Explanatory Notes to Legislative Proposals Relating to the Income Tax Act and Regulations

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Preface

These explanatory notes are provided to assist in an understanding of legislative proposals relating to the *Income Tax Act* and *Income Tax Regulations*. These explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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

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Income Tax Act

Clause 1
Standby charge for automobile

Income Tax Act (the Act or ITA)
6(1) and (2)

Where an employer makes an automobile available for the personal use of an employee, a standby charge must be included in the employee's income. The scope of the standby charge provided for in paragraph 6(1)(e) of the Act is expanded in two respects:

- paragraph 6(1)(e) is amended to maintain consistency with paragraph 6(1)(a) and ensure that a standby charge will be included in an employee's income when the benefit is received by a person who does not deal at arm's length with the employee; and
- subparagraph 6(1)(e)(ii) is amended to clarify that whenever an automobile is made available in respect of, in the course of or because of a taxpayer's office or employment, a standby charge will be included in income regardless of whether the employer makes the benefit available or if an employee employer relationship exists at the time.

Consequential amendments are also being made to paragraph 6(1)(k) and subsection 6(2) of the Act to ensure consistency with the changes described above.

This amendment applies to taxation years that begin after 2022.

Clause 2
Exchanges of property

ITA
13(4.3)(d)

Paragraph 13(4.3)(d) of the Act is amended to correct typographical errors, where "transferee" and "transferor" were transposed.

This amendment applies to dispositions that occur after 2016.

ITA
13(42)(a)

Paragraph 13(42)(a) of the French version of the Act is amended to correct a typographical error.

This amendment is deemed to come into force on January 1, 2017.

ITA
13(43)

Subsection 13(43) provides an additional transitional rule consequential on the repeal of the eligible capital property rules to address cases where a taxpayer disposed of eligible capital property prior to March 22, 2016, if any portion of the resulting proceeds of disposition did not become receivable until after 2016 under a condition of the supporting agreement which, at the end of 2016, the parties to the agreement were unsure would be met.

Absent this transitional treatment, any payments received after 2016 would be treated as proceeds of disposition from the sale of depreciable capital property under the rules which came into effect on January 1, 2017. See amendments to subsections 13(34) to (42) and paragraph 20(1)(b).

New subsection 13(43) allows taxpayers to elect to treat the amount that would be a taxable capital gain as business income from the disposition of eligible capital property, if certain conditions are met. This election provides the taxpayer with generally the same treatment it would have received if such payments had been received prior to 2017. More specifically, this transitional rule may apply in respect of an amount to the extent that:

- the amount is part of the proceeds of disposition of "eligible capital property" (as defined in section 54, as it read on December 31, 2016) that is in respect of the taxpayer's business;
- the disposition is under an agreement between the taxpayer and a purchaser that deals at arm's length with the taxpayer;
- the disposition occurred before the announcement on March 22, 2016 of the repeal of the eligible capital property rules;
- the amount becomes receivable under the agreement after 2016 and before 2024 because of a condition of the agreement, if
    - at the end of 2016, it was uncertain whether the condition would be met, and
    - the condition is met after 2016;
- the amount would, in the absence of this transitional rule, be a taxable capital gain resulting from the disposition of depreciable property;
- the amount would have been included in computing the taxpayer's business income if the amount had become receivable on December 31, 2016; and
- the taxpayer files an election with the Minister, no later than the filing-due date for the taxpayer's first taxation year that ends after the publication of this transitional rule, to have this rule apply in respect of the amount.

This amendment is deemed to come into force on January 1, 2017.

Clause 3
Shareholder debt

ITA
15(2.3)

Subsection 15(2) of the Act requires that certain shareholder indebtedness be included in the income of the debtor in the year in which the indebtedness arose. Where the debtor is a non-resident, subsection 15(2) works in conjunction with subsection 214(3) to deem a dividend that is subject to non-resident withholding tax under Part XIII of the Act.

Subsection 15(2.3) provides two exceptions to the application of subsection 15(2). One exception generally deals with trade accounts receivable that arose in the ordinary course of the taxpayer's business. The other exception is in respect of loans made in the ordinary course of a taxpayer's ordinary business of lending money.

Subsection 15(2.3) is amended to exclude from the money lending business exception any such business if, at any time during which the particular loan is outstanding, less than 90 per cent of the aggregate outstanding amount of the loans of the business is owing by borrowers that deal at arm's length with the lender. Thus, internal or "captive" money lenders within a corporate group will not be able to benefit

from this exception, which is intended to apply to businesses that primarily engage in arm's length lending.

This amendment applies to loans made after 2022. This amendment also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023, as if that portion were a separate loan that was made on January 1, 2023 in the same manner and on the same terms as the particular loan. Accordingly, if the separate loan does not meet the amended money lending exception, taxpayers may repay that separate loan within one year after the end of the taxation year of the lender in which the effective date of January 1, 2023 occurs and, in so doing, not have to include the amount of that separate loan in computing their income.

Interpretation – partnerships

ITA
15(2.31)

New subsection 15(2.31) of the Act is added to provide, for the purpose of subsection 15(2.3), two rules to deal with cases where a borrower or a lender is a partnership. The first rule provides that if any entity is a member of a particular partnership that is a member of another partnership, the entity is deemed to be a member of the other partnership for the purposes of applying the second rule and subsection 15(2.3). This rule applies iteratively in the case of multi-tiered partnerships so that any entity that is – or that is deemed by this rule to be – a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership.

The second rule provides that, in applying the arm's length test in the money lending business exception provided in subsection 15(2.3), consideration must be given to the relationship between the borrower and lender at both the partnership and the partner levels. This is achieved by providing that a borrower shall be considered to deal at arm's length with a lender only if the borrower and the lender deal with each other at arm's length, and:

- where either the borrower or the lender is a partnership and the other party is not, each member of the partnership deals at arm's length with the other party; and
- where both the borrower and the lender are partnerships, the borrower and each member of the borrower deal at arm's length with the lender and each member of the lender.

New subsection 15(2.31) applies to loans made after 2022. It also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023, as if that portion were a separate loan that was made on January 1, 2023 in the same manner and on the same terms as the particular loan.

Automobile benefit

ITA
15(5)

Subsection 15(5) the Act provides rules relating to shareholder benefits from the use by a shareholder of a corporation's automobile. The English version of subsection 15(5) amended consequential on the amendment of subsections 6(1) and 6(2).

This amendment applies to taxation years that begin after 2022.

