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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Minister of Finance

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

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Income Tax Act and other Acts and Regulations

Accelerated Investment Incentive for Resource Expenditures

Clause 1

Short taxation year

Income Tax Act (ITA)
66(13.1)

Subsection 66(13.1) of the *Income Tax Act* (the "Act") limits the amount of certain resource expenses that a taxpayer may deduct in computing income for a taxation year where the amount is based on a percentage of the unclaimed balance and the taxation year is less than 51 weeks. In these cases, the amount that may be deducted by the taxpayer cannot exceed that portion of the amount otherwise determined that the number of days in the taxation year is of 365.

Subsection 66(13.1) is amended by adding references to paragraphs 66.2(2)(d) and 66.4(2)(c) of the Act. This ensures that this short taxation year rule applies in determining the amount of a taxpayer's accelerated Canadian development expense and accelerated Canadian oil and gas property expense.

This amendment applies to taxation years that end after Announcement Date.

Accelerated Investment Incentive for Depreciable Property

Clause 2

Property acquired in the year

Income Tax Regulations (ITR)
1100(2)

Subsection 1100(2) of the *Income Tax Regulations* (the "Regulations") is the general provision relating to the "half-year rule" and the enhanced first-year capital cost allowance (CCA) in respect of "accelerated investment incentive property" (AII property) of a taxpayer.

Element A in the formula in subsection 1100(2) provides the relevant factors for determining the enhanced first-year CCA for a class, in respect of AII property.

Paragraphs (c) and (d) of the description of A are amended to ensure that appropriate factors apply in respect of certain Class 43, 43.2 and 53 properties. In particular, those paragraphs are amended to take into account the fact that the classification of property into those classes depends, in part, on the time they are acquired whereas the factors set out in element A are based on when the property becomes available for use.

For example, the amendments to paragraph (c) are intended to provide appropriate results for property that is acquired in 2024 that is included in Class 43.2 but that becomes available for use in 2025. Similarly, the amendments to paragraph (d) are intended to provide appropriate results

for property that is acquired in 2025 that is included in Class 53 but that becomes available for use in 2026.

These amendments apply in respect of property acquired after November 20, 2018.

Expenditures excluded from element D

ITR
1100(2.02)

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 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 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 generally adding them to element F. However, there is an exception for certain inventory purchases.

Paragraph 1100(2.02)(a) is amended in two ways. First, its scope is broadened so that it now also applies to certain expenditures incurred after November 20, 2018 to which new paragraph 1104(4.1)(b) applies. This new rule is included in subparagraph (ii) (the existing rule is now contained in subparagraph (i)) and is consequential on the addition of new subsection 1104(4.1). For more information, see the commentary on subsection 1104(4.1). Second, the existing exception for certain inventory purchases is broadened to accommodate additional situations.

These amendments apply in respect of property acquired after November 20, 2018.

Clause 3

Anti-avoidance

ITR
1102(20.1)

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 and 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.

Subsection 1102(20.1) is amended to broaden its scope, primarily so that it can also apply to counter artificial arrangements entered into with a view to satisfying the arm's length condition in the newly expanded "inventory" exclusion in subparagraph 1100(2.02)(a)(i).

This amendment applies in respect of property acquired after Announcement Date.

Clause 4

Definition of accelerated investment incentive property

ITR
1104(4)

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.

In general terms, subparagraph 1104(4)(b)(i) provides the conditions for property to qualify as AII property where it is acquired from a non-arm's length party. It currently specifies two conditions. First, the property must not have been used for any purpose before its acquisition. Second, no other person or partnership can have claimed capital cost allowance (or a terminal loss) in respect of the property.

Subparagraph 1104(4)(b)(i) is amended to remove the first condition and to clarify that no person or partnership, including the taxpayer, can have claimed CCA in a taxation year ending prior to the acquisition in order to satisfy the requirements of the subparagraph.

This amendment applies in respect of property acquired after November 20, 2018.

Deemed separate properties

ITR
1104(4.1)

New subsection 1104(4.1) of the Regulations is added for the purpose of the "accelerated investment incentive property" (AII property) definition in subsection 1104(4) in order to ensure appropriate results in the event that certain property constructed over multiple taxation years is transferred between non-arm's length parties before it is put in use. As such, it is only relevant for property that does not qualify as AII property under subparagraph 1104(4)(b)(ii).

Subparagraph 1104(4)(b)(i) allows property of a taxpayer that is acquired from a non-arm's length party to qualify as AII property where no prior CCA claims have been made in respect of the property. The capital cost of a single property can include several expenditures incurred over multiple taxation years. Under special rules in subsections 13(27) and (29) of the Act, some of these expenditures can be eligible for CCA claims before the property is completed and ready to be used. Where a taxpayer avails itself of these claims, whether in respect of expenditures incurred before November 21, 2018 or after November 20, 2018, this could preclude any expenditures in respect of the property from qualifying as AII property in the event of a subsequent transfer of the property to a non-arm's length person.

New subsection 1104(4.1) is introduced in order to ensure that any portions of a single property for which CCA claims are made do not taint any expenditures for which CCA claims are not made. This rule deems any such portions of the single property to be separate properties so that the "other" expenditures can satisfy the condition in subparagraph 1104(4)(b)(i) and be eligible for the enhanced CCA available for AII property. However, in order to preclude two or more taxpayers in a non-arm's length group from benefitting from the AII incentive more than once in respect of the same expenditures, subsection 1100(2.02), as amended, ensures that any amounts

deemed to be separate properties under subsection 1104(4.1) are not eligible to be included in determining the enhanced CCA under variable D of the formula in subsection 1100(2).

This amendment applies in respect of property acquired after November 20, 2018.

Change in Use Rules for Multi-Unit Residential Properties

Clause 5

ITA
45

Section 45 of the Act contains rules which apply in determining a capital gain or allowable capital loss of a property which has been used for more than one purpose. In general, section 45 provides for a deemed disposition and reacquisition of property for tax purposes where its use, or a portion of its use, is altered from personal use to income-earning or producing use, or vice versa. Section 45 also provides that a taxpayer can elect that there be no deemed disposition on a change in use under certain circumstances.

Election where change in use

ITA
45(2)

Subsection 45(2) of the Act provides that, for the purposes of subdivision c of Division B of Part I of the Act and section 13, where there is a change in the use of an entire property of a taxpayer from a non-income producing to an income producing purpose, the taxpayer may file an election to deem there to be no such change (if there were no election, there would be a deemed disposition and reacquisition for tax purposes under subparagraph 45(1)(a)(i) and paragraph 13(7)(b)). The election is required to be filed with the taxpayer's return of income under Part I for the year that the change in use occurs.

The election is not available where there is an increase in the proportion of the use of a property that is for the purpose of gaining or producing income. Therefore, in those circumstances, there will be a deemed disposition with respect to the increase in the proportion of the property used for income producing purposes under subparagraphs (1)(c)(ii) and 13(7)(d)(i).

Subsection 45(2) is amended to provide that, for the purposes of subdivision c and section 13, a taxpayer may also file an election when there is an increase in the proportion of the use of a property for gaining or producing income, to deem there to be no change in use.

New paragraph 45(2)(a) provides that a taxpayer may file an election in respect of a property where there is a change in the entire use of a property of the taxpayer from a non-income producing purpose to an income producing purpose, to deem there to be no change in use.

New paragraph 45(2)(b) provides that a taxpayer may file an election where subparagraph (1)(c)(ii) or 13(7)(d)(i) of the Act would otherwise apply to the property. The election deems there to be no change in use where there is an increase in the proportion of the use of the property made by the taxpayer for the purposes of gaining or producing income.

New paragraph 45(2)(c) provides that a taxpayer may rescind the election in a return of income under Part I for a subsequent year. Under subparagraph 45(2)(c)(i), where the taxpayer rescinds, in the subsequent year, an election initially made in respect of a change in use of a property from non-income producing to income producing, the change in use will be deemed to commence on the first day of that subsequent year. Under subparagraph 45(2)(c)(ii), where the taxpayer rescinds, in the subsequent year, an election initially made in respect of an increase in the proportion of the use of the property made by the taxpayer for the purposes of gaining or producing income, the change in use will be deemed to commence on the first day of that subsequent year.

This amendment applies to changes in use of property that occur on or after March 19, 2019.

Election concerning principal residence

ITA
45(3)

When an individual acquires property for use in a business or for rental purposes and at a later time occupies the property as a principal residence, paragraph 45(1)(a) of the Act treats the individual as having disposed of the property at its fair market value at that time. The deemed disposition may result in recognition of a capital gain. Subsection 45(3) allows an individual to elect that this deemed disposition not apply on the change in use of a residential property.

Subsection 45(3) is amended to allow an individual to also elect that the deemed disposition not apply where the change in use involves only a part of a property.

This amendment applies to changes in use of property that occur on or after March 19, 2019.

Permitting Additional Types of Annuities Under Registered Plans

Advanced Life Deferred Annuities

Clause 6

Definitions

ITA
56(1)

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

New paragraph 56(1)(z.5) provides for the inclusion in computing a taxpayer’s income for a taxation year of amounts required to be included in income under new section 146.5.

For more information, see the commentary on new section 146.5, which applies to advanced life deferred annuities.

This amendment comes into force on January 1, 2020.

Clause 7

Transfer of refund of premium

ITA
60(l)

In circumstances where an individual has received (or is deemed to have received) certain taxable lump-sum amounts from a deceased individual's registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or registered pension plan (RPP), paragraph 60(l) of the Act allows the individual to claim an offsetting deduction for qualifying rollovers made by or on behalf of the taxpayer. An offsetting deduction is available if all or a portion of the taxable death benefit is transferred to certain qualifying arrangements (such as an RRSP or RRIF) of a taxpayer (in this commentary referred to as a "qualifying taxpayer") who was either (i) a spouse or common-law partner of the deceased annuitant, or (ii) a child or grandchild of the deceased annuitant and was financially dependent on the deceased annuitant by reason of mental or physical infirmity.

Paragraph 60(l) is amended, consequential on the introduction of advanced life deferred annuities in new section 146.5. Where a qualifying taxpayer receives a death benefit from an advanced life deferred annuity that is included in the taxpayer's income under subsection 146.5(3), new clause 60(l)(v)(A.2) will permit the taxpayer to claim an offsetting deduction for the portion of the benefit that the taxpayer contributes to a qualifying vehicle. As such, the qualifying taxpayer can effect a tax-deferred rollover for all or a portion of death benefit proceeds from an advanced life deferred annuity.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

This amendment comes into force on January 1, 2020.

Clause 8

Definitions

ITA
118(7) "pension income"

Section 118 of the Act provides for a number of credits that are deductible in computing the tax payable by an individual, including the pension credit in subsection 118(3). The pension credit available to a taxpayer who is 65 years of age or older is based on the taxpayer's "pension income" as defined in subsection 118(7). The definition "pension income" is also relevant for the pension income splitting rules in section 60.03.

Paragraph (a) of the definition is amended by adding new subparagraph (iii.3) to include in pension income any amounts included in the individual's income under new subsection 146.5(2). As a result, annuity payments from an advanced life deferred annuity made after the taxpayer has attained 65 years of age are eligible for the pension credit and for pension income splitting.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

This amendment comes into force on January 1, 2020.

Clause 9

Definitions

ITA
146(1)

Subsection 146(1) of the Act defines a number of terms that apply for the purposes of the rules in section 146 that apply to registered retirement savings plans (RRSPs).

"qualified investment"

The definition "qualified investment" sets out the types of property that a trust governed by an RRSP is permitted to hold. The list of qualified investments includes annuities described in paragraphs (c) to (c.2) of the definition.

Consequential on the introduction of advanced life deferred annuities in new section 146.5, the definition "qualified investment" is amended to add paragraph (c.3) to permit an "advanced life deferred annuity" (as defined in new subsection 146.5(1)) to be a qualified investment for a trust governed by an RRSP.

"retirement income"

The definition "retirement income" describes annuity payments that must commence to be paid to the RRSP annuitant at "maturity" (generally age 71).

Paragraphs (a) and (b) of the definition are amended to exclude payments made from an advanced life deferred annuity described under new section 146.5.

Transfer of funds

ITA
146(16)

Subsection 146(16) of the Act allows a taxpayer to transfer funds on a tax-deferred basis from their registered retirement savings plan (RRSP) to registered vehicles listed in that subsection before maturity of the transferor RRSP.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, subsection 146(16) is amended by adding paragraph (a.1) to permit an RRSP annuitant to transfer an amount on a tax-deferred basis from an RRSP to a licensed annuities provider to acquire an advanced life deferred annuity.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

The amendments to section 146 of the Act come into force on January 1, 2020.

Clause 10

Definitions

ITA
146.3(1) “qualified investment”

The definition “qualified investment” in subsection 146.3(1) of the Act sets out the types of property that a trust governed by a Registered Retirement Income Fund (RRIF) is permitted to hold. The list of qualified investments includes annuities described in paragraphs (b.1) and (b.2) of the definition.

The definition is amended to add paragraph (b.3) to permit an advanced life deferred annuity to be a qualified investment for a trust governed by a RRIF.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

Acceptance of fund for registration

ITA
146.3(2)(f)

Paragraph 146.3(2)(f) of the Act prohibits a RRIF from receiving property other than property transferred from the registered vehicles listed in that paragraph.

Paragraph 146.3(2)(f) is amended consequential on the introduction of advanced life deferred annuities (ALDA) under new section 146.5. An ALDA contract must include a stipulation that a portion of amounts transferred to acquire an ALDA may be refunded to the annuitant or to the registered plan from which the amount was transferred, if the refund is paid to reduce Part XI taxes payable by the annuitant. As a consequence, new subparagraph 146.3(2)(f)(ix) will permit the refunds from an ALDA to be transferred to a RRIF.

Transfer of funds

ITA
146.3(14.1)

Subsection 146.3(14.1) of the Act provides for a tax-deferred transfer of an amount from an annuitant's RRIF to a money purchase provision of a registered pension plan, or to an annuitant’s account under a pooled registered pension plan, under certain circumstances.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, subsection 146.3(14.1) is amended to add paragraph (c) to permit a RRIF annuitant to transfer an amount on a tax-deferred basis from a RRIF to a licensed annuities provider to acquire an advanced life deferred annuity.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

The amendments to section 146.3 of the Act come into force on January 1, 2020.

Clause 11

Advanced life deferred annuity

ITA
146.5

New section 146.5 of the Act provides the tax framework for benefits paid out of an annuity that qualifies as an advanced life deferred annuity (ALDA) acquired by tax-deferred transfers from registered pension plans (RPPs), registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), deferred profit sharing plans (DPSPs) and pooled registered pension plans (PRPPs).

New section 146.5 comes into force on January 1, 2020.

Definitions

ITA
146.5(1)

New subsection 146.5(1) of the Act defines terms that are relevant for the purposes of new section 146.5.

"advanced life deferred annuity"

The definition "advanced life deferred annuity" (ALDA) provides the conditions that an annuity contract must meet to qualify as an ALDA.

Under paragraphs (a) and (b), the annuity contract must be issued by a licensed annuities provider (as defined in subsection 248(1)) and must specify that it is intended to qualify as an ALDA under the Act.

