its acquisitions in the taxation year.

Subsection 1100(2.3) is amended as a consequence of the restructuring of subsection 1100(2). It now refers to elements F and G in subsection 1100(2).

Clause 53

Non-arm's length acquisitions

ITR
1102(14) and (14.13)

Subsection 1102(14) of the Regulations ensures that, subject to certain exceptions, property acquired by a taxpayer in certain transactions remains property of the same class as that of the vendor. This subsection's list of exceptions is being expanded to incorporate a reference to new subsection 1102(14.13).

New subsection 1102(14.13) of the Regulations provides that subsection 1102(14) does not apply to "zero-emission vehicles", as defined in subsection 248(1) of the Act, which are included in Class 54 or Class 55. This is intended to ensure that the enhanced CCA available to these vehicles applies only to new vehicles.

These amendments come into force on March 19, 2019.

Anti-avoidance

ITR
1102(20.1)

New subsection 1102(20.1) of the Regulations deems a taxpayer not to be dealing at arm's length with another person or partnership in certain circumstances. In general, this will apply if the taxpayer would be considered to be dealing at arm's length with the other person as a result of a transaction or series of transactions the principal purpose of which may reasonably be considered to have been to cause one or more properties of the taxpayer to qualify as an "accelerated investment incentive property", as defined in new subsection 1104(4). In essence, this rule is intended to prevent taxpayers from contriving arm's length relationships in order to obtain the more favourable treatment that is available because of subsection 1104(4) in respect of arm's length transfers.

Zero-emission vehicles

ITR
1102(26)

New subsection 1102(26) of the Regulations applies for the purpose of the definition "zero-emission vehicle" in subsection 248(1) of the Act. It prescribes the condition that a plug-in hybrid must have a battery capacity of at least 15 kWh, for paragraph (a) of the definition, and it prescribes the federal purchase incentive announced on March 19, 2019 as part of the Government's 2019 Budget, for clause (c)(ii)(B) of the definition.

This amendment comes into force on March 19, 2019.

Clause 54

Election to exclude property from Class 54 or 55

ITR
1103(2j)

New subsection 1103(2j) of the Regulations provides that a taxpayer may elect not to include in new Class 54 or 55 a vehicle that would otherwise be a "zero-emission vehicle", as defined in subsection 248(1) of the Act. Because of the condition in clause (c)(ii)(A) of that definition, filing such an election means that such a vehicle would not be a "zero-emission vehicle". As such, the vehicle would be included in its usual CCA class, generally Class 10, 10.1 or 16. The taxpayer must file the election with the Minister of National Revenue in its return of income for the taxation year in which the vehicle is acquired. There is no provision for late-filing or amended elections.

This amendment comes into force on March 19, 2019.

Clause 55

Interpretation

ITR
1104

Section 1104 of the Regulations sets out various definitions and interpretation rules that apply for the purpose of determining the capital cost allowance (CCA) rate for a taxation year in respect of a depreciable property of a taxpayer.

Definition of accelerated investment incentive property

ITR
1104(4)

New subsection 1104(4) of the Regulations defines "accelerated investment incentive property" (AII property) for the purposes of Part XI and Schedules II to VI of the Regulations. This definition and amended subsection 1100(2) are the main provisions that implement the temporary enhanced CCA rules announced on November 21, 2018 as part of the 2018 Fall Economic Statement. The enhanced CCA rules in respect of zero-emission vehicles that were announced on March 19, 2019 as part of the 2019 Budget are subject to separate definitions, in subsection 248(1) of the Act, and are excluded from the AII property definition by virtue of the carve-outs for Class 54 and 55 property.

To qualify as AII property, a property must be acquired by a taxpayer after November 20, 2018, become available for use before 2028 and satisfy one of the two conditions set out in paragraph 1104(4)(b).