Clause 4
Small business development bonds

ITA
15.1 and 15.2

Sections 15.1 and 15.2 of the Act set out rules defining and governing the treatment of small business development bonds and small business bonds. As the last such bonds expired in 1997, sections 15.1 and 15.2 are repealed.

Clause 5
Deductions permitted in computing income from business or property

ITA
20(1)

Subsection 20(1) of the Act lists the types of expenses that can be deducted in computing a taxpayer's income from certain types of business or property income.

ITA
20(1)(e)

Paragraph 20(1)(e) provides for the amortization over a five-year period of various expenses incurred in the course of issuing securities, borrowing money, and certain other financing transactions. In cases where a partnership is dissolved, the partnership is not permitted a deduction for its last fiscal period, but the former members of the partnership are able to deduct the unamortized balance of these expenses over the remainder of the five-year period pursuant to subparagraph 20(1)(e)(vi).

It has been suggested that the relieving rule in subparagraph 20(1)(e)(vi) can be interpreted as never being applicable, given that:

- the rule applies only where a partnership has ceased to exist in a fiscal period of a partnership; and
- subsection 99(1) provides that a partnership cannot cease to exist in a fiscal period of the partnership. This is because subsection 99(1) deems a partnership's last fiscal period to have ended immediately before the time that is immediately before the time that the partnership ceased to exist.

Subparagraph 20(1)(e)(vi) of the Act is amended to ensure that it is applicable where appropriate, by taking into account the timing of the end of the last fiscal period of the partnership that is deemed by subsection 99(1).

The amendment to subparagraph 20(1)(e)(vi) is deemed to have come into force on June 26, 2013 (the date of Royal Assent of the amendment to subsection 99(1) that gave rise to this issue).

Mining Taxes

ITA
20(1)(v)

Paragraph 20(1)(v) of the Act provides for the deduction of mining taxes in respect of income for the year from mining operations. The deductible mining taxes are prescribed by section 3900 of the *Income Tax Regulations* (the "Regulations").

Subsection 3900(2) of the Regulations is amended to allow for the deduction of mining taxes (including interest) paid in a taxation year that are in respect of income of the taxpayer from mining operations in a previous taxation year, in situations where a taxpayer's return of income for the previous taxation year cannot be reassessed because of subsections 152(4) to (5) of the Act.

Paragraph 20(1)(v) is reworded for clarity and to ensure consistency with subsection 3900(2) of the Regulations.

This amendment generally applies to taxation years that end after 2007.

Clause 6
Exchanges of property

ITA
44(1)(c) and (d)

Subsection 44(1) of the Act allows a taxpayer who incurs a capital gain on the disposition of certain capital property to elect to defer tax on the gain to the extent that the taxpayer reinvests the proceeds in a replacement property within a certain period of time.

The French versions of paragraphs 44(1)(c) and (d) are amended to better align the French and the English versions of these paragraphs.

Clause 7
Definitions - “principal residence”

ITA
54

The definition “principal residence” in subsection 54 of the Act sets out the requirements that apply in order for a property (typically a housing unit, but also including certain leasehold interests, and shares of a cooperative housing corporation, in respect of a housing unit) to be a taxpayer's principal residence for a taxation year. Only taxpayers who are natural individuals or personal trusts are eligible to have a principal residence. A property must be a taxpayer's principal residence for a taxation year in order for that taxation year to apply in reducing, under the formula in paragraph 40(2)(b), the taxpayer's gain from a disposition of the property in that year or a later year. These rules are commonly referred to as the "principal residence exemption rules".

Where the taxpayer is a personal trust, a property does not qualify as the trust's principal residence for a taxation year unless the requirements in paragraph (c.1) of the definition are met. That paragraph includes the requirement that the trust be an eligible trust one of whose beneficiaries (the “eligible beneficiary”) is resident in Canada in the year and a specified beneficiary of the trust for the year. Eligible trusts fall into three categories, although a trust may qualify as an eligible trust under more than one of the categories.

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

Paragraph (c.1) is amended to add a fourth category. In this case, an eligible trust is a trust under which no person other than the eligible beneficiary may, during the eligible beneficiary’s lifetime, receive or otherwise obtain the use of any of the income or capital of the trust. The trustees must be required to consider the needs of the eligible beneficiary (including the comfort, care and maintenance of the beneficiary) in determining whether to pay, or not to pay, an amount to the beneficiary. The trust’s eligible beneficiary must be a qualifying individual, which is defined in paragraph (g) as an individual who is the settlor or related to the settlor, is resident in Canada and is eligible for the disability tax credit under subsection 118.3(1).

This amendment applies to taxation years that begin after 2016.

Clause 8
Other deductions

ITA
60(i)

Paragraph 60(i) of the Act permits a deduction in respect of amounts that are deductible under section 146 or 146.3 or under subsection 147.3(13.1). This paragraph is amended to permit a deduction in respect of amounts deductible under subsection 147.5(19) in respect of post-death losses under a pooled registered pension plan (PRPP) account.

This amendment comes into force on December 14, 2012.

Clause 9
Effect of pension income split

ITA
60.03(2)

Subsection 60.03(2) of the Act ensures that, where a pension transferee (the spouse or common-law partner of a pensioner) receives a split-pension amount, the pension income and qualified pension income maintain their character for the purpose of calculating the pension transferee's pension credit under subsection 118(3).

Subsection 60.03(2) is amended consequential on amendments to the definition of "eligible pension income" in subsection 60.03(1) and to subsection 118(3) that include retirement income security benefits (RISB) and income replacement benefits (IRB) (such benefits payable under the *Veterans Well-being Act*) to the rules for pension income-splitting and the pension credit.

Paragraph 60.03(2)(a) is amended to add a reference to "an amount described in subparagraph (c)(i) of the definition eligible pension income", thereby deeming the pensioner not to have received the portion of the pensioner's RISB and IRB (payable after attaining age 65) that is allocated to the pension transferee.

New subparagraph 60.03(2)(b)(iii) provides that, if the pension transferee has attained 65 years of age before the end of the taxation year, then for the purposes of calculating a pension credit under subsection 118(3), the pension transferee is deemed to have received an RISB or IRB to the extent that a portion of the split-pension amount was an RISB or IRB paid to the pensioner.

These amendments apply to the 2015 and subsequent taxation years.

Clause 10
Childcare expenses

ITA
63(2.3)(c)

Element C of paragraph 63(2.3)(c) of the French version of the Act is amended to clarify that the clauses within the subparagraphs are totalled.