Paragraphs (c) and (d) provide the conditions that apply to annuity payments from an ALDA. The payments must begin by the end of the calendar year in which the annuitant (as defined in subsection (1)) turns 85 years of age and must be payable as a single-life annuity (*i.e.*, payments for the lifetime of the annuitant) or as a joint-lives annuity until the last-to-die of the annuitant and the annuitant's spouse or common-law partner. For the meaning of the terms "common-law partner" and "spouse", see subsections 248(1) and 252(3) of the Act, respectively.

The annuity payments must be in equal periodic amounts unless they are adjusted to reflect increases in the Consumer Price Index or at an annual rate not exceeding 2%. The payments may be reduced on the death of either the annuitant or the annuitant's spouse or common-law partner. For example, a pension that pays $1,000 per month to the annuitant and $600 per month to the spouse after the death of the annuitant (commonly known as a joint-and-survivor 60% annuity) is a permitted exception to "equal periodic amounts".

If an annuitant dies before a joint-lives annuity becomes payable, and if the surviving spouse chooses to commence annuity payments at an earlier date than the date that payments would have commenced to be paid if the deceased annuitant were alive, then paragraph (e) of the definition requires that the payment amount be adjusted in accordance with generally accepted actuarial principles.

Paragraph (f) of the definition describes the sole type of lump sum death benefit payable from an ALDA. After the annuitant's death (or, in the case of a joint-lives annuity, after the death of both the annuitant and the spouse or common-law partner), a death benefit may be paid to one or more beneficiaries in an amount not exceeding the total amounts transferred to purchase the annuity less the total annuity payments made from the ALDA.

Paragraph (g) requires that the annuity contract must provide for a refund of a portion of premiums paid (*i.e.*, amounts transferred from registered savings vehicles) to acquire an ALDA, if that refund would reduce the tax payable by the annuitant under new Part XI of the Act (*i.e.*, a tax that applies on transfer amounts that exceed specified limits).

Paragraph (h) prohibits any payment from an ALDA that is not expressly provided for in the other paragraphs of the definition. That is, distributions out of an ALDA are limited to annuity payments described in paragraphs (c) to (e), a death benefit described in paragraph (f), or a refund amount described in paragraph (g).

"annuitant"

An annuitant is defined as an individual who has acquired an ALDA contract.

Note that an ALDA may be acquired solely by means of a transfer of assets from an RPP, RRSP, RRIF, DPSP or PRPP. For more information, see the commentary on the amendments to subsections 146(16) and 146.3(14.1) and paragraphs 147(19)(d), 147.3(1)(c) and 147.5(21)(c).

"beneficiary"

A beneficiary is defined as an individual who is entitled to receive survivor benefits from an ALDA after the death of the annuitant (or after the death of the annuitant's spouse or common-law partner).

Taxable amounts

ITA
146.5(2) to (4)

New subsections 146.5(2) to (4) of the Act generally require that all benefits distributed from an ALDA be included in the income of a taxpayer.

Subsection (2) requires that annuity payments received by a taxpayer in a taxation year be included in the taxpayer's income for the taxation year. Note that because of paragraph (c) of the definition "advanced life deferred annuity" in subsection (1), annuity payments from an ALDA are payable only to the annuitant, or after the death of the annuitant, to the annuitant's spouse or common-law partner.

Subsection (3) applies to a lump sum death benefit paid in accordance with paragraph (f) of the definition "advanced life deferred annuity" in subsection (1). Paragraph (3)(a) requires that the death benefit be included in the recipient's income in the taxation year it is received, if the recipient is the spouse or common-law partner of the deceased individual, or a child or grandchild who was financially dependent on the deceased individual for support. Where the recipient of the death benefit is a beneficiary not described in paragraph (3)(a), then paragraph (b) requires that the amount of the death benefit be included in the income of the deceased annuitant.

Subsection (4) applies in the case of a refund described under paragraph (g) of the definition “advanced life deferred annuity” in subsection (1). The portion of the refund that is paid directly to the annuitant is included in computing the income of the annuitant.

Clause 12

Acceptance of plan for registration

ITA
147(2)

Paragraph 147(2)(k) of the Act requires that a DPSP provide for amounts vested in an employee to become payable no later than the end of the year in which the employee turns 71 years of age. It permits, among other benefit options, that the vested amounts may be used to purchase an annuity (by the end of the year of the member turning 71 years of age).

Subparagraph 147(2)(k)(vi) is amended to exclude advanced life deferred annuities from the requirements under paragraph (2)(k). Note that the start date of annuity payments from an ALDA may be deferred until the end of the year in which the annuitant turns 85 years of age.

Transfer of funds

ITA
147(19)

Subsection 147(19) of the Act provides for a tax-deferred transfer on behalf of an individual of a lump sum amount from a deferred profit sharing plan (DPSP) to certain other registered vehicles for the individual's benefit.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, paragraph 147(19)(d) is amended by adding a subparagraph (v) to permit a DPSP member to transfer an amount from a DPSP to a licensed annuities provider to acquire an advanced life deferred annuity.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

The amendments to section 147 of the Act come into force on January 1, 2020.

Clause 13

Transfer of funds

ITA
147.3(1)

Subsection 147.3(1) of the Act permits a tax-deferred transfer on behalf of an individual of a lump sum amount from a money purchase provision of a registered pension plan (RPP) to a money purchase provision of another RPP or to certain other retirement savings vehicles.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, paragraph 147.3(1)(c) is amended by adding subparagraph (iv) to permit an RPP member to transfer an amount from an RPP to a licensed annuities provider to acquire an advanced life deferred annuity.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

This amendment comes into force on January 1, 2020.

Clause 14

RPP annuity contract

ITA
147.4(1)

Where an individual acquires ownership of an annuity in satisfaction of the individual's entitlement to benefits under a registered pension plan (RPP) and certain other conditions are met, subsection 147.4(1) of the Act deems the individual not to have received an amount from the RPP as a result of acquiring the annuity and deems amounts received under the contract to be amounts received under the RPP. Payments made out of the annuity contract are included in the annuitant's income as a "superannuation or pension benefit" under subparagraph 56(1)(a)(i).

Paragraph 147.4(1)(a) is amended to exclude an "advanced life deferred annuity" (as defined in new subsection 146.5(1)) from the application of section 147.4. Benefits paid out of an advanced life deferred annuity will be included in the annuitant's income under new section 146.5 and new paragraph 56(1)(z.5).

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

This amendment comes into force on January 1, 2020.

Clause 15

Definitions

ITA
147.5(1)

The definition "qualifying annuity" in subsection 147.5(1) of the Act is relevant for the purposes of a transfer described in paragraph 147.5(21)(c) from a pooled registered pension plan. A qualifying annuity may be purchased for the benefit of an individual described in paragraph (21)(b).

The definition "qualifying annuity" in subsection 147.5(1) is amended to exclude an "advanced life deferred annuity" (as defined in new subsection 146.5(1)). Benefits paid from an advanced life deferred annuity acquired by a transfer of funds from a pooled registered pension plan will be included in the annuitant's income under new section 146.5 (and not be included in income under section 147.5).

For more information on the tax rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

Transfer of amounts

ITA
147.5(21)

Subsection 147.5(21) of the Act provides conditions relating to a tax-deferred transfer of an amount from a pooled registered pension plan (PRPP) member's account to certain other registered vehicles or for the purchase of a qualifying annuity.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, paragraph 147.5(21)(c) is amended by adding a subparagraph (vi) to permit a PRPP annuitant to transfer an amount from a PRPP to a licensed annuities provider to acquire an advanced life deferred annuity.

For more information on the tax rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

The amendments come into force on January 1, 2020.

Clause 16

Withholding

ITA
153(1)

Section 153 of the Act requires the withholding of 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.

Consequential on the introduction of rules relating to advanced life deferred annuities under new section 146.5, paragraph (u) is added to subsection 153(1) to require the withholding of tax on payments out of advanced life deferred annuities.

Clause 17

Tax in respect of advanced life deferred annuity

ITA
Part XI

New Part XI of the Act introduces a tax on any portion of amounts transferred to an advanced life deferred annuity (ALDA) that is a “cumulative excess amount” as defined in subsection 205(1).

Part XI comes into force on January 1, 2020.

Definitions

ITA
205(1)

Subsection 205(1) defines various terms that apply for the purposes of section 205.

"ALDA dollar limit"

The definition "ALDA dollar limit" is important for determining if a taxpayer has a "cumulative excess amount" in respect of amounts transferred to an ALDA. The ALDA dollar limit is $150,000 for 2020. For subsequent years, it is indexed in the manner set out in section 117.1 (*i.e.*, indexed according to increases in the Consumer Price Index), rounded to the nearest multiple of $10,000.

"cumulative excess amount"

The "cumulative excess amount" of an individual at any particular time in a calendar year is determined by the formula A – B.

Variable A is the greater of two amounts. The first amount is the total of "excess ALDA transfers" from each transfer made by the individual to acquire an ALDA. The second amount, determined by the formula C – D, is the amount by which the total transfers by the individual to an ALDA exceed the "ALDA dollar limit" for the calendar year.

Variable B is the total refunds made at or before the particular time on behalf of an individual from an ALDA to reduce the amount of tax payable by the individual under Part XI. Note that paragraph (g) of the definition "advanced life deferred annuity" in subsection 146.5(1) permits a refund directly to the member or as a repayment to the plan from which the amount was transferred.

"excess ALDA transfer"

The definition "excess ALDA transfer" is relevant to the determination of whether a taxpayer has a "cumulative excess amount" in respect of amounts transferred to an ALDA. The test for an excess ALDA transfer applies each time a transfer is made to an ALDA from a "transferor plan" (registered retirement savings plan, registered retirement income fund, deferred profit sharing plan, registered pension or pooled registered pension plan) under any of subsections 146(16) and 146.3(14.1) and paragraphs 147(19)(d), 147.3(1)(c) and 147.5(21)(c).

The excess ALDA transfer, if any, is determined by the formula A – B. Variable A is the amount transferred from the transferor plan to acquire an ALDA. Variable B is computed as 25% of the sum of variable C (property held for the individual's benefit under the transferor plan at the end of the prior year) plus variable D (the total amounts transferred to an ALDA from the transferor plan in prior years), less variable E (the total amounts transferred to an ALDA from the transferor plan prior to the particular transfer, whether in prior years or the current year).

Illustration of excess amounts:

On December 31, 2019, Ian has a $100,000 account balance in his deferred profit sharing plan (DPSP), a $200,000 balance in his registered retirement savings plan (RRSP) and a $500,000 balance in a money purchase account under a registered pension plan (RPP).

Assume that the ALDA dollar limit is $150,000 and that, apart from the transfers to an ALDA, there are no fluctuations in the value of property in Ian's registered plans for both 2020 and 2021.

The following transfers are made under a contract for an ALDA that Ian has entered into with an insurance company in Canada:

April 2020:	*$40,000 is transferred from the DPSP*
September 2020:	*$40,000 is transferred from the RRSP*
February 2021:	*$20,000 is transferred from the RRSP*
June 2021:	*$10,000 is transferred from the RRSP*
July 2021:	*$50,000 is transferred from the RPP*

As a result of the transfer made in April 2020 from the DPSP, Ian's "cumulative excess amount" and "excess ALDA transfer" for the months April to August 2020 are calculated as follows:

The DPSP's excess ALDA transfer:

A= $40,000 transferred

B = 25% (C +D) – E

= 25% ($100,000 + $0) – $0 = $25,000

A – B = $40,000 - $25,000 = $15,000

Cumulative excess amount = A – B

A = greater of:

(a) The sum of "excess ALDA transfers" = 15,000,

and

(b) C – D

= $40,000 – $150,000 = 0

B = total amounts refunded from ALDA = 0

Cumulative excess amount = A – B = ***$15,000***

From April to August 2020, Ian is liable to pay a 1% tax per month on the cumulative excess amount, $15,000.

As a result of the transfer made in September 2020 from the RRSP, Ian's "excess ALDA transfer" and "cumulative excess amount" for the months September to December 2020 are calculated as follows:

The RRSP's excess ALDA transfer:

A = $40,000 transferred

B = 25% (C +D) – E

= 25% ($200,000 + $0) – $0

= $50,000

A – B = $40,000 - $50,000 = 0

Cumulative excess amount = A – B

A = greater of:
(a) The sum of Ian's excess ALDA transfers

= 15,000 from DPSP + 0 from RRSP = $15,000,

and
(b) C – D = $40,000 DPSP + $40,000 RRSP – $150,000 = 0

B = total amounts refunded from ALDA = 0

Cumulative excess amount = A – B = ***$15,000***

Although there is no excess ALDA transfer in respect of Ian's RRSP, he continues to have a cumulative excess amount of $15,000 derived from a DPSP excess transfer amount. From September 2020 to January 2021, Ian remains liable to pay a 1% tax per month on the $15,000 cumulative excess amount.

As a result of the transfer made in February 2021 from the RRSP, Ian's "excess ALDA transfer" and "cumulative excess amount" for the months February 2021 to May 2021 are calculated as follows:

Excess ALDA transfer:

A = $20,000 transferred

B = 25% (C+D) – E

= 25% ($160,000 + $40,000) – $40,000 = $10,000

A – B = $20,000 - $10,000 = $10,000

Cumulative excess amount = A – B

A = greater of:
(a) The sum of Ian's excess ALDA transfers

= 15,000 from DPSP + $10,000 from RRSP (February 2021) = $25,000,

and
(b) C – D

= $40,000 DPSP + $60,000 RRSP – $150,000 = 0

B = total amounts refunded from ALDA = 0

Cumulative excess amount = A – B = ***$25,000***

From February to May 2021, Ian will be subject to 1% tax per month on the cumulative excess amount of $25,000.

As a result of the third RRSP transfer made in June 2021, Ian's "excess ALDA transfer" and "cumulative excess amount" for June 2021 is calculated as follows:

Excess ALDA transfer:

A = $10,000 transferred

B = 25% (C+D) – E

= 25% ($160,000 + $40,000) – $60,000 = nil (absent section 257, the result of the formula would be negative $10,000)

A – B = $10,000 – $0 = $10,000

Cumulative excess amount = A – B

A = greater of:
(c) The sum of Ian's excess ALDA transfers

= 15,000 from DPSP + $10,000 from RRSP (February 2021) + $10,000 from RRSP (June 2021) = $35,000,

and
(d) C – D

= $40,000 DPSP + $70,000 RRSP – $150,000 = 0

B = total amounts refunded from ALDA = 0

Cumulative excess amount = A – B = ***$35,000***

For June 2021, Ian is liable to pay a 1% tax per month on the cumulative excess amount of $35,000.

As a result of the transfer made in July 2021 from the RPP, Ian's "excess ALDA transfer" and "cumulative excess amount" for July 2021 is calculated as follows:

Excess ALDA transfer:

A = $50,000 transferred

B = 25% (C+D) – E

= 25% ($500,000 + $0) – $0 = $125,000

A – B = $50,000 – $125,000 = $0

Cumulative excess amount = A – B

A = greater of:
(e) The sum of Ian's excess ALDA transfers

= 15,000 from DPSP + $10,000 from RRSP (February 2021) + $10,000 RRSP (June 2021)= $35,000,

and
(f) C – D

= $40,000 DPSP + $70,000 RRSP + $50,000 RPP – $150,000 = $10,000

B = total amounts refunded from ALDA = 0

Cumulative excess amount = A – B = ***$35,000***

Ian's total transfers to an ALDA exceed the ALDA dollar limit by $10,000. But his "excess ALDA transfers" ($35,000) is the greater amount. The cumulative excess amount remains at $35,000.