Subparagraph 1104(4)(b)(i) allows property to be AII property if it has never been used and no person has ever claimed capital cost allowance (or a terminal loss) in respect of the property. This rule makes no distinction between the arm's length or non-arm's length status of the vendor of the property. However, if the property is AII property solely because of this subparagraph (*i.e.*, it does not also qualify under subparagraph 1104(4)(b)(ii)), certain amounts in respect of the property could be disqualified from the enhanced CCA rules as a result of the application of subsection 1100(2.02).

Subparagraph 1104(4)(b)(ii) allows property to be AII property if the property was not subject to a "rollover" and it was not previously owned or acquired by the taxpayer or a non-arm's length person or partnership.

In respect of rollovers, this includes property acquired in circumstances where the taxpayer was deemed to have been allowed or deducted an amount under paragraph 20(1)(a) of the Act when computing income for previous taxation years (*e.g.*, where the property is acquired in a transaction to which section 85 applies). It also includes property acquired in circumstances where the undepreciated capital cost of depreciable property of a prescribed class of the taxpayer was reduced by an amount determined by reference to the amount by which the capital cost of the property to the taxpayer exceeds its cost amount (*e.g.*, where the property is acquired in a transaction to which section 87 applies).

In respect of the arm's length condition, the "or acquired" criterion is intended to be relevant in circumstances where there is an acquisition of property in circumstances where the property is not yet owned, such as in paragraph 16.1(1)(b) of the Act.

Classes 43.1 and 43.2 – energy conservation property

ITR
1104(17)(a)

Subsection 1104(17) of the Regulations requires environmental compliance in respect of certain properties before those properties can be included in class 43.1 or 43.2 in Schedule II to the Regulations.

Subsection 1104(17) prevents the inclusion of the capital cost of certain property in Class 43.1 or 43.2 if the property is not in compliance with environmental laws, by-laws and regulations at the time the property becomes available for use. The subsection applies to property that would otherwise be included in subparagraph (c)(i) of Class 43.1, to property that is described in certain subparagraphs of paragraph (d) of Class 43.1 and to property described in paragraph (a) of Class 43.2.

Property is not in compliance if, at the time the property becomes available for use by the taxpayer, the taxpayer has not satisfied the requirements of all environmental laws, by-laws and regulations of Canada, a province or a municipality in Canada, or of a municipal or public body performing a function of government in Canada, applicable in respect of the property.

If a property is not included in Class 43.1 or 43.2 because of subsection 1104(17), the property may remain included in the CCA class that would otherwise apply to that property.

Paragraph 1104(17)(a) is amended as a consequence of initiatives announced in the 2016 and 2017 budgets. The 2017 budget initiatives have already been enacted and apply as of March 22, 2017. The amendment to paragraph 1104(17)(a) relates to the initiative announced in the 2016 budget relating to electric vehicle charging stations and applies as of March 22, 2016. The amended text of paragraph

1104(17)(a) reflects the 2016 and 2017 amendments and a special transitional rule ensures the appropriate coming-into-force dates for each.

The amendment adds a reference to subparagraph (d)(xvii) of Class 43.1 to Schedule II, to ensure that the requirement for environmental compliance also applies to property described in that subparagraph, which includes in Class 43.1 certain electric vehicle charging stations.

Clause 56

Treaty co-production

ITR
1106(3)

Subsection 1106(3) of the Regulations provides a list of prescribed instruments under which a film or video production will be considered a "treaty co-production" for the purposes of eligibility for the film or video production tax credit. The provision includes as a prescribed instrument any co-production treaty entered into between Canada and another state, as well as four listed co-production Memoranda of Understanding.

Subsection 1106(3) is amended to add as a prescribed instrument the *Memorandum of Understanding between the Government of Canada and the Respective Governments of the Flemish, French and German-Speaking Communities of the Kingdom of Belgium concerning Audiovisual Coproduction*.

The amendment applies as of March 12, 2018.

Clause 57

Interpretation

ITR
3500(1)

Part XXXV of the Regulations provides rules with respect to the issuance of official donation receipts by qualified donees.