Clause 11
Canadian exploration expense

ITA
66.1

Section 66.1 of the Act provides rules relating to the deduction of “Canadian exploration expense” (CEE), as defined in subsection 66.1(6).

Canadian development expenses for preceding years

ITA
66.1(9)

Subsection 66.1(9) permits, among other things, a taxpayer's Canadian development expense (CDE) (as defined in subsection 66.2(5)) incurred in a taxation year in respect of an oil or gas well to be reclassified as CEE in a subsequent year. The taxpayer may reclassify as CEE in the year any CDE incurred in a previous year in respect of the well if an oil or gas well results in the discovery of a natural underground reservoir containing petroleum or natural gas, is abandoned and has never produced (except for specified purposes), or the 24-month period after drilling of the well is completed has ended and the well has never produced (except for specified purposes).

Subparagraph (d)(i) of the CEE definition, includes a taxpayer's expenses incurred in a taxation year for drilling or completing an oil or gas well in Canada, only in the event that the drilling or completing of the well resulted in the initial discovery that a natural underground reservoir contains petroleum or natural gas, and the discovery occurred within six months after the end of the year. However, clause (d)(i)(C) of the CEE definition ensures that expenditures related to drilling or completing a discovery well (or in building a temporary access road to, or in preparing a site in respect of, any such well) generally incurred after 2018 (including expenses incurred in 2019 that are deemed to have been incurred in 2018 because of the “look-back” rule) no longer qualify as CEE. By default, such expenses are included in the CDE definition in subsection 66.2(5).

A grandfathering rule in subclause (d)(i)(C)(I) applies to expenses actually incurred before 2021 if the expenses are related to drilling or completing a discovery well, where the taxpayer has, before March 22, 2017, entered into a written commitment (including a commitment to a government under the terms of a license or permit) to incur those expenses. Such expenses in respect of a discovery well remain eligible to be treated as CEE.

Paragraph 66.1(9)(f) is amended in three respects.

First, the paragraph is reworded for clarity by introducing new subparagraphs (i) to (iii).

Second, similar to subclause d(i)(C)(II) of the CEE definition, new clause 66.1(9)(f)(iii)(B) is introduced to ensure that expenditures in respect of a discovery well incurred after 2018 (including expenses incurred in 2019 that are deemed to have been incurred in 2018 because of the “look-back” rule) can no longer be reclassified as CEE.

Third, similar to subclause (d)(i)(C)(I) of the CEE definition, new clause 66.1(9)(f)(iii)(A) is introduced to ensure that expenses actually incurred before 2021 continue to be eligible for reclassification to CEE if the expenses are in respect of a discovery well, where the taxpayer has, before March 22, 2017, entered

into a written commitment (including a commitment to a government under the terms of a license or permit) to incur those expenses.

Clause 12
Foreign affiliate share-for-share exchange – exception

ITA
85.1(4)

Subsection 85.1(4) of the Act is an anti-avoidance rule that contains two exceptions to the rule in subsection 85.1(3) which otherwise allows a taxpayer to transfer the shares of a foreign affiliate (the first affiliate) to another foreign affiliate (the second affiliate) on a "rollover" basis. The first exception is contained in existing paragraph (a) which provides that the rollover in subsection 85.1(3) will not apply to the transfer of shares of the first affiliate where all or substantially all of the first affiliate's property is excluded property (as defined in subsection 95(1)) and the share is subsequently disposed of as part of a single transaction or event, or as part of a series, to an arm's length person or partnership (other than a foreign affiliate in which the taxpayer has a qualifying interest (as defined in paragraph 95(2)(m) of the Act)).

Paragraph (a) is intended to prevent taxpayers from transferring shares of a directly held foreign affiliate to another foreign affiliate on a rollover basis to defer Canadian taxation of a capital gain on a subsequent disposition of the first affiliate shares in certain circumstances. In the absence of this paragraph, such a deferral would be available if the first affiliate shares were excluded property at the time of the subsequent disposition (i.e., the gain would be included in computing the hybrid surplus of a disposing foreign affiliate, which is generally not subject to tax until it is distributed to a taxpayer).

Existing subparagraph (a)(ii) describes the circumstances in which a subsequent disposition of the first affiliate shares will trigger the anti-avoidance rule. This subparagraph is renumbered as subparagraph (a)(i) and is amended in three ways.

First, the scope of relevant subsequent acquirers is expanded to include non-arm's length non-residents as well as partnerships any member of which is an arm's length person or a non-arm's length non-resident.

Second, the carve-out for foreign affiliate subsequent acquirers is narrowed such that only foreign affiliates which are controlled foreign affiliates (for the purposes of section 17) are excepted from this anti-avoidance rule.

These amendments ensure, among other things, that subsection 85.1(4) will prevent a taxpayer from deferring recognition of a capital gain in respect of the shares of the first affiliate where those shares are subsequently sold out from under Canada to a related non-resident that is not a controlled foreign affiliate (for the purposes of section 17) of the taxpayer.

Third, the rule will now expressly capture subsequent dispositions of one or more properties substituted for the shares of the first affiliate, or that derive any of their fair market value from the first affiliate shares or any substituted property. This is intended to address a range of scenarios, including where there is a direct or indirect sale of an interest in the first foreign affiliate (e.g., through the sale of shares of a holding company), for example following one or more substitutions of property, without the same first affiliate shares that were originally transferred to the second affiliate being directly disposed of to the acquirer. Notably, to capture all relevant scenarios, subparagraph 85.1(4)(a)(i) does not require a specific person to have substituted, or effected the substitution of, one property for another, or to have disposed of

a substituted property (or of the first affiliate shares or any property that derives any of its value from those shares) to a relevant acquirer.

Existing subparagraph 85.1(4)(a)(i) requires that all or substantially all of the first affiliate's property be excluded property immediately before the transfer to the second affiliate. The rationale for this requirement is that it is assumed that, if this is not the case, the subsequent disposition of the first affiliate shares will give rise to foreign accrual property income of a disposing controlled foreign affiliate, in respect of which the taxpayer is subject to taxation on a current basis. Thus, the tax deferral that paragraph (a) seeks to prevent would not be available in these circumstances.

The existing rule can, however, (subject to the potential application of anti-avoidance rules, including the general anti-avoidance rule) allow the very deferral that paragraph (a) is intended to eliminate, where it is not the case that all or substantially all of the property of the first affiliate is excluded property immediately before the transfer of the first affiliate shares to the second affiliate but the first affiliate shares are excluded property of a disposing foreign affiliate at the time of the subsequent disposition.