For July 2021 until Ian receives a refund from the ALDA, Ian will continue to be liable to pay a 1% tax per month on the amount of cumulative excess amount of $35,000.

To eliminate the Part XI tax, Ian would need to withdraw $35,000 from the ALDA. The portion of the refund repaid to the DPSP or to the RRSP is not included in Ian's income. Under new subsection 146.5(4), any portion of the refund that is not repaid to the plans (e.g., paid in cash to Ian) will be included in his income.

If Ian does withdraw $35,000 from his ALDA, the net transfers to his ALDA would be $125,000 ($160,000 transfers minus $35,000 refund.) After such a withdrawal, Ian would have the option of transferring up to $25,000 (or more as the ALDA dollar limit increases) to his ALDA in future years.

Tax payable by individuals

ITA
205(2)

Subsection 205(2) of the Act provides that a taxpayer is required to pay a 1% tax in respect of each month for which the taxpayer has a "cumulative excess amount" (as defined in subsection (1)) in respect of an ALDA at the end of that month.

Waiver of tax

ITA
205(3)

Subsection 205(3) of the Act provides that the Minister of National Revenue may waive tax under Part XI, if the cumulative excess amount on which the tax is based arose as a consequence of reasonable error and if reasonable steps are being taken to eliminate the cumulative excess amount.

Information return and payment of tax

ITA
206(1)

Subsection 206(1) of the Act requires a person liable for tax under Part XI for all or part of a calendar year to file a return for the year on or before the person's filing-due date for the year and to pay any tax owing on or before the person's balance-due day. Both "filing-due date" and "balance-due day" are defined in subsection 248(1).

Provisions applicable to Part

ITA
206(2)

Subsection 206(2) provides that certain provisions of Part I relating to information returns, assessments, payments and appeals apply for the purposes of Part XI with any required modifications.

Clause 18

Tax on income from Canada of non-resident persons

ITA
212(1)

Subsection 212(1) of the Act imposes a 25% income tax, commonly referred to as a "non-resident withholding tax," on certain payments to non-residents of Canada.

Subsection 212(1) is amended by adding new paragraph (y) to provide that payments made to a non-resident of Canada out of an advanced life deferred annuity are subject to this tax.

For more information on the rules that apply to advanced life deferred annuities, see the commentary on new section 146.5.

This amendment comes into force on January 1, 2020.

Clause 19

Definitions

ITA
248(1)

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

Subsection 248(1) is amended to add the definition "advanced life deferred annuity," so that the definition of that term in new section 146.5(1) applies for the purposes of the Act.

This amendment comes into force on January 1, 2020.

Clause 20

Extended meaning of spouse and former spouse

ITA
252(3)

Subsection 252(3) of the Act extends the meaning of the terms "spouse" and "former spouse" to include, for a number of purposes in the Act, a party to a void or voidable marriage.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, which includes certain benefits payable to an annuitant's spouse after the death of the annuitant, subsection 252(3) is amended so that it applies for the purposes of section 146.5.

This amendment comes into force on January 1, 2020.

Clause 21

Definitions

ITR
100

Part 1 of the Regulations provides rules for deductions at source that must be withheld on specified amounts of "remuneration".

The definition of "remuneration" is amended by adding paragraph (p) to include a payment out of an advanced life deferred annuity that is required by new paragraph 56(1)(z.5) of the Act to be included in computing the income of a taxpayer. This amendment is consequential on the introduction of advanced life deferred annuities under new section 146.5 of the Act.

Clause 22

Information return – advanced life deferred annuity

ITR
216

New section 216 of the Regulations requires the filing of certain information returns in respect of advanced life deferred annuities.

Subsection 216(1) defines a “designated entity” to be an administrator, issuer, carrier or trustee, as the case may be, of a registered pension plan, pooled registered pension plan, registered retirement savings plan, registered retirement income fund or deferred profit sharing plan.

Subsection 216(2) applies to a designated entity that transfers an amount to a licensed annuities provider (as defined in subsection 248(1) of the Act) to acquire an advanced life deferred annuity. It requires that the designated entity make an information return in prescribed form in respect of the transfer.

Subsection 216(3) requires a licensed annuities provider to make an information return in prescribed form in respect of a payment from an advanced life deferred annuity that:

- is required by section 146.5 to be included in a taxpayer’s income; or
- is a refund to an annuitant or to a registered plan (as described in paragraph (g) of the definition “advanced life deferred annuity” in subsection 146.5(1)).

For more information on advanced life deferred annuities, see the commentary on new section 146.5 of the Act. Also see the commentary on amendments made to subsections 146(16) and 146.3(14.1) and paragraphs 147(19)(d), 147.3(1)(c) and 147.5(21)(c) of the Act, each of which permits a tax-deferred transfer of funds to a licensed annuities provider to acquire an advanced life deferred annuity.

This amendment comes into force on January 1, 2020.

Variable Payment Life Annuities

Clause 23

Permissible benefits

ITA
147.5(5)

Subsection 147.5(5) of the Act specifies the types of benefits that may be provided by a pooled registered pension plan.

Paragraph 147.5(5)(a) is amended by adding a reference to new paragraph 8506(1)(e.2) of the *Income Tax Regulations*. A member of a pooled registered pension plan may acquire an entitlement to a variable payment life annuity under the same conditions that apply to a member of a money purchase provision of a registered pension plan.

For more information about variable payment life annuities, see the commentary on new paragraph 8506(1)(e.2) and new subsection 8506(13) of the Regulations.

This amendment comes into force on January 1, 2020.

Clause 24

Payment of pension

ITR
8502(e)

Paragraph 8502(e) of the Regulations generally requires that retirement benefits from a registered pension plan begin to be paid to each member no later than the end of the year in which the member turns 71 years of age, or in the case of variable benefits provided under paragraph 8506(1)(e.1), no later than the end of the year in which the member turns 72 years of age.

Subparagraph 8502(e)(i) is amended by adding new clause (C), consequential on the introduction of variable payment life annuities (VPLAs) described in new paragraph 8506(1)(e.2). Subclause (C)(I) requires that VPLA benefits commence to be paid to the member by the end of the year in which the member turns 71 years of age (if the VPLA was acquired before that time). If the transfer to acquire a VPLA is made after the year in which the member turns 71 years of age, subclause (C)(II) requires that VPLA benefits commence to be paid to the member by the end of the year of the transfer. The latter deadline recognizes that a member who is receiving variable benefits from their account in years after age 71 may choose to transfer all or a portion of the account to the VPLA fund to acquire a VPLA.

For more information on VPLAs, see the commentary on new paragraph 8506(1)(e.2) and new subsection 8506(13).

Clause 25

Variable benefits

ITR
8506(1)(e.1)

Paragraph 8506(1)(e.1) of the Regulations permits a registered pension plan to provide retirement benefits (referred to as “variable benefits”) to a member under a money purchase provision, and to beneficiaries of the member after the member's death, by means of payments from the member's account. It generally permits money purchase benefits to be provided in the same manner as is permitted under a registered retirement income fund. The opening words of paragraph 8506(1)(e.1) distinguish variable benefits from other retirement benefits “permissible under any of paragraphs (a) to (e).”

Consequential on the introduction of variable payment life annuities under new paragraph 8506(1)(e.2), paragraph (e.1) is amended to add a reference to paragraph (e.2). The “variable benefits” option for money purchase provisions of pension plans is not replaced or affected by the new VPLA option.

This amendment comes into force on January 1, 2020.

Variable payment lifetime annuity

ITR
8506(1)(e.2)

New paragraph 8506(1)(e.2) of the Regulations sets out the conditions under which a money purchase provision of a pension plan may provide benefits from a variable payment life annuity ("VPLA benefits").

The VPLA benefits may be paid only from a VPLA fund (as described in new subsection 8506(13)). A member may acquire a right to VPLA benefits by transferring one or more amounts from the member's account to the VPLA fund. Note that a corresponding amendment to paragraph 8506(2)(g) exempts VPLA benefits from the retirement benefits that otherwise must be provided by means of annuities purchased from an insurance company.

The VPLA benefits are limited to retirement benefits described in paragraphs 8506(1)(a) to (e), (g) and (i), except that indexing of benefits is limited to increases in the Consumer Price Index or increases not exceeding 2% per annum. For example, a plan member could choose a joint-lives (member and spouse) annuity payable directly from the VPLA fund, with a guarantee of five years of payments. Those retirement benefits are described in paragraphs 8506(1)(a), (c) and (d) and qualify as VPLA benefits.

The amount of VPLA benefits payable to each member or beneficiary must be adjusted at least annually if the VPLA fund rate of return or the rate of mortality of members and beneficiaries differs materially from the actuarial assumptions used to determine the VPLA benefits.

This amendment comes into force on January 1, 2020.

Retirement benefits

ITR
8506(2)(g)

Paragraph 8506(2)(g) of the Regulations generally requires that retirement benefits payable under a money purchase provision of a registered pension plan be provided by means of annuities purchased from a licensed issuer of annuities. An exception is provided for variable benefits (described in paragraph 8506(1)(e.1)) that are paid to a member directly from the member's account.

Consequential on the introduction of variable payment life annuities under new paragraph 8506(1)(e.2), paragraph 8506(2)(g) is amended to add a reference to paragraph 8506(1)(e.2), thereby excluding VPLAs from the retirement benefits that must be provided by means of annuities purchased from an insurance company.

This amendment comes into force on January 1, 2020.

VPLA fund

ITR
8506(13)

New subsection 8506(13) of the Regulations sets out three conditions that must be satisfied for an arrangement to qualify as a "VPLA fund" under a money purchase provision of a pension plan for the purposes of new paragraph 8506(1)(e.2) and new clause 8502(e)(i)(C).

Paragraph (a) prohibits contributions to the fund other than amounts transferred from accounts of members of the plan. Note from subparagraph (ii) of new paragraph 8506(1)(e.2) that variable payment life annuity entitlements may be acquired only by means of transfers from member accounts.

Paragraph (b) requires that the arrangement be established with at least 10 members and that it be reasonable to expect that the arrangement will have at least 10 members on an ongoing basis.

Paragraph (c) provides that no benefit may be paid from the fund other than the VPLA benefits described in subparagraph 8506(1)(e.2)(iii).

This amendment comes into force on January 1, 2020.

Registered Disability Savings Plan – Cessation of Eligibility for the Disability Tax Credit

Clause 26

Definitions

ITA
60.02(1)

Section 60.02 of the Act provides definitions and rules that apply for the purposes of a tax-deferred rollover to a registered disability savings plan (RDSP) after the death of an annuitant of a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF), or a member of a registered pension plan (RPP) or a pooled registered pension plan (those plans collectively referred to as "registered plans").

"specified RDSP payment"

A "specified RDSP payment" is an amount paid to an RDSP – under which an eligible individual (as defined in subsection (1)) is the beneficiary – that complies with the conditions set out in paragraphs 146.4(4)(f) to (h) and that has been designated as a specified RDSP payment by the eligible individual and the RDSP holder (as defined in subsection 146.4(1)) at the time of the payment. Unlike other RDSP contributions, for which no tax deduction is available, the amount of a specified RDSP payment will be included in the recipient's income on withdrawal from the RDSP.

Paragraph 146.4(4)(f) prohibits RDSP contributions if the beneficiary is not a "DTC-eligible individual" (as defined in subsection 146.4(1)), except for a contribution that is a "specified RDSP payment."

The definition “specified RDSP payment” is amended by adding paragraph (e) to permit a tax-deferred rollover of proceeds from a registered plan of a deceased individual to the RDSP of an eligible beneficiary before the end of the fifth taxation year throughout which the beneficiary is DTC-ineligible.

For more information, see the commentary on section 146.4.

This amendment is deemed to have come into force on March 19, 2019.

Clause 27

Registered disability savings plan

Budget 2019 announced that an RDSP will no longer be required to be closed when the beneficiary ceases to qualify for the disability tax credit (DTC). The plan holder will no longer be required to file an election to extend the period for which a RDSP may remain open or obtain a medical certification that the beneficiary is likely to become eligible for the DTC in the future.

Section 146.4 of the Act is being amended to permit an RDSP to remain registered on an indefinite basis after the beneficiary is no longer a “DTC-eligible individual” (as defined in subsection (1)), subject to conditions that will apply in the years subsequent to the loss of DTC-eligibility.

Definitions

ITA
146.4(1)

“disability savings plan”

A “disability savings plan” of a beneficiary is an arrangement between a trust company (referred to as the issuer of the disability savings plan) and one or more entities listed in subparagraph (a)(ii) of the definition. Paragraph (c) requires that the beneficiary be a “DTC-eligible individual” in the year in which the arrangement is entered into.

Paragraph (c) of the definition is amended to permit a DTC-ineligible beneficiary to replace an existing RDSP with an RDSP issued by another financial institution. In particular, it permits an RDSP to be established in a year in which the beneficiary is no longer DTC-eligible, if it is established by way of a transfer from another RDSP and if the transfer satisfies the conditions in subsection 146.4(8). This amendment is consequential on amendments to section 146.4 that permit an RDSP to remain open on an indefinite basis despite DTC-ineligibility.

This amendment comes into force on January 1, 2021.

Plan conditions

ITA
146.4(4)

Subsection 146.4(4) of the Act sets out conditions applicable to the registration of RDSPs.

ITA
146.4(4)(f)

Paragraph 146.4(4)(f) requires that a disability savings plan prohibit contributions from being made in a year in respect of which its beneficiary is no longer a "DTC-eligible individual" (as defined in subsection (1)) or after the death of the beneficiary. An exception is provided for a tax-deferred rollover of proceeds from a registered plan (*i.e.*, a "specified RDSP payment", as defined in subsection 60.02(1)).

Consequential on the repeal of subsection 146.4(4.1), subparagraph 146.4(4)(f)(i) is amended to remove the reference to the election on cessation of DTC-eligibility. For further information, see the commentary on subsections 146.4(4.1) to (4.3).

ITA
146.4(4)(n)

Paragraph 146.4(4)(n) imposes a limit on the amount of disability assistance payments that can be made in a calendar year from an RDSP when the plan is a primarily government-assisted plan (*i.e.*, where the total of all grants and bonds paid under the *Canada Disability Savings Act* in respect of the beneficiary of the plan exceeds the total of all private contributions made in respect of the beneficiary, as described in the opening portion of paragraph 146.4(4)(n)). Primarily government-assisted plans are subject to the "specified maximum amount" limit, as defined in subsection 146.4(1).

Subparagraph 146.4(4)(n)(i) is amended to refer to new clauses 146.4(4)(p)(ii)(A) and (B). If the beneficiary has no severe and prolonged impairments with the effects described in paragraph 118.3(1)(a.1) (*i.e.*, the beneficiary becomes DTC-ineligible), and if the holder of the plan requests that the plan be terminated, the "specified maximum amount" definition will not apply to limit the amount to be withdrawn from the plan upon termination.