The definition "registered organization" in section 3500 is amended to add a "registered journalism organization" to its list, consequential on the amendments to section 149.1 of the Act that add registered journalism organizations to the class of qualified donees.

This amendment comes into force on January 1, 2020.

Clause 58

Required retention periods

ITR
5800(1)(d) and (e)

Paragraphs 5800(1)(d) and (e) of the Regulations provide the required retention periods for certain records of a registered charity or registered Canadian amateur athletic association.

Paragraphs 5800(1)(d) and (e) are amended to also apply to a registered journalism organization, consequential on the amendments to section 149.1 of the Act that add registered journalism organizations to the class of qualified donees.

These amendments come into force on January 1, 2020.

Clause 59

Prescribed amount – zero-emission passenger vehicle

ITR
7307(1.1)

New subsection 7307(1.1) of the Regulations prescribes the amount for the purposes of the capital cost limitation in subparagraph 13(7)(i)(i) of the Act in respect of a "zero-emission passenger vehicle", as defined in subsection 248(1) of the Act. The initial limit is $55,000 plus the federal and provincial sales taxes that would be incurred by the taxpayer if the taxpayer had acquired the vehicle for $55,000.

This amendment comes into force on March 19, 2019.

Clause 60

Normalized pensions

ITR
8302(3)

Subsection 8302(3) of the Regulations sets out rules for determining the normalized pension of an individual under a defined benefit provision of a registered pension plan (RPP). Paragraph (j) applies where the defined benefit formula includes an offset by reference to the amount of Canada Pension Plan (CPP) or Québec Pension Plan benefits payable to the individual. Unless the plan administrator uses an alternate reasonable calculation method, the public pension offset in respect of a plan member and a particular year is determined as 25 per cent of the lesser of the plan member's remuneration for the year from employers who participate in the RPP or the Year's Maximum Pensionable Earnings.

Consequential on changes to the CPP that introduced an "enhanced CPP" component beginning in 2019, two amendments are introduced to subsection 8302(3). First, paragraph (j) is amended to apply to an RPP whose defined benefits payable to a plan member are offset solely by reference to "base CPP" payments (*i.e.*, payable pursuant to paragraph 46(1)(a) of the *Canada Pension Plan*) to the plan member.

Second, new paragraph (j.1) is introduced to apply to an RPP whose defined benefits payable to a plan member are offset by reference to full CPP payments to the plan member. The reference to paragraphs 46(1)(a) and (b) of the *Canada Pension Plan* effectively refer to both base CPP payments and enhanced CPP payments.

These amendments come into force on January 1, 2019.

Clause 61

Capital cost allowance – prescribed classes

ITR
Schedule II

Schedule II to the Regulations lists the properties that can be included in each capital cost allowance (CCA) class. A portion of the capital cost of depreciable property is deductible as CCA each year. CCA rates for each type of property, identified by their CCA classes, are set out in section 1100 of the Regulations.

Class 43.1 (30% CCA rate**)**

Class 43.1 in Schedule II to the Regulations currently provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment. Class 43.1 (and indirectly Class 43.2) is amended to expand eligibility for inclusion in Classes 43.1 and 43.2 to certain electric vehicle charging stations and a broader range of electrical energy storage equipment.

ITR
Class 43.1(d)(i)(A)(I) and (II)

Subparagraph (d)(i) of Class 43.1 applies to certain active solar heating equipment and ground source heat pump system equipment.

Subclauses (d)(i)(A)(I) and (II) of Class 43.1 are amended to clarify that only thermal energy storage equipment in connection with active solar heating equipment and ground source heat pump systems is eligible for inclusion in subparagraph (d)(i). This amendment is consequential on the introduction of new subparagraph (d)(xviii) of Class 43.1 which now describes electrical energy storage equipment. Any electrical energy storage equipment related to active solar heating equipment and ground source heat pump systems is to be included in new subparagraph (d)(xviii).