To ensure a tax deferral is not available in these and similar circumstances, and better align the provision with its policy rationale, paragraph 85.1(4)(a) is amended to provide that the rollover under subsection 85.1(3) also does not apply where, at the time of the subsequent disposition described in new subparagraph (a)(i), the property that is disposed of is excluded property of a foreign affiliate of the taxpayer.

This new provision is set out in new clause 85.1(4)(a)(ii)(B), with the condition in existing subparagraph 85.1(4)(a)(i) being retained in new clause (a)(ii)(A). (In conjunction with the renumbering of subparagraph (a)(ii) as (a)(i), existing subparagraph (a)(i) is renumbered as subparagraph (a)(ii).)

Finally, paragraph 85.1(4)(b) is amended, consequential on the amendments described above.

The amendments to subsection 85.1(4) apply to dispositions that occur on or after Announcement Date.

In addition, to ensure that subsection 85.1(4) applies appropriately in respect of structures containing partnerships:

- the membership "look-through" rules for tiered partnerships in subsection 93.1(3) are extended to apply for the purposes of subsection 85.1(4.1) (by adding a reference to that subsection in paragraph 93.1(3)(c)); and
- new rules are introduced in new subsection 85.1(4.1), applicable for the purposes of subparagraph 85.1(4)(a)(ii), to determine whether a partnership is dealing, or not, at arm's length with a person or another partnership.

For more information, see the commentary on subsection 85.1(4.1).

Interpretation –partnerships

ITA
85.1(4.1)

New subsection 85.1(4.1) of the Act provides rules of interpretation for the purpose of paragraph 85.1(4)(a). Paragraphs (a) and (b) of the subsection provide rules for determining whether a partnership is dealing, or not, at arm's length with a person or another partnership for the purpose of subparagraph 85.1(4)(a)(i). Where a taxpayer transfers shares of a foreign affiliate (or property that is substituted for, or derives its value from, the shares) to another foreign affiliate, these new rules apply if either or both of the

taxpayer and a subsequent acquirer (referred to as the “acquirer”) of the property (each referred to as a “party”) are partnerships.

The first series of rules, in paragraph 85.1(4.1)(a), deem certain parties to be dealing at arm’s length. They provide that, if only one party is a partnership, the taxpayer is deemed to deal at arm’s length with the acquirer, for the purpose of subparagraph 85.1(4)(a)(i), if any member of the partnership deals at arm’s length with the other party. If both parties are partnerships, the rule deems the taxpayer to deal at arm’s length with the acquirer, if any member of one party deals at arm’s length with the other party or with a member of the other party.

The second series of rules, in paragraph 85.1(4.1)(b), deem certain acquirers to be non-resident persons with whom the taxpayer does not deal at arm’s length. They provide that, if only one party is a partnership, the acquirer is deemed to be a non-resident person with whom the taxpayer does not deal at arm’s length, for the purpose of subparagraph 85.1(4)(a)(i), if:

- any member of the partnership does not deal at arm’s length with the other party; and
- the acquirer is a non-resident person or, if the acquirer is a partnership, any member of the acquirer is a non-resident person.

If both parties are partnerships, the acquirer is deemed to be a non-resident person with whom the taxpayer does not deal at arm’s length, if:

- one party, or any member of that party, does not deal at arm’s length with the other party, or any member of that other party; and
- any member of the acquirer is a non-resident person.

Finally, paragraph 85.1(4.1)(c) provides that the term “excluded property”, which is relevant in applying subparagraph 85.1(4)(a)(ii), has the meaning assigned by subsection 95(1).

New subsection 85(4.1) applies in respect of dispositions that occur on or after Announcement Date.

Clause 13
Amalgamations

ITA
87

Section 87 provides rules that apply in the case of a qualifying amalgamation or merger of taxable Canadian corporations.

ITA
87(2)

Subsection 87(2) applies where two or more taxable Canadian corporations amalgamate to form a new corporation.

Continuing corporation

ITA
87(2)(j.6)

Paragraph 87(2)(j.6) provides that a corporation formed as a result of an amalgamation is considered, for the purposes of a number of provisions of the Act, to be the same corporation as, and a continuation of, each predecessor corporation.

Paragraph 87(2)(j.6) is amended to add a reference to paragraph 20(1)(v) of the Act so that subsection 87(2) also applies for the purposes of paragraph 20(1)(v). This amendment is consequential on amendments to paragraph 20(1)(v) of the Act and subsection 3900(2) of the Regulations. Paragraph 20(1)(v) of the Act provides for the deduction of mining taxes in respect of income for the year from mining operations. The deductible mining taxes are prescribed by section 3900 of the Regulations. Subsection 3900(2) of the Regulations has been amended to allow for the deduction of mining taxes (including interest) paid in a taxation year that are in respect of income of the taxpayer from mining operations in a previous taxation year.

This amendment applies to taxation years that end after 2007.

Foreign merger – anti-avoidance

ITA
87(8.3)

Subsection 87(8.3) of the Act is intended to prevent the use of certain structures aimed at circumventing the anti-avoidance rule in subsection 85.1(4). In particular, it is intended to ensure that certain foreign merger transactions cannot be used to effectively transfer shares of a foreign affiliate (all or substantially all of whose property is excluded property of the affiliate) in a manner that is inconsistent with subsection 85.1(4). Subsection 87(8.3) is amended, in parallel to amendments made to subsection 85.1(4), to further restrict the parties to which a disposition of shares of the new foreign corporation (as defined in subsection 87(8.1)) may be made without triggering the application of subsection 87(8.3) and to expand the categories of property the disposal of which may trigger the application of the rule.

Subsection 87(8.3) provides that subsection 87(8), which allows certain foreign mergers to qualify for the tax-deferred amalgamation provisions in subsections 87(4) and (5), does not apply in respect of a taxpayer's shares of a predecessor foreign corporation (as defined in subsection 87(8.1)) in the context of a foreign merger (as defined in subsection 87(8.1)) where four conditions are present.

The first condition, contained in paragraph 87(8.3)(a), is maintained. It requires that the new foreign corporation is, immediately after the foreign merger, a foreign affiliate of the taxpayer.

The remaining paragraphs of subsection 87(8.3) are restructured and amended as follows.

The condition in existing paragraph 87(8.3)(b) is moved to new subparagraph (d)(i).