ITA
146.4(4)(p)

Paragraph 146.4(4)(p) provides rules related to the termination of an RDSP. Currently, apart from termination by the end of the year following the death of the beneficiary, an RDSP must be terminated by the end of the calendar year following the first calendar year throughout which the beneficiary is DTC-ineligible (unless an election under subsection (4.1) is filed to permit the plan to remain open for five years after the DTC-ineligibility).

Subparagraph 146.4(4)(p)(ii) is amended to no longer require the termination of an RDSP after the beneficiary becomes DTC-ineligible and to permit the plan to remain open indefinitely. It is further amended to permit a holder to voluntarily terminate the RDSP, subject to conditions that apply on plan termination, where the beneficiary no longer has severe and prolonged impairments with the effects described in paragraph 118.3(1)(a.1) (*i.e.*, if the beneficiary is DTC-ineligible).

These amendments apply as of January 1, 2021.

Election on cessation of DTC-eligibility

ITA
146.4(4.1) to (4.3)

Subsections 146.4(4.1) to (4.3) of the Act enable an RDSP holder to elect to keep the RDSP open for up to five years after its beneficiary has become DTC-ineligible. Subsection 146.4(4.1) sets out conditions that a holder of an RDSP must meet in order to make an election to keep the RDSP open in respect of a beneficiary who is DTC-ineligible for a particular taxation year, including providing medical certification that the beneficiary is likely going to become DTC-eligible again.

Subsections 146.4(4.1) to (4.3) are repealed, consequential on the amendment to paragraph 146.4(4)(p), which permits an RDSP to remain open on an indefinite basis after the beneficiary loses DTC-eligibility. While the beneficiary is DTC-ineligible, contributions are prohibited under paragraph 146.4(4)(f). If the beneficiary regains eligibility for the DTC, contributions to the plan are permitted as the general RDSP rules will apply.

This amendment comes into force on January 1, 2021.

Transitional Rule

ITA
146.4(4.4)

New subsection 146.4(4.4) of the Act contains a transitional rule permitting certain RDSPs to remain open on an indefinite basis.

Amendments to subsections 146.4(4) to (4.3) allow an RDSP to remain open after a beneficiary becomes ineligible for the disability tax credit. These amendments will come into force on January 1, 2021. Under new subsection 146.4(4.4), if the beneficiary of a RDSP is DTC-ineligible on or after March 19, 2019 and before 2021, it is not required that the plan be terminated, notwithstanding the plan's terms. In addition, if an election was made under subsection 146.4(4.1) (to enable the RDSP holder to maintain the RDSP for up to five years after the beneficiary has become DTC-ineligible) and the election ceases to be valid between March 19, 2019 and 2021, it is not required that the plan be terminated.

For more information, see the commentary on the repeal of subsections 146.4(4.1) to (4.3).

This amendment applies from March 19, 2019 to January 1, 2021.

Contributions to a Specified Multi-Employer Plan for Older Members

Clause 28

Additional prescribed conditions

ITR
8510(7)

Subsection 8510(7) of the Regulations imposes additional prescribed conditions for the registration of a registered pension plan that is a specified multi-employer plan (SMEP) as defined in subsection 8510(2).

Subsection 8510(7) is amended to add new paragraph (c), which prohibits contributions to

- a SMEP in respect of a member after the calendar year in which the member turns 71 years of age; and
- a defined benefit provision of a SMEP during a period (other than a phased retirement period) for which retirement benefits are being paid to the member.

Paragraph (c) is intended to ensure that no contributions will be made to a SMEP in respect of an employee who works for a participating employer during a period for which the employee is prohibited by paragraphs 8502(e) and 8503(3)(b) from accruing further benefit entitlements.

This amendment applies to contributions made to a SMEP on or after the date of any collective bargaining agreement that pertains to the SMEP and that is entered into after 2019.

Pensionable Service Under an Individual Pension Plan

Clause 29

Transfer – Defined Benefit to Defined Benefit

ITA
147.3(3)(c)

Subsection 147.3(3) of the Act permits a tax-deferred transfer of assets from a defined benefit provision of a registered pension plan to a defined benefit provision of another registered pension plan where certain conditions are met. Paragraph 147.3(3)(c) requires that the assets be transferred to another registered pension plan to be held in connection with a defined benefit provision of that recipient plan.

Paragraph 147.3(3)(c) is amended to prohibit tax-deferred transfers to an individual pension plan (defined in subsection 8300(1) of the Regulations) where the transfer relates to benefits attributable to employment with a former employer that is not a participating employer (defined in subsection 147.1(1)) or its predecessor employer (defined in subsection 8500(1) of the Regulations).

If a transfer of assets from a defined benefit provision of a registered pension plan to a defined benefit provision of an individual pension plan does not meet the conditions in subsection 147.3(3), it will not qualify as a tax-deferred transfer under subsection 147.3(9) and the full

amount of the transfer will be included in the plan member's income pursuant to subparagraph 56(1)(a)(i) of the Act.

This amendment is deemed to have come into force on March 19, 2019.

Clause 30

Eligible service

ITR
8503(3)(a)

Paragraph 8503(3)(a) of the Regulations restricts the lifetime retirement benefits provided to a member under a defined benefit provision of a registered pension plan (RPP) to benefits that are provided in respect of certain periods of eligible service.

Each of subparagraphs 8503(3)(a)(v), (v.1) and (vi) are amended to prohibit an individual pension plan (IPP) from providing retirement benefits in respect of past years of service under a defined benefit RPP of an employer other than the IPP's participating employer (or its predecessor employer). This means that an individual cannot transfer to an IPP their pensionable service or eligible service from a defined benefit RPP of a former employer (other than a predecessor employer). This is the case even if the relevant pensionable service was credited under the other RPP prior to March 19, 2019.

These amendments apply in respect of pensionable service that is credited to a member of an individual pension plan on or after March 19, 2019.

Mutual Funds: Allocation to Redeemers Methodology

Clause 31

Allocation to redeemers

ITA
132(5.3)

Section 132 of the Act contains special rules relating to the taxation of mutual fund trusts. New subsection 132(5.3) introduces rules that recognize the investment fund industry's use of the allocation to redeemers methodology. This new subsection is intended to prevent the deferral or avoidance of tax that is associated with the misuse of this methodology.

The preamble to subsection 132(5.3) provides the conditions for the application of the new rules. In particular, subsection 132(5.3) applies to a trust that is a mutual fund trust throughout a taxation year and that paid or made payable to a beneficiary, on a redemption of a beneficiary's unit, an amount that is not included in the beneficiary's proceeds from the redemption of that unit. (In these notes, such amount is referred to as the "allocated amount".) The allocated amount represents the portion of what would otherwise be the beneficiary's redemption proceeds that is treated as a distribution to the beneficiary out of the mutual fund trust's ordinary income or

capital gains. The allocated amount does not include ordinary course distributions (*e.g.*, distributions made to all unitholders periodically).

Where the provision applies, paragraph 132(5.3)(a) denies the mutual fund trust a deduction in computing its income for a taxation year for the portion of the allocated amount that is paid out of the mutual fund trust's income, other than taxable capital gains.

Where the provision applies, paragraph 132(5.3)(b) denies the mutual fund trust a deduction in computing its income for a taxation year for the portion of the allocated amount that is paid out of the mutual fund trust's taxable capital gains that exceeds one half of the gain that would have been realized by the redeeming beneficiary but for the allocated amount. This denied amount is determined by the formula A − 1/2 (B + C − D).

Variable A is the portion of the allocated amount that would be, without reference to subsection 104(6), an amount paid out of the mutual fund trust's taxable capital gains.

Variable B is the beneficiary's proceeds from the disposition of the unit on redemption.

Variable C is the allocated amount.

Variable D is the amount determined by the trustee to be the beneficiary's cost amount of that unit, using reasonable efforts to obtain the information required to determine the cost amount.

Generally, it is expected that a mutual fund trust will keep records of initial subscription prices paid when units are acquired and will have accurate information as to transactions involving the units to which the mutual fund trust is a party, that may affect the cost amount of the units. In the absence of such information, it is expected that the mutual fund trust would make reasonable efforts to obtain this information, for example through inquiries to third parties or through a search of relevant records.

It would not be expected that a mutual fund trust would need to make inquires regarding external factors (*i.e.*, events that did not involve the mutual fund trust or transactions to which the mutual fund trust was not a party) unless the mutual fund trust has reason to believe that such external factors exist and could affect the cost amount of the units.

Example – Capital Gains Overallocation

Mutual Fund Trust disposed of investments during a taxation year and realized a capital gain of $90. A Beneficiary who held units on capital account redeemed its units during the same taxation year when the net asset value of the units was $100 and the adjusted cost base to Beneficiary of the redeemed units was $50. Beneficiary is entitled to receive $100 with respect to the redemption.

Using the "allocation to redeemers methodology", Mutual Fund Trust treats the $100 payable to Beneficiary as being a distribution to Beneficiary of Mutual Fund Trust's entire capital gain of $90 and a payment of redemption proceeds of $10. This capital gain allocated to Beneficiary exceeds the capital gain of $50 that would otherwise have been realized by Beneficiary on the redemption of its units. Mutual Fund Trust claims a deduction under subsection 104(6) in

computing its income in respect of the entire taxable capital gain of $45 realized by it. This deduction of $45 exceeds the deduction of $25 (i.e., ½ x $50) that Mutual Fund Trust would have claimed had it limited the allocated amount to the capital gain of $50 that would otherwise have been realized by Beneficiary.

New paragraph 132(5.3)(a) would not be applicable in this example, because no portion of the allocated amount was treated as being paid out of the income of Mutual Fund Trust.

However, new paragraph 132(5.3)(b) would apply to limit the deduction by Mutual Fund Trust under subsection 104(6). The amount denied would be the portion of the allocated amount determined by the formula:

$$A - \tfrac{1}{2}(B + C - D) = \$45 - \tfrac{1}{2}(\$10 + \$90 - \$50) = \$20$$

where

A is the portion of the allocated amount of $90 that would be, without reference to subsection 104(6), an amount paid out of the taxable capital gains of the trust: $45

B is Beneficiary's proceeds from the disposition of the unit on the redemption: $100 - $90 = $10

C is the allocated amount: $90

D is the Beneficiary's cost amount of that unit: $50

In sum, new subsection 132(5.3) would deny a deduction in respect of $20 of the allocated amount. This represents the difference between the claimed deduction of $45 and the deduction of $25 (which Mutual Fund Trust would have claimed had it limited the allocated amount to the capital gain of $50 that would otherwise have been realized by Beneficiary).

These amendments apply to taxation years that begin after March 18, 2019. However, paragraph 132(5.3)(b) does not apply to a taxation year of a mutual fund trust that begins before March 20, 2020, if, in that taxation year, units of the trust are listed on a designated stock exchange in Canada and are in continuous distribution (*i.e.*, an exchange traded fund).

Electronic Delivery of Requirements for Information

Clause 32

Requirement to provide documents or information

ITA
231.2(1)

Subsection 231.2(1) of the Act provides that, notwithstanding any other provision of the Act, the Minister of National Revenue may by notice require that any person provide information or any document for any purpose relating to the administration or enforcement of the Act. An exception

is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 231.1(2) to (6) must be followed.

Subsection 231.2(1) is amended by moving the methods by which a notice referred to in this subsection must be sent or served to new subsection 231.2(1.1).

This amendment comes into force on January 1, 2020.

Notice

ITA
231.2(1.1)

New subsection 231.2(1.1) of the Act sets out the manner in which a notice referred to in subsection 231.2(1) may be provided to a person. In addition to personal service and to registered or certified mail, which were already provided for under subsection 231.2(1) prior to this amendment, this subsection provides that a notice may be sent electronically to a bank or credit union. In order for a notice to be sent electronically, the bank or credit union must first have provided written consent.

This subsection comes into force on January 1, 2020.

Clause 33

Requirement to provide foreign-based information

ITA
231.6(2)

Subsection 231.6(2) of the Act provides that, notwithstanding any other provision of the Act, a person resident in Canada or a non-resident person carrying on business in Canada must provide, when required by notice of the Minister of National Revenue, any foreign-based information or document.

Subsection 231.6(2) is amended by moving the methods by which a notice referred to in this subsection must be sent or served to new subsection 231.6(3.1).

This amendment comes into force on January 1, 2020.

Notice

ITA
231.6(3.1)

New subsection 231.6(3.1) of the Act sets out the manner in which a notice referred to in subsection 231.6(2) may be provided to a person resident in Canada or to a non-resident person carrying on business in Canada. In addition to personal service and to registered or certified mail, which were already provided for under subsection 231.6(2) prior to this amendment, this subsection provides that a notice may be sent electronically to a bank or credit union. In order for a notice to be sent electronically, the bank or credit union must first have provided written consent.

This subsection comes into force on January 1, 2020.

Review of foreign information requirement

ITA
231.6(4)

Subsection 231.6(4) of the Act permits the person who is provided with a notice referred to in subsection 231.6(2), within 90 days of the provision thereof, to apply to a judge for a review of the requirement to provide the foreign-based information or document.

The English version of subsection 231.6(4) is amended to add references to the sending of a notice in addition to the serving of a notice. This amendment is consequential on the addition of subsection 231.6(3.1).

This amendment comes into force on January 1, 2020.

Unreasonableness

ITA
231.6(6)

Subsection 231.6(6) of the Act contains a limitation in determining the reasonableness of a requirement for the purposes of paragraph 231.6(5)(c), which sets out the powers of a judge on hearing an application for review under subsection (4). A requirement is not to be considered unreasonable where the foreign-based information or document being sought is under the control of or available to a related non-resident person merely because that person is not controlled by the person provided with the notice under subsection (2).

The English version of subsection 231.6(6) is amended to add a reference to the sending of a notice in addition to the serving of a notice. This amendment is consequential on the addition of subsection 231.6(3.1).

This amendment comes into force on January 1, 2020.

Consequence of failure

ITA
231.6(8)

Subsection 231.6(8) of the Act sets out the consequences to a person of failing to comply with a requirement under section 231.6. Failure to provide substantially all information or documents required may result in a prohibition on the introduction into evidence of any such information or document in a civil proceeding relating to the administration or enforcement of the Act.

Subsection 231.6(8) is amended to add a reference to the sending of a notice in addition to the serving of a notice. This amendment is consequential on the addition of subsection 231.6(3.1).

The French version of subsection 231.6(8) is also amended to align the French and English versions of the Act. The references to “requirement” (“mise en demeure”) are replaced with references to “notice” (“avis”).

These amendments come into force on January 1, 2020.

Clause 34

Time period not to count

ITA
231.8(a)

Section 231.8 of the Act provides that the period of time that elapses between the filing of the application for review of a requirement for information, or the filing of a notice of appearance (or otherwise challenging the application for a compliance order), and the time either the application for judicial review or the application to obtain the compliance order is finally disposed of, as the case may be, does not count toward the statutory limit for making tax assessments.

Paragraph 231.8(a) is amended to replace the reference to "served" with a reference to "sent or served with". This amendment is consequential on the addition of subsection 231.2(1.1).

This amendment comes into force on January 1, 2020.

Clause 35

Proof of electronic delivery

ITA
244(6.1)

Subsections 244(5) and (6) contain rules for what is to be considered evidence of personal service or sending by mail.

New subsection 244(6.1) provides rules for what is to be considered evidence that a notice was sent electronically to a person. This amendment is consequential on the addition of subsection 231.2(1.1). For more information, see the commentary on that subsection.