This amendment applies in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(v)(B)(I)

Subparagraph (d)(v) of Class 43.1 describes a wind energy conversion system (wind turbines) that is used primarily for the purpose of generating electrical energy.

Subclause (d)(v)(B)(I) is amended to remove a reference to battery storage equipment that is used in connection with a wind energy conversion system. This amendment is consequential on the introduction of new subparagraph (d)(xviii) of Class 43.1, which now describes electrical storage equipment. Batteries and other electrical energy storage equipment related to a wind energy conversion system are eligible to be included in the new subparagraph (d)(xviii).

This amendment applies in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(vi)

Subparagraph (d)(vi) of Class 43.1 in Schedule II to the Regulations applies to certain fixed location photovoltaic equipment (solar panels) that converts solar energy into electrical energy.

The preamble of the subparagraph is amended to remove a reference to battery storage equipment. This amendment is consequential on the introduction of new subparagraph (d)(xviii) of Class 43.1, which applies to eligible electrical storage equipment. Batteries and other electrical energy storage equipment that is used in connection with fixed location photovoltaic equipment are eligible to be included in the new subparagraph (d)(xviii).

This amendment applies in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(vii)

Subparagraph (d)(vii) of Class 43.1 in Schedule II to the Regulations describes equipment that is used primarily for the purpose of generating electrical energy solely from geothermal energy (geothermal energy equipment). Under the present wording of the subparagraph, geothermal energy equipment does not include equipment designed to store electrical energy (electrical energy storage equipment).

The subparagraph is amended, for simplicity and clarity, to remove the reference to the electrical storage equipment from the list of excluded equipment for the purposes of the subparagraph. This amendment is consequential on the introduction of new subparagraph (d)(xviii) of Class 43.1 which applies to eligible electrical storage equipment. Electrical energy storage equipment that is used in connection with geothermal energy equipment is no longer excluded from paragraph (d). In particular, such equipment is eligible to be included in the new subparagraph (d)(xviii).

This amendment applies in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

Subparagraph (d)(vii) of Class 43.1 was previously amended in 2017 to implement a measure announced in the 2017 budget. That amendment is being re-enacted, after the 2016 amendment referred to immediately above, for property acquired for use after March 21, 2017 that has not been used or acquired for use before March 22, 2017.

ITR
Class 43.1(d)(xii)

Subparagraph (d)(xii) of Class 43.1 in Schedule II to the Regulations currently describes a fixed location fuel cell that uses hydrogen generated from ancillary electrolysis equipment (or if the fuel cell is reversible, the fuel cell itself) only if the ancillary electrolysis equipment uses electricity all or substantially all of which is generated by photovoltaic equipment, wind energy conversion equipment or hydro-electric equipment.

Subparagraph (d)(xii) is amended to broaden the range of equipment that can be used to produce electricity that is to be used by the ancillary electrolysis equipment. In particular, the list of equipment that produces electricity, all or substantially all of which is to be used by the ancillary electrolysis equipment, is broadened to include geothermal equipment. In addition, ancillary electrolysis equipment can also use electricity all or substantially all of which is generated by using kinetic energy of flowing water or wave or tidal energy.

This amendment applies in respect of equipment acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(xiv)

Subparagraph (d)(xiv) of Class 43.1 in Schedule II to the Regulations currently describes equipment that generates electricity using kinetic energy of flowing water or wave or tidal energy without using physical barriers or other dam-like structures.

The subparagraph is amended to remove a reference to battery storage equipment. This amendment is consequential on the introduction of new subparagraph (d)(xviii) of Class 43.1 which applies to eligible electrical storage equipment. Batteries or other electrical energy storage equipment that are used in connection with equipment that generates electricity using kinetic energy of flowing water or wave or tidal energy are eligible to be included in the new subparagraph (d)(xviii).