The conditions in existing paragraph 87(8.3)(c) are restructured such that they are now split between paragraphs (b) and (c). Paragraph 87(8.3)(b) now provides that the foreign merger must be part of a transaction, event or series that includes the disposition of certain property, and the types of properties within scope of the rule are expanded to expressly include, in addition to shares of the new foreign

corporation, property substituted for those shares and property deriving any of its fair market value from those shares or property substituted for those shares.

Paragraph 87(8.3)(c) is now focussed on the identity of the acquirer in a subsequent disposition of any of the property identified in paragraph 87(8.3)(b), and is amended to narrow the permissible acquirers to Canadian residents that are non-arm's length with the taxpayer and non-residents corporations that are controlled foreign affiliates of the taxpayer (for the purpose of section 17). In addition, the reference to partnerships in subparagraph 87(8.3)(c)(ii) is removed and the application of paragraph 87(8.3)(c) to partnerships is addressed in new subsection 87(8.31).

Finally, new paragraph 87(8.3)(d) provides that subsection 87(8.3) is triggered if either all or substantially all of the property of the predecessor foreign corporation was excluded property (within the meaning of subsection 95(1)) immediately before the foreign merger, or the property subsequently disposed of is excluded property of a foreign affiliate of the taxpayer at the time of the subsequent disposition.

In addition, to ensure that subsection 87(8.3) applies appropriately in respect of structures containing partnerships:

- new rules are introduced in new subsection 87(8.31), applicable for the purposes of paragraph 87(8.3)(c), to determine whether a partnership is dealing, or not, at arm's length with a person or another partnership; and
- the membership "look-through" rules for tiered partnerships in subsection 93.1(3) are amended to reflect the addition of new subsection 87(8.31) by removing the reference to subsection 87(8.3) and adding a reference to subsection 87(8.31) to paragraph 93.1(3)(c).

For more information, see the commentary on subsection 87(8.31).

The amendments to subsection 87(8.3) apply to dispositions that occur on or after Announcement Date.

Interpretation –partnerships

ITA
87(8.31)

New subsection 87(8.31) of the Act is added to provide rules for determining whether a partnership is dealing, or not, at arm's length with a person or another partnership for the purpose of subsection 87(8.3). Where a taxpayer's shares of a predecessor foreign corporation that is a foreign affiliate of the taxpayer are exchanged for or become shares of a new foreign corporation (shares of which are excluded property) or foreign parent corporation, these new rules apply if either or both of the taxpayer and a subsequent acquirer of the new foreign corporation shares (or property that is substituted for, or derives its value from, the shares) are partnerships.

This new subsection mirrors new subsection 85.1(4.1) and ensures consistency in the application of the anti-avoidance rules contained in subsections 85.1(4) and 87(8.3).

New subsection 87(8.31) applies in respect of dispositions that occur on or after Announcement Date.

Clause 14
Suppression election

ITA
88(3.3)

Subsections 88(3.3) and (3.4) of the Act allow a taxpayer to elect, in accordance with rules prescribed in section 5911 of the Regulations, to reduce (*i.e.*, "suppress") the amount for which a distributed property is considered disposed of under paragraph 88(3)(a) where the distributed property is capital property of a foreign affiliate that is the subject of a "qualifying liquidation and dissolution". This reduced amount is then deemed under paragraph 88(3)(c) to be the taxpayer's cost of the distributed property and it results in a reduction in the taxpayer's proceeds of disposition of the dissolving affiliate's shares. The purpose of this election is to allow taxpayers a deferral on any gain that would have been realized on the disposition of the dissolving affiliate's shares until the affiliate's distributed property is disposed of.

Subsection 88(3.3) is amended to restrict its application to distributed property, of a dissolving affiliate, that is shares of another foreign affiliate. This restriction is made to more clearly align the rule with its original policy intent, by ensuring that any gain that would otherwise have been realized on the disposition of the disposing affiliate's shares cannot be eliminated, or deferred in circumstances where a deferral would be inappropriate in policy terms. For example, if the distributed property, in respect of which the suppression election is made, were shares or debt of a Canadian-resident corporation, the accrued gain could, subject to the application of the general anti-avoidance rule:

- be eliminated through a reorganization of the Canadian-resident corporation following the dissolution; or
- be deferred indefinitely while still allowing a Canadian-resident corporation use of the underlying property.

This amendment applies in respect of dispositions that occur on or after Announcement Date.

Clause 15
Loan from foreign affiliate – exceptions

ITA
90(8)(b)

Subsection 90(6) of the Act is the main operative component of the so-called "upstream loan" rules. This rule provides for an inclusion of "specified amounts" in the income of a taxpayer resident in Canada where loans are made by a "creditor affiliate" or a "creditor partnership" of the taxpayer to certain "specified debtors".

Paragraph 90(8)(b) provides two exceptions from the application of subsection 90(6). One exception generally deals with trade accounts receivable that arise in the ordinary course of the taxpayer's business. The other exception is in respect of loans made in the ordinary course of a creditor's ordinary business of lending money.

Paragraph 90(8)(b) is amended to exclude from the money lending business exception a business if, at any time during which an upstream loan is outstanding, less than 90 per cent of the aggregate outstanding amount of the loans of the business is owing by borrowers that deal at arm's length with the creditor. Thus, internal or "captive" money lenders within a corporate group will not be able to benefit from this exception, which is intended to apply only to arm's length lending.

This amendment applies to loans made after 2022. This amendment also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023, as if that portion were a separate loan that was made on January 1, 2023 in the same manner and on the same terms as the particular loan. As such, if the separate loan does not meet the amended money lending exception, taxpayers may repay that separate loan within two years of January 1, 2023 and, in so doing, not have to include the amount of that separate loan in computing their income.

Interpretation - partnerships

ITA
90(8.01)

New subsection 90(8.01) of the Act is added to provide, for the purposes of paragraph 90(8)(b), a rule to deal with cases where a borrower or a creditor is, or both are, a partnership. This rule provides that, in applying the arm's length test in the money lending business exception provided in paragraph 90(8)(b), consideration must be given to the relationship of the borrower and creditor at both the partnership and the partner level. This is achieved by requiring that a borrower shall be considered to deal at arm's length with a creditor only if the borrower and the creditor deal with each other at arm's length, and

- where either the borrower or the creditor is a partnership and the other party is not, each member of the partnership deals at arm's length with the other party, and
- where both the borrower and the creditor are partnerships, the borrower and each member of the borrower deal at arm's length with the creditor and each member of the creditor.