This subsection comes into force on January 1, 2020.

Clause 36

Provision of documents may be required

Excise Tax Act (ETA)
99(1) and (1.1)

Subsection 99(1) of the *Excise Tax Act* provides that, subject to section 102.1 of that Act, the Minister of National Revenue may, by a notice served personally or by registered or certified mail, require that any person provide any book, record, writing or other document or any information or further information for any purpose relating to the administration or enforcement of a listed international agreement (as defined in section 2 of that Act) or relating to the administration or enforcement of that Act. An exception is made where the information or

document relates to an unnamed person or persons, in which case the procedure set out in section 102.1 must be followed.

Subsection 99(1) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 99(1.1). In addition to the existing methods of service, subsection 99(1.1) allows the Minister to send such notices electronically to a bank or credit union (as defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically.

This amendment comes into force on January 1, 2020.

Clause 37

Unnamed persons

ETA
102.1(1) and (2)

Section 102.1 of the *Excise Tax Act* provides a procedure for requesting information or documents that relate to an unnamed person or persons.

Consequential on the addition of new subsection 99(1.1) (see commentary on that subsection), section 102.1 is amended to replace the references to a notice of a requirement for information being "served" by references to "served or sent".

This amendment comes into force on January 1, 2020.

Clause 38

Proof of electronic delivery

ETA
105(2.1)

Section 105 of the *Excise Tax Act* provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Parts I to VIII of that Act.

To accommodate the introduction of electronic delivery of notices under subsection 99(1) of the *Excise Tax Act*, new subsection 105(2.1) provides that a sworn affidavit of an officer of the Canada Revenue Agency is evidence of a notice and of that notice having been sent electronically to a person if the affidavit sets out three elements. The first element is that the officer has knowledge of the facts in the particular case. The second element is that the notice was sent electronically to the person on a named day. The third element is that the officer identifies as exhibits annexed to the affidavit a copy of an electronic message confirming that the notice has been sent to the person and a copy of the notice.

This amendment comes into force on January 1, 2020.

Clause 39

Requirement to provide documents or information

ETA
289(1) and (1.1)

Subsection 289(1) of the *Excise Tax Act* provides that, despite any other provision of Part IX of that Act, the Minister of National Revenue may, by a notice served personally or by registered or certified mail, require that any person provide any information or document for any purpose relating to the administration or enforcement of a listed international agreement (as defined in subsection 123(1) of that Act) or relating to the administration or enforcement of Part IX. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 289(2) and (3) of that Act must be followed.

Subsection 289(1) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 289(1.1). In addition to the existing methods of service, subsection 289(1.1) allows the Minister to send such notices electronically to a bank or credit union, if the bank or credit union has provided written consent to receive those notices electronically.

This amendment comes into force on January 1, 2020.

Clause 40

Time period not to count

ETA
289.2(a)

Section 289.2 of the *Excise Tax Act* extends the reassessment period when a person makes an application for judicial review of a requirement for information (other than a requirement for foreign-based information or document under section 292 of that Act) or when a person files a notice of appearance or otherwise challenges a compliance order.

Consequential on the addition of new subsection 289(1.1) (see commentary on that subsection), paragraph 289.2(a) is amended to replace the reference to a notice of a requirement for information being “served” by a reference to “served or sent”.

This amendment comes into force on January 1, 2020.

Clause 41

Requirement to provide foreign-based information

ETA
292(2), (3.1), (4), (6) and (8)

Subsection 292(2) of the *Excise Tax Act* provides that the Minister of National Revenue may, by a notice served personally or by registered or certified mail and subject to judicial review, require any person resident in Canada or a non-resident person that carries on business in Canada to

provide any “foreign-based information or document”, as defined in subsection 292(1), relevant to the administration or enforcement of Part IX of that Act.

Subsection 292(2) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 292(3.1). In addition to the existing methods of service, subsection 292(3.1) allows the Minister to send such notices electronically to a bank or credit union, if the bank or credit union has provided written consent to receive those notices electronically. Subsection 292(2) is also amended to generally update the wording in accordance with current legislative drafting standards.

Consequential on the addition of new subsection 292(3.1), the English versions of subsections 292(4), (6) and (8) are amended to replace references to a notice being “served” by references to “served or sent”. Subsections 292(4) and (6) are also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on January 1, 2020.

Clause 42

Proof of electronic delivery

ETA
335(2.1)

Section 335 of the *Excise Tax Act* provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX of that Act.

To accommodate the introduction of electronic delivery of notices under subsections 289(1) and 292(2) of the *Excise Tax Act* (see commentary for those subsections), new subsection 335(2.1) provides that a sworn affidavit of an officer of the Canada Revenue Agency is evidence of a notice and of that notice having been sent electronically to a person if the affidavit sets out three elements. The first element is that the officer has knowledge of the facts in the particular case. The second element is that the notice was sent electronically to the person on a named day. The third element is that the officer identifies as exhibits attached to the affidavit a copy of an electronic message confirming that the notice has been sent to the person and a copy of the notice.

This amendment comes into force on January 1, 2020.

Clause 43

Requirement to provide information

Air Travellers Security Charge Act (ATSCA)
38(1), (2.1), (3), (5) and (7)

Subsection 38(1) of the *Air Travellers Security Charge Act* provides that, despite any other provision of that Act, the Minister of National Revenue may, by a notice served personally or by registered or certified mail, require a person that is resident in Canada or a person that is not resident in Canada but that carries on business in Canada to provide any information or record.

Subsection 38(1) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 38(2.1). In addition to the existing methods of service, subsection 38(2.1) allows the Minister to send such notices electronically to a bank or credit union (as defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically. Subsection 38(1) is also amended to generally update the wording in accordance with current legislative drafting standards.

Consequential on the addition of new subsection 38(2.1), subsection 38(5) and the English versions of subsections 38(3) and (7) are amended to replace references to a notice being "served" by references to "served or sent". Subsections 38(3) and (5) are also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on January 1, 2020.

Clause 44

Proof of electronic delivery

ATSCA
83(2.1)

Section 83 of the *Air Travellers Security Charge Act* provides a number of evidentiary and procedural rules dealing with the administration and enforcement of that Act.

To accommodate the introduction of electronic delivery of notices under subsections 38(1) of that Act, new subsection 83(2.1) provides that a sworn affidavit of an officer of the Canada Revenue Agency is evidence of a notice and of that notice having been sent electronically to a person if the affidavit sets out three elements. The first element is that the officer has knowledge of the facts in the particular case. The second element is that the notice was sent electronically to the person on a named day. The third element is that the officer identifies as exhibits attached to the affidavit a copy of an electronic message confirming that the notice has been sent to the person and a copy of the notice.

This amendment comes into force on January 1, 2020.

Clause 45

Requirement to provide records or information

Excise Act, 2001 (EA, 2001)
208(1) and (1.1)

Subsection 208(1) of the *Excise Act, 2001* provides that, despite any other provision of that Act, the Minister of National Revenue may, by a notice served personally or by registered or certified mail, require that any person provide information or any record for any purpose relating to the administration or enforcement of a listed international agreement (as defined in section 2 of the *Excise Act, 2001*) or relating to the administration or enforcement of that Act. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 208(2) and (3) must be followed.

Subsection 208(1) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 208(1.1). In addition to the existing methods of service, subsection 208(1.1) allows the Minister to send such notices electronically to a bank or credit union (as those terms are defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically.

This amendment comes into force on January 1, 2020.

Clause 46

Time period not to count

EA, 2001
209.1(a)

Section 209.1 of the *Excise Act, 2001* extends the reassessment period when a person makes an application for judicial review of a requirement for information (other than a requirement for foreign-based information or record under section 210 of that Act) or when a person files a notice of appearance or otherwise challenges a compliance order.

Consequential on the addition of new subsection 208(1.1) (see commentary on that subsection), paragraph 209.1(a) is amended to replace the reference to a notice of a requirement for information being “served” by a reference to “served or sent”.

This amendment comes into force on January 1, 2020.

Clause 47

Requirement to provide foreign-based information

EA, 2001
210(2), (3.1), (4), (6) and (8)

Subsection 210(2) of the *Excise Act, 2001* provides that the Minister of National Revenue may, by a notice served personally or by registered or certified mail and subject to judicial review, require any person resident in Canada or a non-resident person that carries on business in Canada to provide any “foreign-based information or record”, as defined in subsection 210(1), relevant to the administration or enforcement of that Act.

Subsection 210(2) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 210(3.1). In addition to the existing methods of service, subsection 210(3.1) allows the Minister to send such notices electronically to a bank or credit union (as those terms are defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically. Subsection 210(2) is also amended to generally update the wording in accordance with current legislative drafting standards.

Consequential on the addition of new subsection 210(3.1), the English versions of subsections 210(4), (6) and (8) are amended to replace references to a notice of a requirement for information being “served” by references to “served or sent”. Subsections 210(4) and (6) are also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on January 1, 2020.

Clause 48

Proof of electronic delivery

EA, 2001
301(2.1)

Section 301 of the *Excise Act, 2001* provides a number of evidentiary and procedural rules dealing with the administration and enforcement of that Act.

To accommodate the introduction of electronic delivery of notices under subsections 208(1) and 210(2) of the *Excise Act, 2001* (see commentary for those subsections), new subsection 301(2.1) provides that a sworn affidavit of an officer of the Canada Revenue Agency is evidence of a notice and of that notice having been sent electronically to a person if the affidavit sets out three elements. The first element is that the officer has knowledge of the facts in the particular case. The second element is that the notice was sent electronically to the person on a named day. The third element is that the officer identifies as exhibits attached to the affidavit a copy of an electronic message confirming that the notice has been sent to the person and a copy of the notice.

This amendment comes into force on January 1, 2020.

Clause 49

Requirement to provide information or record

Greenhouse Gas Pollution Pricing Act (GGPPA)
106(1) and (1.1)

Subsection 106(1) of the *Greenhouse Gas Pollution Pricing Act* provides that, despite any other provision of Part 1 of that Act, the Minister of National Revenue may, by a notice served personally or by registered or certified mail, require that any person provide information or any record for any purpose relating to the administration or enforcement of Part 1. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 106(2) and (3) must be followed.

Subsection 106(1) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 106(1.1). In addition to the existing methods of service, subsection 106(1.1) allows the Minister to send such notices electronically to a bank or credit union (as defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically.

This amendment comes into force on January 1, 2020.

Clause 50

Requirement to provide foreign-based information

GGPPA
144(2), (3.1), (4), (6) and (8)

Subsection 144(2) of the *Greenhouse Gas Pollution Pricing Act* provides that the Minister of National Revenue may, by a notice served personally or by confirmed delivery service and subject to judicial review, require any person resident in Canada or a non-resident person that carries on business in Canada to provide any "foreign-based information or record", as defined in subsection 144(1), relevant to the administration or enforcement of Part 1 of that Act.

Subsection 144(2) is amended so that a notice under that subsection is to be served or sent in accordance with new subsection 144(3.1). In addition to the existing methods of service, subsection 144(3.1) allows the Minister to send such notices electronically to a bank or credit union (as defined in subsection 123(1) of the *Excise Tax Act*), if the bank or credit union has provided written consent to receive those notices electronically.

Consequential on the addition of new subsection 144(3.1), the English versions of subsections 144(4), (6) and (8) are amended to replace the references to a notice of a requirement for information being "served" by references to "served or sent". Subsections 144(4) and (6) are also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on January 1, 2020.

Clause 51

Proof of electronic delivery

GGPPA
164(2.1)

Section 164 of the *Greenhouse Gas Pollution Pricing Act* provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part 1 of that Act.

To accommodate the introduction of electronic delivery of notices under subsections 106(1) and 144(2) of the *Greenhouse Gas Pollution Pricing Act* (see commentary for those subsections), new subsection 164(2.1) provides that a sworn affidavit of an officer of the Canada Revenue Agency is evidence of a notice and of that notice having been sent electronically to a person if the affidavit sets out three elements. The first element is that the officer has knowledge of the facts in the particular case. The second element is that the notice was sent electronically to the person on a named day. The third element is that the officer identifies as exhibits attached to the affidavit a copy of an electronic message confirming that the notice has been sent to the person and a copy of the notice.

This amendment comes into force on January 1, 2020.

Accelerated Capital Cost Allowance for Zero-Emission Vehicles

Clause 52

Rules applicable – zero-emission passenger vehicles

ITA
13(7)(i)

Paragraph 13(7)(i) of 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), the cost of which exceeds the prescribed 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. This reduction is effected by multiplying the proceeds of disposition otherwise determined 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.

Subparagraph 13(7)(i)(ii) is amended in two respects. First, clause (B) of the description of B in the formula is amended to refer to the amount determined for variable C. Second, the description of C itself is amended by introducing a formula that adjusts the taxpayer's cost of the vehicle for any payments or repayments of government assistance that may have been received or repaid by the taxpayer in respect of the vehicle.

These amendments apply in respect of dispositions made on or after Announcement Date.

Character Conversion Transactions

Clause 53

Definitions

ITA
248(1)

"derivative forward agreement"

A derivative forward agreement essentially combines a derivative financial instrument with the purchase or sale of a capital property. Income from a derivative financial investment is generally fully taxable as ordinary income. Derivative forward agreements are typically used in an attempt to convert this fully taxable derivative income to a capital gain, only half of which is included in income. A derivative forward agreement therefore involves the purchase or sale of a capital property.

Paragraph (a) of the definition "derivative forward agreement" in subsection 248(1) of the Act requires that the term of the agreement exceed 180 days or the agreement be part of a series of agreements with a term that exceeds 180 days.

Paragraph (b) of the definition deals with agreements to purchase a capital property. In order for a purchase agreement to be a derivative forward agreement, the economic return on the agreement must have a derivative component. The economic return under such a purchase

agreement is the difference between the price paid for the property and the fair market value of the property when it is delivered. If the agreement is a derivative forward agreement, this return will be included (or potentially deducted if there is a loss) in computing the taxpayer's income under paragraph 12(1)(z.7) (or paragraph 20(1)(xx)).

For the purpose of determining whether the return has a derivative component, the return must be attributable, in whole or in part, to an underlying interest that is not described in subparagraph (b)(i), (ii) or (iii) of the definition.

Subparagraph (b)(i) of the definition essentially provides that, where the return on the purchase is based on the economic performance of the property being purchased, the purchase agreement will not be a derivative forward agreement. This exception is intended to exclude certain commercial transactions (*e.g.*, merger and acquisition transactions) from the scope of the definition.

This exception in subparagraph (b)(i) has been misused to achieve the same unintended tax benefits as those realized by the derivative forward agreements initially targeted by the definition. Therefore, the scope of this exception is amended to narrow its application.

New clauses (b)(i)(A) to (C) of the definition contain the conditions under which the exception is not available. The conditions are the following:

- the property is a Canadian security (as defined in subsection 39(6)) or an interest in a partnership the fair market value of which is derived, in whole or in part, from a Canadian security;
- the purchase agreement is an agreement to acquire property from a tax-indifferent investor or a financial institution (as defined in subsection 142.2(1)); and
- it can reasonably be considered that one of the main purposes of the series of transactions or events, or any transaction or event in the series, of which the purchase agreement is part, is for all or any portion of the capital gain on a disposition (other than a disposition by the seller to the taxpayer under the agreement) of a Canadian security (referred to in the first bullet) – as part of the same series of transactions or events – to be attributable to amounts paid or payable on the Canadian security by the issuer of the Canadian security during the term of the purchase agreement as interest, dividend, or income of a trust other than income paid out of the taxable capital gains of the trust.