This amendment applies in respect of equipment acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(xvii)

New subparagraph (d)(xvii) of Class 43.1 in Schedule II to the Regulations is introduced to expand Class 43.1 eligibility to include certain fixed location electric vehicle charging stations.

New subparagraph (d)(xvii) describes equipment used by the taxpayer, or by a lessee of the taxpayer, for the purpose of charging electric vehicles. Such equipment includes charging stations, transformers, distribution and control panels, circuit breakers, conduits and related wiring. For such equipment to be eligible for inclusion in Class 43.1,

- the equipment must be situated on the load side of an electricity meter used for billing purposes by a power utility, or on the generator side of an electricity meter used to measure electricity generated by the taxpayer,
- more than 75 percent of the electrical capacity of the equipment must be dedicated to charging electric vehicles, and
- the equipment must be an electric vehicle charging station that supplies more than 10 kilowatts of continuous power, or must be used primarily in connection with at least one electric vehicle charging station that supplies more than 10 kilowatts of continuous power. For these purposes, an electric vehicle charging station does not include a building.

This amendment applies in respect of equipment acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

ITR
Class 43.1(d)(xviii)

New subparagraph (d)(xviii) of Class 43.1 in Schedule II to the Regulations is introduced to expand Class 43.1 eligibility to include certain electrical energy storage property.

New subparagraph (d)(xviii) describes fixed location energy storage property (the “electrical energy storage property”) that is used by the taxpayer, or by a lessee of the taxpayer for the purpose of storing electrical energy.

Qualifying electrical energy storage property includes batteries, compressed air energy storage, flywheels, ancillary equipment (including control and conditioning equipment) and related structures. It does not include buildings, pumped hydroelectric storage, hydroelectric dams and reservoirs, property used solely for backup electrical energy, batteries used in motor vehicles, fuel cell systems where the hydrogen is produced via steam reformation of methane or property otherwise included in Class 10 or 17.

In order to be eligible for inclusion in Class 43.1, the electrical energy storage property must meet one of two additional conditions. First, the electrical energy to be stored by the electrical storage equipment must be used in connection with Class 43.1 property of the taxpayer or a lessee of the taxpayer, as the case may be. Second, where the property is not to be used in connection with Class 43.1 property of the taxpayer or a lessee of the taxpayer, the round trip efficiency of the electrical energy storage system must be greater than 50%. In this regard, the round trip efficiency of the electrical energy storage system is to be computed by reference to the quantity of electrical energy supplied to and discharged from the electrical energy storage system.

These amendments apply in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

Clause 62

Clean energy equipment

ITR
Class 43.2 (50% CCA rate)

Class 43.2 in Schedule II to the Regulations provides for a temporary accelerated CCA rate of 50% for certain Class 43.1 properties. Class 43.2 includes some of the properties described in Class 43.1 if acquired after February 22, 2005 and before 2020.

Class 43.2 is amended in two respects. First, paragraph (a) of Class 43.2 is reworded for clarity. Second, paragraph (b) is reworded to introduce new subparagraphs (ii) and (iii). Subparagraph (i) continues to describe property that was previously described in paragraph (b). The second amendment is consequential on the amendments to Class 43.1 that expand eligibility to include certain electric vehicle charging stations and a broader range of electrical energy storage equipment in Classes 43.1 and 43.2.

In particular, the addition of new subparagraphs (b)(ii) and (iii) of Class 43.2 is consequential on the introduction of subparagraphs (d)(xvii) and (xviii), respectively, of Class 43.1.