New subsection 90(8.01) applies to loans made after 2022. It also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023, as if that portion were a separate loan that was made on January 1, 2023 in the same manner and on the same terms as the particular loan.

Clause 16
Tiered partnerships

ITA
93.1(3)(c)

Subsection 93.1(3) of the Act provides "look-through" rules for tiered partnerships that apply for the purposes of certain provisions of the Act. Paragraph 93.1(3)(c) is amended to add a reference to new subsections 85.1(4.1) and 87(8.31). For further information, please see the commentary on subsections 85.1(4) and (4.1) and 87(8.3) and (8.31).

This amendment applies in respect of dispositions that occur on or after Announcement Date.

Clause 17
Specified trusts

ITA
93.3

The amendments to section 93.3 expand the special regime for certain trusts resident in Australia to also apply in respect of certain trusts resident in India.

To this end, the defined term “Australian trust” in subsection 93.3(1) is replaced with “specified trust”, which comprises certain trusts resident in Australia or India in which a foreign affiliate, in respect of which the taxpayer has a qualifying interest, has a beneficial interest. Consequential amendments are made to subsections 93.3(2) to (4).

Where the conditions set out in subsection 93.3(2) are met, the specified trust is deemed, for the purpose of determining the Canadian tax results of the taxpayer in respect of the shares of a foreign affiliate, not to be a trust and to instead be a non-resident corporation resident where the trust is resident (either Australia or India, as the case may be). As a result, the specified trust is treated as a foreign affiliate, and distributions from the specified trust to the other foreign affiliate of the taxpayer are treated as inter-affiliate dividends.

There are no changes to the mechanics or the main objective of the rules in section 93.3.

The amendments are deemed to have come into force on January 1, 2022.

Clause 18
Tracking interests

ITA
94.2(5)

Section 94.2 of the Act provides certain rules that are relevant in applying various provisions of the Act in respect of non-resident trusts that meet the conditions in subsection 94.2(1). Among other things, these rules generally result in the attribution of the foreign accrual property income (“FAPI”) of such a trust to a taxpayer that directly – or indirectly, through a controlled foreign affiliate – holds interests representing at least 10% of the fair market value of any class of interests in the trust.

New subsection 94.2(5) is principally intended to provide certain rules for determining the portion of a trust’s FAPI that is attributable to a taxpayer where the trust meets the conditions in subsection 94.2(1) and takes the form of an “umbrella trust”. An umbrella trust is, in general terms, a single trust consisting of several sub-funds traded as individual investment funds, with the assets and liabilities of each sub-fund being separate from the assets and liabilities of other sub-funds. An umbrella trust typically issues a separate class of participating interests for each sub-fund, which provides holders with exposure to the returns on assets of the particular sub-fund and not assets of other sub-funds.

Subsection 94.2(5) ensures that, if subsection 94.2(2) applies to a taxpayer in respect of a trust, subsection 95(11) of the “tracking arrangement” rules applies – subject to a modified reading of that subsection (discussed below) – in determining the portion of the trust’s FAPI that is attributable to the taxpayer under subsection 91(1) (as well as any related deductions under subsection 91(4) and the filing requirements under section 233.4). The main purpose is to allow this determination to be made based on the income, gains and losses realized in the particular sub-fund, of an umbrella trust, in which the taxpayer is invested, and not on the basis of the income, gains and losses realized in other sub-funds in which the taxpayer is not invested.

Subsection 94.2(5) applies if two conditions are met.

First, the taxpayer must have a “tracking interest” (within the meaning of subsection 95(8)) in respect of the trust (a condition that corresponds to paragraph 95(10)(a)). This condition would generally be met, for example, where subsection 94.2(2) applies to a taxpayer in respect of an umbrella trust. This is because

the fair market value of the taxpayer's interest in the umbrella trust is determined by reference to the assets of the particular sub-fund in which the taxpayer has invested (i.e., the sub-fund that is tracked by the class of interests held by the taxpayer) and not by reference to the assets of other sub-funds. This is true regardless of whether the taxpayer holds the interests in the trust directly, or indirectly through a controlled foreign affiliate.

Second, the taxpayer or its controlled foreign affiliate must hold an interest in a "tracking class" of the trust (a condition that corresponds to paragraph 95(10)(b)). This condition will be met if the fair market value of the class of trust interests held by the taxpayer or affiliate can reasonably be considered to be determined by reference to the trust's property and activities that are "tracked" by the taxpayer's tracking interest.

Where these conditions are met, subsection 94.2(5) provides a "read-as" rule for the purpose of applying subsection 95(11) in respect of the trust. This rule deems the taxpayer (and its controlled foreign affiliate, if applicable) to control any "separate corporation" that is deemed to arise under subsection 95(11), which, in the case of an umbrella trust, generally corresponds to the particular sub-fund in which the taxpayer is invested. This ensures that the application of subsection 95(11) does not compromise the integrity of section 94.2, which is intended to cause a trust to be a controlled foreign affiliate of a taxpayer where the conditions in subsection 94.2(1) are met, such that the taxpayer is taxable on an accrual basis in respect of its share of the trust's FAPI.

Notably, there is no provision analogous to subsection 94.2(5) that applies where a taxpayer has a tracking interest in respect of a non-resident corporation (as opposed to a trust) that is a controlled foreign affiliate of the taxpayer (determined without regard to the tracking arrangement rules). Such a provision is not required since the tracking arrangement rules would not apply in that situation. Indeed, their application in that situation could, in certain cases, potentially result in the deemed separate corporation under subsection 95(11) failing to meet the definition of a controlled foreign affiliate, a result that runs diametrically counter to the policy intent of the tracking arrangement rules, which is to ensure that controlled foreign affiliate status (and consequent accrual taxation of FAPI) cannot be avoided.

An amendment recommended in a comfort letter dated March 25, 2019, if implemented, would clarify that the tracking arrangement rules do not apply in this situation, by conditioning the application of the tracking arrangement rules on whether it is reasonable to expect that one of the reasons for a taxpayer acquiring or holding a tracking interest in a foreign corporation (or for investing through an umbrella corporation) is to avoid an income inclusion under subsection 91(1)). This test would not be met where a foreign corporation is already a controlled foreign affiliate of a taxpayer, since in that case the taxpayer would already be subject to accrual taxation in respect of the affiliate's FAPI and thus can be presumed not to have acquired a tracking interest to avoid controlled foreign affiliate status (and, consequently, an inclusion under subsection 91(1) in respect of the affiliate).