This amendment is deemed to have come into force on March 19, 2019.

"tax-indifferent investor"

A "tax-indifferent investor" is generally defined in subsection 248(1) of the Act as meaning a person or partnership that is:

- A person exempt from tax under section 149;
- A non-resident person, other than a person to which all amounts paid or credited under a synthetic equity arrangement or a specified synthetic equity arrangement may be attributed to the business carried on by the person in Canada through a permanent establishment;

- A trust resident in Canada (other than a specified mutual fund trust) if any of the interests as a beneficiary under the trust is not a fixed interest in the trust; or
- In certain cases, a trust or partnership of which persons in the first three bullets are, directly or indirectly, beneficiaries or members.

Consequential on the amendment of the exception in subparagraph (b)(i) of the definition "derivative forward agreement" in subsection 248(1), paragraph (b) of the definition "tax-indifferent investor" is amended to exclude a non-resident person to which all amounts paid or credited under a derivative forward agreement may be attributed to the business carried on by the person in Canada through a permanent establishment.

For more information, see the commentary on the definition "derivative forward agreement" in subsection 248(1).

This amendment is deemed to have come into force on March 19, 2019.

Transfer Pricing Measures

Order of Application of the Transfer Pricing Rules

Clause 54

Transfer Pricing Adjustment

ITA
247(2)

Subsection 247(2) of the Act sets out the adjustment required for tax purposes to ensure that non-arm's length parties conduct their transactions under terms and conditions that would have prevailed if the parties had been dealing at arm's length with each other as well as the conditions under which such an adjustment is to be made.

The mid-amble to subsection 247(2) currently has three main components:

- A requirement to identify any amounts that, but for sections 245 and 247, would be determined for the purposes of the Act in respect of the taxpayer or the partnership for a taxation year or fiscal period;
- The determination of what the amounts would have been if the relevant assumptions in paragraph (c) or (d) were true; and
- The requirement to adjust the first amounts to the quantum or nature of the amounts in the second bullet.

Subsection 247(2) is amended to define the first reference to "amounts" in the mid-amble of the subsection (*i.e.*, the amounts described in the first bullet above) as the "initial amounts" and to define the second reference to "amounts" (*i.e.*, the amounts described in the second bullet above) as the "adjusted amounts". These two terms are used in new subsection 247(2.1).

For clarity, subsection 247(2) is also amended to restate the condition "but for this section and section 245" as "(if this Act were read without reference to this section and section 245)" and

move it to after "would be determined for the purposes of this Act". The reference to section 247 is intended to prevent the following circularity: once the initial amounts are adjusted to the adjusted amounts, those adjusted amounts could be considered amounts determined for the purposes of the Act, but it does not make sense that they be considered initial amounts that must themselves be adjusted. The reference to section 245 is for greater certainty and is consistent with the general anti-avoidance rule in section 245 applying only if there would be a tax benefit (as that term is defined in subsection 245(1)) but for section 245.

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

Ordering

ITA
247(2.1)

New subsection 247(2.1) of the Act is intended to clarify the interaction of subsection (2) and the other provisions of the Act. The subsection provides an ordering for the application of the transfer pricing adjustments in the context of the provisions of the Act.

Paragraph (2.1)(a) provides that where the conditions in the opening words of subsection (2) and its paragraph (a) or (b) are met, a taxpayer or partnership is first required to determine each of the amounts (defined in subsection 247(2) as the "initial amounts") that would be determined for the purposes of the Act if the Act were read without reference to section 247 and 245.

Paragraph (2.1)(b) then provides that the quantum or nature of the initial amounts are adjusted to the adjusted amounts (*i.e.*, the amounts that would be determined if the assumptions in paragraph (2)(c) or (d), as the case may be, were true).

Lastly, paragraph (2.1)(c) provides that each of the provisions of the Act, other than subsection 247(2) and, for greater certainty, including the general anti-avoidance rule in section 245, are to be applied using the adjusted amounts. This ensures that the rule embodying the arm's length principle is a rule of general application.

Example 1 – application of subsections 247(2) (Transfer pricing adjustment) and 18(4) (Limitation on deduction of interest)

In a taxation year, a corporation resident in Canada has a debt owing to a non-arm's length non-resident corporation of $1,000 that is the sole debt included in the corporation's outstanding debts to specified non-residents (as defined in subsection 18(5)). The applicable annual interest rate on that debt is 10%. Accordingly, interest of $100 is payable under the terms of the debt obligation in the taxation year. The corporation has an equity amount (as defined in subsection 18(5)) of $600. The interest rate that would have been agreed had the parties been dealing at arm's length is 7%.

The conditions in the opening words of subsection 247(2) and its paragraph (a) are met. New subsection (2.1) then provides rules for making the adjustment under subsection (2) in the context of the other provisions of the Act, such as subsection 18(4).

Paragraph 247(2.1)(a) requires a determination of each of the "initial amounts" that would be determined for the purposes of the Act. In this case, the "initial amounts" would include the $100 of interest.

Paragraph 247(2.1)(b) then requires that the adjustments under subsection (2) be made to each of the initial amounts. Since it is assumed in this example that only paragraph (2)(a) applies, the initial amount is to be adjusted to the amount that would be determined if the assumptions in paragraph (c) were true. The $100 of interest payable in the taxation year would therefore be adjusted to reflect the 7% arm's length rate of interest (i.e., the adjustment under subsection (2) is $30).

Paragraph 247(2.1)(c) provides that each other provision of the Act is then to be applied using the adjusted amounts. This would include subsection 18(4) in this case, which generally prevents a corporation or trust from deducting interest on debts owing to certain specified non-residents to the extent that the debt owing to such non-residents exceeds a 1.5-to-1 debt-to-equity ratio. Applying the calculation in subsection 18(4) to the current facts, $7 of the $70 adjusted amount of interest would be denied (i.e., $70((1,000 – 600 x 1.5)/1,000)).

The effect of new subsection 247(2.1) is to clarify that the adjustment under subsection 247(2) is made before the application of subsection 18(4). The limitation, if any, pursuant to subsection 18(4) on the interest otherwise deductible in computing income is then computed with reference to the arm's length amount of interest determined pursuant to subsection 247(2).

Example 2 – application of subsection 247(2) (Transfer pricing adjustment) and section 17(Amount owing by non-resident)

Throughout a taxation year, a non-resident (Forco) owes an amount of $100 to a corporation resident in Canada (Canco). Canco does not deal at arm's length with Forco and Forco is not a controlled foreign affiliate for the purpose of section 17. Interest at a rate of 1% is payable on the loan. The interest rate that would have been agreed to had the parties been dealing at arm's length with each other is 3%.

The conditions in the opening words of subsection 247(2) and its paragraph (a) are met. New subsection (2.1) then provides rules for making the adjustment under subsection (2) in the context of the other provisions of the Act, such as subsection 17(1). Where subsection 17(1) applies (i.e., because the conditions in subsection 17(1.1) are met), a corporation must include in computing its income for a taxation year an amount determined under the formula in that subsection.

Paragraph 247(2.1)(a) requires a determination of each of the "initial amounts" that would be determined for the purposes of the Act. In this case, the initial amounts would include the $1 of interest on the loan.

Paragraph 247(2.1)(b) then requires that the adjustments under subsection (2) be made to each of the initial amounts. Since it is assumed in this example that only paragraph (2)(a) applies, the initial amount is to be adjusted to the amount that would be determined if the assumptions in paragraph (c) were true. The amount corresponding to the use of a 1% rate of interest would therefore be adjusted to reflect the 3% arm's length rate of interest (i.e., the adjustment under subsection (2) is $2).

Paragraph 247(2.1)(c) provides that each other provision of the Act is then to be applied using the adjusted amounts. This could include subsection 17(1), if the conditions in subsection (1.1) are met. However, based on the assumption that a 3% rate of interest is reasonable, the condition in paragraph 17(1.1)(c) would not be met and subsection 17(1) would not apply.

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

Provisions not applicable

ITA
247(8)

Subsection 247(8) of the Act is repealed, consequential on the introduction of new subsection 247(2.1).

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

Applicable Reassessment Period

Clause 55

Assessment and Reassessment

ITA
152(4)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may at any time assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. Subsection 152(4) includes exceptions that apply in certain circumstances.

Paragraph 152(4)(b) describes the circumstances in which the Minister of National Revenue may, after a taxpayer's normal reassessment period for a taxation year, assess tax payable under Part I for the year. Clause 152(4)(b)(iii)(A) applies where the assessment is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length.

Clause 152(4)(b)(iii)(A) is amended to provide that the definition "transaction" in subsection 247(1) is used for the purpose of this provision, with the result that a transaction under clause 152(4)(b)(iii)(A) includes "an arrangement or event".

This amendment applies to taxation year for which the normal reassessment period ends on or after March 19, 2019.

Foreign Affiliate Dumping

Clause 56

Acquisition of control

ITA
17.1(2)

Subsection 17.1(2) of the Act provides 180 days of transitional relief from the application of the interest rules in subsection 17.1(1), in respect of a pertinent loan or indebtedness (as defined in subsection 212.3(11)), where a non-resident parent referred to in section 212.3 acquires control of a corporation resident in Canada (referred to as a “CRIC”) that was not controlled by a non-resident corporation immediately before the acquisition of control.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of application of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm’s length, subsection 17.1(2) is amended to extend the transitional relief under that subsection to where a group of non-resident persons not dealing with each other at arm’s length acquires control of the CRIC (and the other conditions in that subsection are satisfied).

For more information, see the commentary on paragraph 212.3(1)(b).

This amendment applies in respect of transactions or events that occur after March 18, 2019.

Clause 57

Foreign affiliate dumping – immigrating corporation

ITA
128.1(1)(c.3)

Paragraph 128.1(1)(c.3) of the Act is intended to apply to prevent certain tax planning arrangements involving corporate immigrations that could otherwise be used as substitutes for transactions that are addressed by the foreign affiliate dumping rules in section 212.3. That paragraph applies where a particular non-resident corporation controls another non-resident corporation that immigrates to Canada and the immigrating corporation owns shares of the capital stock of a non-resident corporation that becomes a foreign affiliate of the immigrating corporation, either immediately after the immigration or as part of a transaction or event or series of transactions or events that includes the immigration.

Paragraph 128.1(1)(c.3) can deem the immigrating corporation to pay a dividend to the particular non-resident corporation or cause a reduction of the paid-up capital (PUC) of the shares of the immigrating corporation.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of application of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm’s length, paragraph 128.1(1)(c.3) is amended to similarly extend its scope of application to where the immigrating corporation is controlled by a group of non-resident persons not dealing with each other at arm’s

length. Consequential changes are also made to the defined terms in paragraph 128.1(1)(c.3). For more information, see the commentary on paragraph 212.3(1)(b).

Also consequential on the amendments to paragraph 212.3(1)(b), a new formula is added to subparagraph 128.1(1)(c.3)(ii), for the purpose of calculating the amount of any dividend deemed to be paid by the immigrating corporation to a parent. The effect of this change is that, where the immigrating corporation is controlled by a group of parents, the amount that would have been the amount of the deemed dividend, had a single non-resident person controlled the immigrating corporation, is allocated between the group members based on the relative fair market values of the shares of the immigrating corporation that are held, directly or indirectly, by them. These amendments are analogous to the concurrent changes to paragraph 212.3(2)(a). For more information, see the commentary on paragraph 212.3(2)(a).

This amendment applies in respect of transactions or events that occur after March 18, 2019.

Clause 58

Foreign affiliate dumping – conditions for application

ITA
212.3(1)(b)

Subsection 212.3(1) of the Act provides the conditions for the application of subsection 212.3(2), the main operative rule of the foreign affiliate dumping rules in section 212.3. In order for subsection 212.3(2) to apply to an investment in a non-resident corporation (referred to as the "subject corporation") by a corporation resident in Canada (referred to as the "CRIC"), paragraph 212.3(1)(a) generally requires that the subject corporation be a foreign affiliate of the CRIC or of a corporation that does not deal at arm's length with the CRIC (referred to as the "other Canadian corporation").

Paragraph 212.3(1)(b) requires that the CRIC or the other Canadian corporation be controlled by a non-resident corporation (referred to as the "parent") immediately after the time of the investment, or become controlled by the parent after the time of the investment and as part of a transaction, event or series of transactions or events that includes the making of the investment.

Paragraph 212.3(1)(b) is amended to expand the scope of application of the foreign affiliate dumping rules to where a CRIC (or an other Canadian corporation) is controlled by a non-resident individual (*i.e.*, a natural person or a trust) or by a group of non-resident persons, each member of which does not deal at arm's length with the other members. Consequential on this change, the defined terms are modified such that, for the purposes of section 212.3, where there is a single non-resident person who controls the CRIC (or the other Canadian corporation), that non-resident person is referred to as the "parent"; and where the CRIC (or an other Canadian corporation) is controlled by a group of non-resident persons not dealing with each other at arm's length, and not by any single non-resident person, each group member is referred to as a "parent" and the group of non-residents is referred to as the "group of parents". It is intended that references to "parent" and "group of parents" include natural persons and trusts.

Consequential on these amendments, subparagraph 212.3(1)(b)(i) is modified in two ways. First, the reference to "the parent" is replaced by "a parent". This ensures that, where there is a group

of parents, the condition in subparagraph 212.3(1)(b)(i) is satisfied if its requirements are met in relation to any parent that is a member of the group of parents.

Second, subparagraph 212.3(1)(b)(i) is modified by deleting a reference to “non-resident”. This ensures that, in determining whether the 25-per-cent-of-equity threshold (measured by votes or value) under that provision is met, any shares of the CRIC (or other Canadian corporation) owned by a partnership whose members include any person that does not deal at arm’s length with a parent – whether that person is resident in Canada or non-resident – is to be taken into consideration. For example, if a CRIC were controlled by a limited partnership, of which the general partner was a Canadian-resident corporation whose sole shareholder was a non-resident individual, the shares of the CRIC owned by the partnership would be taken into consideration for the purposes of determining whether the 25 per cent threshold in subparagraph 212.3(1)(b)(i) is satisfied.

Foreign affiliate dumping – consequences

ITA
212.3(2)(a)

Where the conditions in subsection 212.3(1) of the Act are satisfied, paragraph 212.3(2)(a) deems a CRIC to pay a dividend to the parent in an amount equal to the total of all amounts each of which is the portion of the fair market value of any property transferred, obligations assumed or incurred, or benefits otherwise conferred, by the CRIC, or any property transferred to the CRIC that results in the reduction of an amount owing to the CRIC, that can reasonably be considered to relate to the CRIC’s investment in the subject corporation.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of application of subsection 212.3(2) to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm’s length, paragraph 212.3(2)(a) is modified to ensure that, where the CRIC is controlled by a group, each member of the group is deemed to receive a dividend from the CRIC in an appropriate amount. More specifically, the amount that would have been the amount of the deemed dividend, had a single non-resident person controlled the CRIC, is allocated between the group members based on the relative fair market values of the shares of the CRIC that are held, directly or indirectly, by them.