ITR
Class 43.2(b)(ii)

New subparagraph (b)(ii) of Class 43.2 in Schedule II to the Regulations is introduced consequential on the introduction of subparagraph (d)(xvii) of Class 43.1. New subparagraph (b)(ii) describes, by reference to subparagraph (d)(xvii) of Class 43.1, equipment used for the purpose of charging electric vehicles. Such equipment includes charging stations, transformers, distribution and control panels, circuit breakers, conduits and related wiring. For such equipment to be eligible for inclusion in Class 43.2,

- the equipment must be situated on the load side of an electricity meter used for billing purposes by a power utility, or on the generator side of an electricity meter used to measure electricity generated by the taxpayer,
- more than 75 percent of the electrical capacity of the equipment must be dedicated to charging electric vehicles, and
- the equipment must be an electric vehicle charging station that supplies at least 90 kilowatts of continuous power, or be used primarily in connection with one or more electric vehicle charging stations that supply more than 10 kilowatts of continuous power and in connection

with at least one electric vehicle charging station that supplies at least 90 kilowatts of continuous power. For these purposes, an electric vehicle charging station does not include a building.

ITR
Class 43.2(b)(iii)

New subparagraph (b)(iii) of Class 43.2 in Schedule II to the Regulations is introduced consequential on the introduction of subparagraph (d)(xviii) of Class 43.1.

New subparagraph (b)(iii) describes, by reference to subparagraph (d)(xviii) of Class 43.1, fixed location energy storage property (the "electrical energy storage property") that is used for the purpose of storing electrical energy.

Qualifying electrical energy storage property includes batteries, compressed air energy storage, flywheels, ancillary equipment (including control and conditioning equipment) and related structures. It does not include buildings, pumped hydroelectric storage, hydroelectric dams and reservoirs, property used solely for backup electrical energy, batteries used in motor vehicles, fuel cell systems where the hydrogen is produced via steam reformation of methane or property that is included in Class 43.1 that would otherwise be included in Class 10 or 17.

In addition, in order to be eligible for inclusion in Class 43.2, the electrical energy to be stored by the electrical energy storage equipment must be used in connection with Class 43.2 property of the taxpayer or a lessee of the taxpayer, as the case may be.

These amendments apply in respect of property acquired after March 21, 2016 that has not been used or acquired for use before March 22, 2016.

Clause 63

Zero-emission vehicles

ITR
Class 54 (30% CCA rate)

New Class 54 includes "zero-emission vehicles" of a taxpayer that are not included in Class 16 or 55 of Schedule II to the Regulations. As such, in general terms, this class would include zero-emission vehicles that would otherwise be included in Class 10 or 10.1. However, unlike Class 10.1, Class 54 does not establish a separate class for each vehicle whose cost exceeds the prescribed threshold. Furthermore, Class 54 may include both zero-emission passenger vehicles that do and do not exceed the prescribed threshold.

As a result of amended subsection 1100(2) of the Regulations, Class 54 property is eligible for a first-year accelerated capital cost allowance (CCA) rate of 100 per cent for such property that is acquired after March 18, 2019 and becomes available for use before 2024. A reduced accelerated CCA rate applies for such property that becomes available for use in the calendar years 2024 to 2027, through the operation of subparagraphs (e)(ii) and (iii) of element A of the formula in subsection 1100(2).

CCA will be deductible on any remaining balance in Class 54 on a declining-balance basis at a rate of 30 per cent.

If a zero-emission vehicle is also a "zero-emission passenger vehicle", as defined in subsection 248(1), new subparagraph 13(7)(i)(i) of the Act limits the amount of its capital cost included in new Class 54 to a prescribed amount, which is initially set at $55,000 (plus federal and provincial sales tax) under subsection 7307(1.1) of the Regulations.

This amendment comes into force on March 19, 2019.

ITR
Class 55 (40% CCA rate)

New Class 55 is similar to Class 54 except that it includes "zero-emission vehicles" that would otherwise be included in Class 16, for example taxis. However, it cannot include "zero-emission passenger vehicles" and, as such, does not have any capital cost limitation.

As a result of amended subsection 1100(2) of the Regulations, Class 55 property is eligible for a first-year accelerated capital cost allowance (CCA) rate of 100 per cent for such property that is acquired after March 18, 2019 and becomes available for use before 2024. A reduced accelerated CCA rate applies for such property that becomes available for use in the calendar years 2024 to 2027, through the operation of subparagraphs (f)(ii) and (iii) of element A of the formula in subsection 1100(2).