To give effect to subsection 94.2(5), it is intended that the above-noted amendment recommended in the comfort letter would not apply in the case of a trust in respect of which subsection 94.2(2) applies.

This amendment applies in respect of taxation years of trusts beginning on or after February 26, 2018.

Clause 19
Definitions – "foreign accrual property income"

ITA
95(1)

The definition "foreign accrual property income" (FAPI) in subsection 95(1) of the Act is relevant for the purposes of determining amounts that a taxpayer is to include under subsection 91(1), as income from a share of a controlled foreign affiliate, in computing its income for a particular taxation year. It is also relevant for the purposes of determining the tax surpluses and deficits of a foreign affiliate of a taxpayer. Variables A to C of the formula in the FAPI definition contain the additions to FAPI and variables D to H contain the deductions from FAPI.

The descriptions of variables A and D are being amended consequential on the introduction of new subsection 95(3.03). These amendments provide that a foreign affiliate's FAPI is to be computed without regard to amounts paid or payable by the affiliate that give rise to income of another foreign affiliate that is not included in computing the other affiliate's FAPI because of the application of subsection 95(3.03). In effect, this ensures that the payment of an expense by one affiliate that is included in the active business income of another affiliate cannot be used to reduce the FAPI (or increase the foreign accrual property loss) of the payer affiliate.

For more information, see the commentary on subsection 95(3.03).

To ensure symmetry in the treatment of the payer and payee affiliates in cases where subsection 95(3.03) applies, subsection 5907(2.7) of the Regulations is also being amended to provide that the amounts paid or payable by the payer affiliate are to be deducted in computing its income or loss from an active business for its earliest taxation year in which the amounts were paid or payable. For more information, see the commentary on subsection 5907(2.7).

These amendments apply in respect of taxation years of a foreign affiliate of a taxpayer that end after 2016.

Base Erosion Rules for Income from Services

ITA
95(2)(b)

The opening words of the French version of paragraph 95(2)(b) of the Act are amended to correct a typographical error.

Amendments are also made to subparagraph 95(2)(b)(i). That subparagraph deems the provision of services (or an undertaking to provide services) by a foreign affiliate (the payee affiliate) of a taxpayer to be a separate business, other than an active business, carried on by the payee affiliate – and any income from that business, or that pertains to or is incident to that business, to be income from a business other than an active business – to the extent that the amounts paid or payable in consideration for those services or that undertaking are deductible, or can reasonably be considered to relate to amounts that are deductible, in computing:

- the income from a business carried on in Canada by a taxpayer referred to in subclause 95(2)(b)(i)(A)(I) or (II); or
- the foreign accrual property income (FAPI) of a foreign affiliate (the payer affiliate) of a taxpayer referred to in subclause 95(2)(b)(i)(B)(I) or (II).

Such income is therefore included in computing the payee affiliate's FAPI.

Clause 95(2)(b)(i)(B) effectively ensures that income that would otherwise be FAPI of the payer affiliate cannot be converted to active business income by the payment of consideration to the payee affiliate for services rendered to the payer affiliate. Where clause 95(2)(b)(i)(B) applies, all of the payee affiliate's income from the provision of the services (or the undertaking) is included in its FAPI.

Clause 95(2)(b)(i)(B) is amended to ensure that the services income is included in the payee affiliate's FAPI only in proportion to the aggregate interests, of taxpayers of which the payer affiliate is a foreign affiliate, in the payer affiliate's income. Specifically, the amount to be included in the payee affiliate's FAPI is determined by the formula A X B, where:

- A is the amounts paid or payable in consideration for the services (or the undertaking) that are deductible, or can reasonably be considered to relate to an amount that is deductible, in computing the payer affiliate's FAPI for a taxation year; and
- B is the total of all amounts each of which is the participating percentage, in respect of the payer affiliate, of a share that is owned by any taxpayer of which the payer affiliate is a foreign affiliate.

For the purpose of variable B, the participating percentages are to be determined:

- at the end of the taxation year of the payer affiliate in which the amounts paid or payable are deductible;
- as if there were no ($5,000) *de minimis* rule in the definition "participating percentage"; and
- as if the references to "controlled foreign affiliate" in the definition "participating percentage" and section 5904 of the Regulations were references to "foreign affiliate", thus ensuring, among other things, that amounts can be included under variable B in respect of foreign affiliates that are not controlled foreign affiliates.

Consequential on the amendment to clause 95(2)(b)(i)(B), structural changes are made to the preamble of subparagraph 95(2)(b)(i) and to clause 95(2)(b)(i)(A). These changes are not intended to have any substantive effect.

The amendment to the French version of paragraph 95(2)(b) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin on or after February 27, 2004.

The amendments to subparagraph 95(2)(b)(i) apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after 2015.

Exception to subparagraph 95(2)(b)(i)

ITA
95(3.03)

New subsection 95(3.03) of the Act provides an exception from the "base erosion" rule in subparagraph 95(2)(b)(i) for a provision of services (or an undertaking to provide services) by a particular foreign affiliate of a taxpayer, and the income of the particular affiliate for a taxation year from those services (or that undertaking), where the conditions in paragraphs 95(3.03)(a) to (e) are met.

The conditions in paragraphs 95(3.03)(a) to (e) are largely analogous to those in clause 95(2)(a)(ii)(D), which generally recharacterizes, as income from an active business, income derived by a qualifying interest foreign affiliate, or a controlled foreign affiliate, of a taxpayer from amounts paid or payable by another qualifying interest foreign affiliate of the taxpayer, in certain circumstances. Notably, the

conditions in paragraphs 95(3.03)(c) and (d) must be met in respect of all of the amounts paid or payable by the second affiliate, in consideration for the services (or the undertaking), from which the particular affiliate derived the income for the taxation year. It is intended that, where new subsection 95(3.03) applies in respect of a provision of services (or an undertaking) by a particular affiliate and the income from those services (or that undertaking) for a taxation year, the result is that only the specific provision of services (or the undertaking) that gave rise to that income for that year is excepted from subparagraph 95(2)(b)(i). In order for a prior or subsequent provision by the particular affiliate of services of the same type, together with the particular affiliate's income from such provision in a prior or subsequent taxation year, to qualify for the exception from subparagraph 95(2)(b)(i), the conditions in paragraphs 95(3.03)(a) to (e) must be met in respect of that provision of services (or undertaking) and that related income.