The amount of the dividend deemed to be paid by the CRIC to each parent is determined by the new formula A x B/C.

Variable A, in effect, represents the amount that was, prior to these amendments the amount of the deemed dividend under paragraph 212.3(2)(a). Because both variables B and C are equal to one where there is only one parent, the amount determined by the formula will equal the amount determined for A where the CRIC is controlled by a single non-resident person.

Where there is a group of parents, the fraction B/C represents the proportion that the fair market value of the shares of the CRIC that are held, directly or indirectly, by a parent is of the total fair market value of all shares of the CRIC that are held, directly or indirectly, by all parents among the group of parents.

Dividend substitution election

ITA
212.3(3)

Subsection 212.3(3) of the Act is an elective rule that allows for all or a portion of a dividend that would otherwise be deemed under paragraph 212.3(2)(a) to be paid by the CRIC to the parent to instead be deemed to be paid by certain other Canadian-resident corporations in the corporate group (that are "qualifying substitute corporations", as defined by subsection 212.3(4)), to either the parent or another non-resident corporation in the group.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, subsection 212.3(3) is modified to replace two references to "the parent" with "a parent". This ensures that a parent that is a member of a group of parents that controls the CRIC can file an election (jointly with the CRIC and any other relevant person) under subsection 212.3(3) in respect of the dividend that parent is otherwise deemed to receive from the CRIC under paragraph 212.3(2)(a).

Subsection 212.3(3) is also amended such that a parent (jointly with the CRIC and any other relevant person) can elect to substitute, in place of that parent as the dividend recipient, only a non-resident person that is related to the parent. Prior to this amendment, the election allowed for any non-resident corporation that did not deal at arm's length with the parent to be so substituted.

Definitions

ITA
212.3(4)

Subsection 212.3(4) of the Act sets out definitions that apply for the purposes of the foreign affiliate dumping rules in section 212.3.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, the definitions "cross-border class", "dividend time" and "qualifying substitute corporation" are modified to replace references to "the parent" with "a parent", and certain references to "non-resident corporation" with "non-resident person"; and to add a reference to a "group of parents".

Sequential investments – paragraph (10)(f)

ITA
212.3(5.1)

Subsection 212.3(5.1) of the Act ensures that, in certain circumstances where an indirect investment in a subject corporation is made after and as part of the same series of transactions or events as a direct investment in the subject corporation, paragraph 212.3(2)(a) does not cause a deemed dividend (or, in combination with subsection 212.3(7), a reduction of paid-up capital (PUC)) in respect of the indirect investment to the extent of the amount of the earlier direct investment.

Consequential on the amendment to paragraph 212.3(2)(a) adding a formula to that paragraph, subsection 212.3(5.1) is modified to refer to the amount determined for A in that formula. For more information, see the commentary on paragraph 212.3(2)(a).

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, subsection 212.3(5.1) is also modified to include a reference to a "group of parents". For more information, see the commentary on paragraph 212.3(1)(b).

Anti-avoidance rule – cross-border class

ITA
212.3(6)

Subsection 212.3(6) of the Act is an anti-avoidance rule that deems, in certain circumstances, a particular class of shares of a CRIC or a qualifying substitute corporation to not be a cross-border class in respect of an investment.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, paragraph 212.3(6)(a) and clause 212.3(6)(a)(ii)(B) are modified to replace references to "the parent" with "a parent".

Reduction of deemed dividend

ITA
212.3(7)

Subsection 212.3(7) of the Act provides rules that allow for dividends that are otherwise deemed to arise under paragraph 212.3(2)(a) to be offset against the PUC of the shares of the CRIC, or qualifying substitute corporations in respect of the CRIC, in certain circumstances.

Consequential on the amendment to paragraph 212.3(2)(a) adding a formula to that paragraph to address cases where the CRIC is controlled by a group of parents, references in subsection 212.3(7) to the amount otherwise determined for the deemed dividend under paragraph 212.3(2)(a) are replaced with references to the amount determined for A in the formula in paragraph 212.3(2)(a). These amendments are intended to ensure that a given amount of PUC in respect of a cross-border class cannot be offset separately against multiple deemed dividends under paragraph 212.3(2)(a). For example, if a CRIC that is controlled by a group of parents is deemed by paragraph 212.3(2)(a) to pay a $100 dividend to each of its two parents (*i.e.*, the amount determined for variable A in the formula in paragraph 212.3(2)(a) is $200), and the total PUC of cross-border classes in respect of the investment is equal to $100, the CRIC's PUC will effectively offset each parent's deemed dividend by $50.

Consequential on the amendment to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, paragraph 212.3(7)(c) is also

modified by replacing references to "the parent" and "non-resident corporations" with "parents" and "non-resident persons", respectively.

Finally, paragraph 212.3(7)(d) is modified, consequential on the amendment to paragraph 212.3(1)(b), to replace references to "the parent" with "a parent" or "each parent".

Pertinent loan or indebtedness

ITA
212.3(11)

Subsection 212.3(11) of the Act defines "pertinent loan or indebtedness" for the purposes of subsection 212.3(10).

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, paragraph 212.3(11)(c) is modified to replace the reference to "the parent" in the definition with "each parent". Thus, where the CRIC is controlled by a group of parents, the election under that paragraph must be made jointly by the CRIC and each parent.

Control

ITA
212.3(15)

Subsection 212.3(15) of the Act provides special rules for determining control for the purposes of section 212.3 and paragraph 128.1(1)(c.3).

Subparagraphs 212.3(15)(a)(i) and (ii) are generally relieving provisions. Subparagraph 212.3(15)(a)(i) prevents multiple dividends from being deemed under paragraph 212.3(2)(a) or 128.1(1)(c.3) in respect of an investment because more than one non-resident corporation in a corporate chain controls a CRIC or immigrating corporation (referred to as the "specific corporation"). Subparagraph 212.3(15)(a)(ii) provides relief where a specific corporation is controlled by a non-resident corporation that is ultimately controlled by a Canadian-resident corporation and not by a non-resident person.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, subparagraph 212.3(15)(a)(i) is modified by replacing references to "non-resident corporation" with "non-resident person".

The reference to control "by more than one non-resident person" in subparagraph 212.3(15)(a)(i) is not intended to describe a structure where a group of parents controls a specific corporation, but none of the group members controls the specific corporation individually. Rather, it describes where two or more non-resident persons simultaneously control the specific corporation, independently from one another, which generally occurs where one of the non-resident persons controls another non-resident person that controls the specific corporation.

Also consequential on the amendments to paragraph 212.3(1)(b), clause 212.3(15)(a)(ii)(B) is amended to ensure that relief is not available under subparagraph 212.3(15)(a)(ii) where the Canadian-resident corporation (that controls the non-resident corporation that controls the specific corporation) is controlled by a group of non-resident persons that do not deal with each other at arm's length.

Another amendment that is being made consequential on the amendments to paragraph 212.3(1)(b) is to replace paragraph 212.3(15)(b). The rule in paragraph 212.3(15)(b), prior to this amendment, was intended to ensure that the foreign affiliate dumping rules could not be avoided where a corporation is held through a related group of non-resident corporations, no one member of which owns shares having more than 50 per cent of the votes in respect of the corporation. This rule is no longer needed, since the amendments to paragraph 212.3(1)(b), among other things, extend the foreign affiliate dumping rules to CRICs that are controlled by a group of non-resident persons not dealing with each other at arm's length.

The new paragraph 212.3(15)(b) rule addresses a different issue from the previous one. It ensures that a non-resident person is not considered to be a member of a group of non-resident persons not dealing with each other at arm's length that controls a CRIC, solely because the non-resident person controls another member of the group. Similar to subparagraph 212.3(15)(a)(i), this is intended to ensure, among other things, that deemed dividends are not inappropriately duplicated at multiple levels within an ownership chain.

Exception – more closely connected business activities

ITA
212.3(16)

Subsection 212.3(16) of the Act provides an exception from the operative foreign affiliate dumping rule in subsection 212.3(2). The exception is intended to allow a CRIC to invest in foreign affiliates in certain circumstances where the CRIC is making a strategic acquisition of a business that is more closely connected to its business than to that of any non-resident corporation with which the CRIC does not deal at arm's length.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, paragraph 212.3(16)(a) is modified to replace the reference to "non-resident corporation" with "non-resident person". This change expands, in certain cases, the businesses that must be taken into consideration in applying the "more closely connected business" test, to include business activities carried on by certain natural persons or trusts.

Exception – corporate reorganizations

ITA
212.3(18)

Subsection 212.3(18) of the Act provides exceptions from the foreign affiliate dumping rules for various forms of corporate reorganizations and distributions that result in direct or indirect investments by a CRIC in a subject corporation.

Amendments are made to subsection 212.3(18), consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length.

Subparagraph 212.3(18)(a)(i) provides an exception for certain acquisitions of the shares or debt obligations of a subject corporation by a CRIC from another Canadian-resident corporation (referred to as the "disposing corporation"). Subparagraph 212.3(18)(a)(ii) is similar to subparagraph (a)(i) but applies in respect of acquisitions by a CRIC that is formed on the amalgamation, governed by subsection 87(1), of two or more Canadian-resident corporations.

Both subparagraphs 212.3(18)(a)(i) and (ii) are amended in three main ways. First, some references to "non-resident corporation" are replaced with references to "non-resident person", reflecting the expanded scope of the foreign affiliate dumping rules as a result of the amendments to paragraph 212.3(1)(b).

Second, subparagraphs 212.3(18)(a)(i) and (ii) are restructured, generally in order to "make room" for new sets of conditions applicable in the case where a CRIC is controlled by a group of parents rather than by one parent. These new conditions are in sub-clauses 212.3(18)(a)(i)(A)(II) and (B)(II), and (ii)(A)(II) and (B)(II).

Third, the main substantive changes to subparagraphs 212.3(18)(a)(i) and (ii) are the new conditions for CRICs that are controlled by a group of parents. These new conditions parallel the existing conditions in those subparagraphs, which apply where the CRIC is controlled by one parent. In general terms, similar to the rules that apply for CRICs controlled by one parent, these new conditions are intended to limit the exceptions in subparagraphs 212.3(18)(a)(i) and (ii) to circumstances where the CRIC and the disposing corporation (or, in the case of an amalgamation, the predecessor corporations) – or the shareholders of the disposing corporation (or the predecessor corporations) – are controlled by the same group of parents throughout the series of transactions or events that includes the acquisition.

Also consequential on the amendments to paragraph 212.3(1)(b), amendments are made to subparagraphs 212.3(18)(c)(i) and (ii) that are analogous to the amendments to subparagraph 212.3(18)(a)(i) and (ii), described above. Subparagraphs 212.3(18)(c)(i) and (ii) are almost identical to subparagraphs 212.3(18)(a)(i) and (ii), except that, whereas the latter deal with direct acquisitions by the CRIC of shares of the subject corporation, the former provide exceptions for internal reorganizations that involve an indirect acquisition of shares of a subject corporation by a CRIC resulting from the direct acquisition by the CRIC of shares of another corporation resident in Canada.

Persons deemed not to be related

ITA
212.3(21)

Subsection 212.3(21) of the Act deems persons to not be related for the purposes of the reorganization exceptions in subsection 212.3(18), if it can reasonably be considered that one of the main purposes for one or more transactions or events was to cause those persons to be related in order to qualify for one of those exceptions.

Consequential on the amendments to paragraph 212.3(1)(b) extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length, and the related amendments to subsection 212.3(18), subsection 212.3(21) is amended to deem a person or group of persons not to control another person if it can reasonably be considered that one of the main purposes for one or more transactions or events was to cause such control in order to qualify for an exception in subsection 212.3(18).

Trusts

ITA
212.3(26)

New subsection 212.3(26) of the Act contains special rules for trusts, which are applicable for the purposes of subsection 17.1(1) (in respect of a pertinent loan or indebtedness, as defined in subsection 212.3(11)), paragraph 128.1(1)(c.3), section 212.3 and subsection 219.1(2). The rules in subsection 212.3(26) also apply for the purposes of paragraph 251(1)(a) as it applies in relation to the foregoing provisions.

Subsection 212.3(26) is introduced in connection with the amendments to paragraph 212.3(1)(b) extending the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length.

Paragraph 212.3(26)(a) sets out a number of assumptions for the purposes of determining whether persons (including trusts) are related to each other, or any person is controlled by any other person or group of persons. For these purposes, each trust is treated as a corporation having a single class of 100 voting shares. Ownership of those shares is allocated to the beneficiaries under the trust in accordance with their proportionate interests (based on fair market value) in the trust.

One consequence of paragraph 212.3(26)(a), among others, is that, where a CRIC is controlled by a Canadian-resident trust in which a non-resident person has a majority interest (determined based on fair market value), that non-resident person will be considered to control the CRIC.

Because the rules in subsection 212.3(26) apply for the purposes of paragraph 251(1)(a), generally as it applies for the purposes of the rules relating to foreign affiliate dumping, any persons that are related to each other based on the assumptions in paragraph 212.3(26)(a) are deemed by paragraph 251(1)(a) to not deal at arm's length for these purposes. This result can be relevant, for example, in determining whether, for the purpose of paragraph 212.3(1)(b), members of a group of non-resident persons that controls the CRIC deal with each other at arm's length.

Paragraph 212.3(26)(b) provides a "look-through" rule that applies where a Canadian-resident trust owns shares of a corporation. In those circumstances, paragraph 212.3(26)(b) deems each beneficiary under the trust to own, and the trust not to own, a number of shares of each class of the corporation in accordance with the beneficiary's proportionate interest (based on fair market value) in the trust.

Paragraph 212.3(26)(b) applies exclusively for the purpose of determining the number of shares of a corporation that are owned by beneficiaries under a trust and, in contrast with paragraph

212.3(26)(a), is not intended to apply for the purpose of determining whether persons are related or if one person controls another. Paragraph 212.3(26)(b) is intended to integrate the rule in paragraph 212.3(26)(a) with the PUC offset rules in subsections 212.3(6) and (7) and related definitions in subsection 212.3(4). Absent paragraph 212.3(26)(b), where paragraph 212.3(26)(a) causes a non-resident person that is a beneficiary under a Canadian-resident trust to be a parent in respect of a CRIC (the shares of which are owned by the trust), the non-resident person would not meet the conditions in the definition "cross-border class" or the conditions in subsection 212.3(7), and thus could not offset the PUC of any class of shares of the CRIC against a deemed dividend under paragraph 212.3(2)(a).

Paragraph 212.3(26)(c) is an anti-avoidance rule in respect of discretionary trusts, which applies for the purposes of both paragraphs 212.3(26)(a) and (b). It treats a discretionary beneficiary as though it held a 100 per cent interest in the trust for the purposes of applying paragraphs 212.3(26)(a) and (b), if:

- the beneficiary's share of the income or capital of the trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power; and
- it can reasonably be considered that one of the main reasons for the discretionary power is to avoid or limit the application of paragraph 128.1(1)(c.3), subsection 212.3(2) or subsection 219.1(2).

Paragraph 212.3(26)(c) reflects a general policy concern regarding the reliance by taxpayers on discretionary or similar interests to avoid certain tax consequences, such as those flowing from paragraph 212.3(26)(a) or (b) (*e.g.*, by taking the position that the fair market value of the interest of a beneficiary under a trust is nil or nominal because it is subject to a discretionary power).