CCA will be deductible on any remaining balance in Class 55 on a declining-balance basis at a rate of 40 per cent.

This amendment comes into force on March 19, 2019.

Clauses 64 and 65

Capital cost allowance – class 15

ITR
Schedule IV Sections 1 & 2

Schedule IV of the Regulations provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(f) in respect of property in Class 15 of Schedule II. Class 15 generally includes property (other than a timber resource property) that is acquired for the purpose of cutting and removing mercantile timber from a timber limit.

Sections 1 and 2 of Schedule IV are amended to provide for an additional deduction in respect of a taxpayer's accelerated investment incentive property included in Class 15. For more information, see the commentary on the definition "accelerated investment incentive property" in subsection 1104(4).

Paragraph 1(a) of Schedule IV is reorganized into subparagraphs (i) and (ii). New subparagraph (i) provides the following additional deductions in respect of accelerated investment incentive property included in Class 15:

- 50%, for accelerated investment incentive property acquired before 2024; and
- 25%, for accelerated investment incentive property acquired after 2023.

Subparagraph (a)(ii) maintains the current deduction for property other than accelerated investment incentive property.

The amendments to paragraph 2(a) of Schedule IV of the Regulations provide that the additional allowance in the first year (under new subparagraph 1(a)(i) of Schedule IV) does not affect the amount that can be claimed in the second and subsequent years, until the undepreciated capital cost limit is reached.

Clauses 66 and 67

Capital cost allowance – industrial mineral mines

ITR
Schedule V Sections 2 & 3

Schedule V of the Regulations provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(g) in respect of capital cost of a property that is an industrial mineral mine or a right to remove industrial minerals from an industrial mine.

Sections 2 and 3 of Schedule V are amended to provide for an additional deduction in respect of accelerated investment incentive property included in paragraph 1100(1)(g). For more information, see the commentary on the definition "accelerated investment incentive property" in subsection 1104(4).

The amendments to section 2 of Schedule V reorganize the provision into a formula and provide the following additional deductions (in paragraphs (a) and (b) of the description of A) in respect of accelerated investment incentive property included in paragraph 1100(1)(g):

- 50%, for accelerated investment incentive property acquired before 2024; and
- 25%, for accelerated investment incentive property acquired after 2023.

Paragraph (c) of the description of A preserves the current deduction available to property that is not accelerated investment incentive property.

The amendments to paragraphs 3(a) and (b) of Schedule V of the Regulations provide that the additional allowance in the first year does not affect the amount that can be claimed in the second and subsequent years, until the undepreciated capital cost limit is reached.

Clauses 68 and 69

Capital cost allowance – timber limits and cutting rights

ITR
Schedule VI Sections 2 & 3

Schedule VI of the Regulations provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(e) in respect of the capital cost of a property (other than a timber resource property) that is a timber limit or a right to cut timber from a limit.

Sections 2 and 3 of Schedule VI are amended to provide for an additional deduction in respect of a taxpayer's accelerated investment incentive property included in paragraph 1100(1)(e). For more information, see the commentary on the definition "accelerated investment incentive property" in subsection 1104(4).

The amendments to section 2 of Schedule VI reorganize the provision into a formula and provide the following additional deductions (in paragraphs (a) and (b) of the description of A) in respect of accelerated investment incentive property included in paragraph 1100(1)(g):

- 50%, for accelerated investment incentive property acquired before 2024; and
- 25%, for accelerated investment incentive property acquired after 2023.

Paragraph (c) of the description of A preserves the current deduction available to property other than an accelerated investment incentive property.

The amendments to paragraphs 3(a) and (b) of Schedule VI of the Regulations provide that the additional allowance in the first year does not affect the amount that can be claimed in the second and subsequent years, until the undepreciated capital cost limit is reached.