Coming-into-force

The above amendments to section 212.1 apply in respect of transactions or events that occur after March 18, 2019.

Clause 59

Foreign affiliate dumping – emigrating corporation

ITA
219.1(2)

Subsection 219.1(2) of the Act applies where any shares of an emigrating corporation are owned by a Canadian-resident corporation that is controlled by a non-resident corporation and the emigrating corporation is a foreign affiliate of that Canadian-resident corporation immediately after the emigration. In these circumstances, any PUC of the shares of the emigrating corporation is deemed to be nil.

To better align with paragraph 212.3(1)(b) - following the amendments to that paragraph extending the scope of the foreign affiliate dumping rules to CRICs that are controlled by a non-resident individual or a group of non-resident persons not dealing with each other at arm's length - subsection 219.1(2) is amended to require that the emigrating corporation be controlled by a

non-resident person or a group of non-resident persons not dealing with each other at arm's length.

This amendment applies in respect of transactions or events that occur after March 18, 2019.

Cross-Border Share Lending Arrangements

Clause 60

Exempt dividends

ITA
212(2.1)

Subsection 212(2.1) of the Act exempts from Part XIII tax an amount paid or credited to a non-resident lender by a borrower under a securities lending arrangement if:

- the payment is deemed by existing subparagraph 260(8)(c)(i) to be a dividend;
- the borrowed security is a share of a non-resident corporation; and
- the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside Canada.

The scope of this provision is broadened so as to exempt from Part XIII tax an amount paid or credited to a non-resident lender by a borrower under a securities lending arrangement or a specified securities lending arrangement if:

- the payment is deemed by new subparagraph 260(8)(a)(ii) to be a dividend;
- the borrowed security is a share of a non-resident corporation; and
- either
  - the arrangement is a fully collateralized arrangement; or
  - the borrower and the non-resident lender are dealing at arm's length.

This amendment ensures that the only circumstances where a dividend compensation payment in respect of a share of a non-resident corporation is not exempted from Part XIII tax under subsection 212(2.1) is if the share is borrowed under a non-arm's length arrangement that is not a fully collateralized arrangement. In these circumstances, the dividend compensation payment is deemed to be a payment of interest made by the borrower to the non-resident lender under new paragraph 260(8)(c).

For more information, see the commentary on the new definitions "fully collateralized arrangement" and "specified securities lending arrangement" in subsection 248(1), and new paragraphs 260(8)(a) and (c).

This amendment applies to amounts paid or credited on or after March 19, 2019.

Interest - definitions

ITA
212(3)

Subsection 212(3) of the Act contains definitions that are applicable for the purposes of paragraph 212(1)(b). One of these definitions is that of "fully exempt interest." If an interest payment is fully exempt interest, then – provided it is not participating debt interest – it will not be subject to Part XIII tax under paragraph 212(1)(b) even if the payer and the recipient do not deal at arm's length.

Paragraph (d) of the definition "fully exempt interest" currently includes an amount paid or payable or credited under a securities lending arrangement that is deemed by existing subparagraph 260(8)(c)(i) to be a payment made by the borrower to the non-resident lender of interest, if

- the securities lending arrangement was entered into by the borrower in the course of carrying on a business outside of Canada; and
- the borrowed security is described in paragraph (b) or (c) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer.

The scope of this provision is broadened to include amounts paid or credited under a securities lending arrangement or a specified securities lending arrangement, that are deemed by new subparagraph 260(8)(a)(i) to be payments made by a borrower to a lender of interest, if the arrangement is a fully collateralized arrangement, and

- the following conditions are met:
  - the arrangement was entered by the borrower in the course of carrying on a business outside of Canada, and
  - the borrowed securities are described in paragraph (b) of the definition "qualified security" in subsection 260(1) and issued by a non-resident issuer;
- the borrowed securities are described in paragraph (c) of the definition "qualified security" in subsection 260(1); or
- the borrowed securities are described in paragraphs (a) or (b) of the definition "fully exempt interest" in subsection 212(3).

This amendment has three main objectives.

First, it ensures that an interest compensation payment that qualified as fully exempt interest under existing paragraph (d) of the definition will continue to qualify under either new subparagraph (d)(i) or (d)(ii) of the definition.

Second, it ensures that an interest compensation payment that was exempted from Part XIII tax under existing subparagraph 260(8)(c)(ii) will be similarly exempted under new subparagraph (d)(ii) of the definition.

Third, it ensures that an interest compensation payment that qualified as fully exempt interest under paragraph (a) or (b) of the definition through the application of the "payable on the security" deeming rule under existing paragraph 260(8)(c), which has been eliminated under new

subparagraph 260(8)(a)(i), will continue to qualify under new subparagraph (d)(iii) of the definition.

For more information, see the commentary on the new definitions "fully collateralized arrangement" and "specified securities lending arrangement" in subsection 248(1), and new paragraph 260(8)(a).

This amendment applies to amounts paid or credited on or after March 19, 2019.

Clause 61

Definitions

ITA
248(1)

"fully collateralized arrangement"

Subsection 248(1) of the Act is amended to add the definition "fully collateralized arrangement." This definition largely parallels the "fully collateralized" test used in existing subparagraph 260(8)(c)(i). This definition is relevant for the purposes of subsection 212(2.1), paragraph (d) of the definition "fully exempt interest" in subsection 212(3), new paragraph 260(8)(c) and new subsection 260(8.3).

This amendment is deemed to have come into force on March 19, 2019.

"specified securities lending arrangement"

Subsection 248(1) of the Act is amended to add the definition "specified securities lending arrangement." This term is defined to have the meaning assigned in subsection 260(1). This definition is relevant for the purposes of subsection 212(2.1), paragraph (d) of the definition "fully exempt interest" in subsection 212(3) and new subsections 260(1.2), (8), (8.1), (8.2), (8.3) and (9.1).

This amendment is deemed to have come into force on March 19, 2019.

Clause 62

References – borrower and lender

ITA
260(1.2)

Subsection 260(1.2) of the Act provides that for the purposes of subsections 260(8), (8.1), (8.2), (8.3) and (9.1) and subsections 212(2.1) and (3), in respect of a specified securities lending arrangement, a reference to a borrower includes a transferee and a reference to a lender includes a transferor.

This amendment is deemed to have come into force on March 19, 2019.

Non-resident withholding tax

ITA
260(8)

Subsection 260(8) of the Act contains special rules that determine the character of an amount paid or credited under a securities lending arrangement by a borrower to a non-resident lender for the purposes of Part XIII tax.

In general terms, paragraph 260(8)(a) provides that any amount paid or credited as compensation for any interest or dividend paid in respect of the security is deemed to be a payment of interest made by the borrower to the lender. However, if the arrangement is fully collateralized, subparagraph 260(8)(c)(i) provides that any such amount is, to the extent of the interest or dividend paid in respect of the security, deemed to be a payment made by the borrower to the non-resident lender of interest or dividend, as the case may be, payable on the security. For the purposes of subparagraph 260(8)(c)(i), the arrangement is fully collateralized if, throughout the term of the securities lending arrangement, the borrower has provided to the lender money or government debt obligations with a value of not less than 95% of the fair market value of the borrowed security. To meet this “fully collateralized” test, the borrower must also be entitled to enjoy the benefits of all or substantially all income derived from, and opportunity for gain with respect to, the money or government debt obligations provided.

When the borrowed security is a qualified trust unit, paragraph 260(8)(b) provides that any amount paid or credited in respect of the security is deemed, to the extent of the amount of the underlying payment to which the compensation payment relates, to be an amount paid by the trust and having the same character and composition as the underlying payment.

Finally, paragraph 260(8)(d) provides that any amount paid or credited as, on account of, in lieu of payment of or in satisfaction of a fee for the use of the security is deemed to be a payment of interest made by the borrower to the user.

Subsection 260(8) is amended in a number of respects.

First, its preamble is amended so that it applies to an amount paid or credited under a specified securities lending arrangement as well as under a securities lending arrangement. This ensures that amounts paid or credited under arrangements that are substantially similar to those that fall with the definition “securities lending arrangement” are subject to the same Part XIII tax treatment applicable to those arrangements.

Second, existing subparagraph 260(8)(c)(i) is renumbered as new paragraph 260(8)(a), its “fully collateralized” test is eliminated and new paragraph 260(8)(a) becomes the main characterization rule in subsection 260(8).

New paragraph 260(8)(a) provides that any amount paid or credited as compensation for any interest or dividend paid in respect of a security that is not a qualified trust unit is, subject to new paragraph 260(8)(c), deemed

- to the extent of the amount of the interest paid in respect of the security, to be a payment made by the borrower to the lender of interest; and
- to the extent of the amount of the dividend paid in respect of the security, to be a payment made by the borrower, as a corporation, to the lender of a dividend payable on the security.

Under new subparagraph 260(8)(a)(i), any interest compensation payment made in respect of a security will be deemed to be a payment of interest, but this payment, in contrast to what occurs under existing subparagraph 260(8)(c)(i), will not be deemed to be payable on the security.

Under new subparagraph 260(8)(a)(ii), any dividend compensation payment made in respect of a share of a Canadian resident corporation will always be treated as having the character of a dividend for the purposes of Part XIII, whether or not the arrangement is a fully collateralized arrangement.

Third, the exemption under existing subparagraph 260(8)(c)(ii) for interest compensation payments made in respect of a borrowed Canadian or foreign government debt obligation is essentially moved to new subparagraph (d)(ii) of the definition "fully exempt interest" in subsection 212(3).

Fourth, existing paragraph 260(8)(a) is renumbered as new paragraph 260(8)(c) and the scope of this provision is considerably narrowed.

The original policy objective of existing paragraph 260(8)(a) was to prevent a borrower from avoiding or reducing the Part XIII interest withholding tax that would have otherwise applied on a cross-border borrowing by instead effectively obtaining cross-border financing through the guise of a securities lending arrangement that is not "fully collateralized."

However, when the borrower and the non-resident lender are dealing at arm's length, this concern is generally no longer present. As of 2008, arm's length interest payments, except for participating debt interest, are exempt from Part XIII tax. Accordingly, there is no longer an incentive for arm's length parties to use a securities lending arrangement as a disguised financing.

When the borrower and the non-resident lender are not dealing at arm's length, existing paragraphs 260(8)(a) and (c) essentially provide that any deemed interest payment made under a securities lending arrangement is not deemed to be payable on the borrowed security unless the arrangement is "fully collateralized." This is intended to prevent such a deemed interest payment from qualifying for any withholding tax exemption that is dependent on the underlying nature of the borrowed security in circumstances when the arrangement is a disguised financing. A similar result is now effected through new subparagraph 260(8)(c)(i) in conjunction with new subparagraph (d)(iii) of the definition "fully exempt interest" in subsection 212(3).

In the end, new paragraph 260(8)(c) is limited to providing that any amount paid or credited as a compensation payment is deemed to be an interest payment, if:

- the borrowed security is a share of a non-resident corporation;
- the borrower and the lender are not dealing at arm's length; and
- the arrangement is not a fully collateralized arrangement.

For more information, see the commentary on subsection 212(2.1), paragraph (d) of the definition "fully exempt interest" in subsection 212(3) and the new definitions "fully collateralized arrangement" and "specified securities lending arrangement" in subsection 248(1).

This amendment applies in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019. However, the amendment does not apply in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019 and before October 2019, if they are pursuant to a written arrangement entered into before March 19, 2019.

Deemed fee for borrowed security

ITA
260(8.1)

Subsection 260(8.1) of the Act provides that, where a non-resident lender has received money as collateral or consideration for a loaned security and the borrower has not paid a reasonable fee for the use of the security, the borrower is deemed to have paid to the non-resident lender a borrow fee for the use of the security. This borrow fee is equal to the difference between interest on money held by the non-resident lender, calculated at a prescribed rate, and any amount paid to the borrower by the non-resident lender other than as a return of the collateral or consideration.

Subsection 260(8.1) is amended to ensure that it appropriately applies in the context of a specified securities lending arrangement.

For more information, see the commentary on the new definition “specified securities lending arrangement” in subsection 248(1).

This amendment applies in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019. However, the amendment does not apply in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019 and before October 2019, if they are pursuant to a written arrangement entered into before March 19, 2019.

Effect for tax treaties - interest

ITA
260(8.2)

Subsection 260(8.2) of the Act provides that any amount paid or credited under a securities lending arrangement by a borrower to a non-resident lender, that is deemed by existing paragraph 260(8)(a), (b) or (d) to be a payment of interest, is deemed for the purposes of any tax treaty not to be payable on or in respect of the security. The only circumstances where subsection 260(8.2) does not deem the interest compensation payment not to be payable on the security for treaty purposes is when existing paragraph 260(8)(c) applies and the arrangement is therefore “fully collateralized.”

Subsection 260(8.2) is amended to ensure that this result continues to be achieved even though the “payable on the security” deeming rule has been eliminated under new paragraph 260(8)(a). Specifically, subsection 260(8.2) is amended to provide that in applying new subparagraph 260(8)(a)(i), if a securities lending arrangement or specified securities lending arrangement is a fully collateralized arrangement, any interest compensation payment is deemed for the purposes of any tax treaty to be payable on the security.

For more information, see the commentary on the new definitions “fully collateralized arrangement” and “specified securities lending arrangement” in subsection 248(1), and new paragraph 260(8)(a).

This amendment applies in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019. However, the amendment does not apply in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019 and before October 2019, if they are pursuant to a written arrangement entered into before March 19, 2019.

Effect for tax treaties - dividend

ITA
260(8.3)

New paragraphs 260(8.3)(a) and (b) of the Act, when applied together, are intended to ensure that the same dividend withholding tax rate under a tax treaty applies to a dividend compensation payment made to a non-resident lender as to a dividend that would have been paid to that non-resident had it continued to hold the lent share of a Canadian-resident corporation.

The effect of new paragraph 260(8.3)(c) is generally to prevent a non-resident lender from obtaining the benefit of the lowest treaty-reduced dividend withholding tax rate on a dividend compensation payment if:

- the securities lending arrangement or the specified securities lending arrangement is not a fully collateralized arrangement; and
- the borrower and the non-resident lender are not dealing at arm's length.

For more information, see the commentary on subsection 212(2.1), and the new definition "specified securities lending arrangement" in subsection 248(1).

This amendment applies in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019. However, the amendment does not apply in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019 and before October 2019, if they are pursuant to a written arrangement entered into before March 19, 2019.

Non-arm's length compensation payment

ITA
260(9.1)

Subsection 260(9.1) of the Act deems a non-resident lender not to be dealing at arm's length with a person that is deemed by subsection 260(8) to have made a payment of interest to the non-resident lender if the non-resident lender is not dealing at arm's length with either the borrower or the issuer of the borrowed security, or both.

Subsection 260(9.1) is amended to ensure that it appropriately applies in the context of a specified securities lending arrangement.

For more information, see the commentary on the new definition "specified securities lending arrangement" in subsection 248(1).

This amendment applies in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019. However, the amendment does not apply in respect of amounts paid or credited as SLA compensation payments on or after March 19, 2019 and before October 2019, if they are pursuant to a written arrangement entered into before March 19, 2019.