Consequential on the introduction of new subsection 95(3.03), amendments are being made to the descriptions of variables A and D in the definition "foreign accrual property income" in subsection 95(1) and to subsection 5907(2.7) of the Regulations, in order to ensure symmetrical treatment between the payer and payee foreign affiliates in cases where new subsection 95(3.03) applies to an inter-affiliate payment for services. For more information, see the commentary on those provisions.

This new subsection applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2016.

Definitions – "eligible controlled foreign affiliate"

ITA
95(4)

The definition "eligible controlled foreign affiliate" in subsection 95(4) of the Act, which essentially is a controlled foreign affiliate in which the taxpayer has a participating percentage of at least 90 per cent, is relevant for the purposes of determining the "relevant cost base" (RCB) of a property to a foreign affiliate of a taxpayer, in respect of the taxpayer. RCB is defined under subsection 95(4) as the greater of the amounts determined under paragraphs (a) and (b), the latter being a function of whether the taxpayer has elected an additional amount in respect of the property. Paragraph (b) of the RCB definition limits the ability to elect an additional amount to property owned by an eligible controlled foreign affiliate of a taxpayer.

The condition in existing paragraph (b) of the definition "eligible controlled foreign affiliate" requires that the taxpayer would own shares with a participating percentage in respect of the foreign affiliate of 90 per cent or more "if this definition were read without reference to this paragraph". This condition is amended in two ways and paragraph (b) is reorganized into the formula: A > 90 per cent.

The first amendment replaces the existing "read-as" rule with a rule in new subparagraph (i) of the description of A that, for the purpose of determining whether the condition in paragraph (b) is met, reads out of subparagraph (b)(i) of the RCB definition the requirement that the affiliate be an eligible controlled foreign affiliate. In effect, in determining whether the condition in paragraph (b) is met, the participating percentage is to be determined on the assumption that a valid RCB election is made. This rule is intended to remove the circularity that would otherwise arise in cases where the participating percentage of shares owned by a taxpayer, in respect of a foreign affiliate – and thus the affiliate's "eligible controlled foreign affiliate" status – could depend on whether a valid RCB election has been made.

The second amendment adds another "read-as rule" for the purpose of determining whether the condition in paragraph (b) is met. For this purpose, new subparagraph (ii) of the description of A ensures that the definition "participating percentage" in subsection 95(1) applies without reference to the *de minimis* rule

in its paragraph (a) and the portion of its paragraph (b) before subparagraph (i). This rule is intended to ensure that the condition in paragraph (b) of the definition "eligible controlled foreign affiliate" can be met even if the FAPI of the controlled foreign affiliate for the year is not greater than $5,000.

These amendments apply in respect of determinations made after August 19, 2011 in respect of property of a foreign affiliate of a taxpayer. However, in respect of any such determination made before Announcement Date, a taxpayer may elect an alternate reading of paragraph (b) of the definition "eligible controlled foreign affiliate".

Clause 20
Rules applicable if partnership ceases to exist

ITA
98(3)(b) and (c)

Subsection 98(3) of the Act is an elective provision permitting (if certain conditions are met) property of a Canadian partnership which has ceased to exist to be distributed to its members on a tax-deferred basis.

Paragraph 98(3)(b) provides that the cost amount to a member of an undivided interest in a partnership's capital property acquired on a dissolution of the partnership is, in general, equal to the total of two amounts:

1) the member's percentage of the total cost amount to the partnership of its property immediately before its distribution; and
2) a cost base increase (referred to below as the "bump-up") determined under paragraph (c) if the adjusted cost base of the member's interest in the dissolving partnership exceeds the total of the amount of money received by the member on the dissolution of the partnership and the member's percentage of the total cost amount to the partnership of its property immediately before its distribution (referred to as the "excess" below).

Paragraph 98(3)(c) limits by two amounts the maximum bump-up that a member may designate in respect of an undivided interest in property received from a dissolving partnership. The first limit is that the designated amount of the bump-up cannot exceed the amount, if any, by which the member's "percentage of the fair market value of the property immediately after its distribution exceeds the person's [member's] percentage of the cost amount to the partnership of the property immediately before its distribution". This first limit restricts the maximum bump-up to no more than the unrealized gain that the member will have in the undivided interest in the partnership property received on its distribution. The second limit is that the total of amounts designated in respect of the undivided interest in each property cannot exceed, in general, the amount by which the adjusted cost base of the member's interest exceeds the total of the amount of money received by the member on the dissolution of the partnership and the member's percentage of the total cost amount to the partnership of its property immediately before its distribution.

Paragraph 98(3)(c) is amended to add a new limit in subparagraph (i.1) which limits the amount of a "person's percentage of the fair market value of the property immediately after its distribution", as referred to above (see subparagraph (c)(i)). This new limit (described in more detail below) ensures that, in general, the maximum bump-up available under subparagraph 98(3)(b)(ii) for an undivided interest in capital property received from a dissolving partnership does not include unrealized gains and recapture income in respect of property that would be ineligible for a bump-up if it were held directly by the dissolving partnership (*e.g.*, depreciable property).

New subparagraph 98(3)(c)(i.1) provides that, if the property described in subparagraph 98(3)(c)(i) is a membership interest in a partnership (the "other partnership"), the person's percentage of the fair market value of the property immediately after its distribution to the person is deemed to be determined by the formula **A−B**

where

A is the amount that is the person's percentage of the fair market value (determined without reference to this subparagraph) of the property immediately after its distribution;

B is the portion of the amount by which the person's percentage of the fair market value (determined without reference to this subparagraph) of the property immediately after its distribution exceeds the person's percentage of the cost amount to the partnership of the property immediately before its distribution as may reasonably be regarded as being attributable to the total of all amounts each of which is immediately after the cessation of the partnership's existence (the "particular time" referred to in the opening words of subsection 98(3)):

(A) in the case of depreciable property held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the amount by which the fair market value (determined without reference to liabilities) of such depreciable property exceeds its cost amount;

(B) in the case of a Canadian resource property or a foreign resource property held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the fair market value (determined without reference to liabilities) of such Canadian or foreign resource property, or

(C) in the case of other property that is not a capital property, a Canadian resource property or a foreign resource property and that is held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the amount by which the fair market value (determined without reference to liabilities) of such other property exceeds its cost amount.

This amendment responds to transactions under which some taxpayers are seeking to bump-up the cost of an undivided interest in a capital property by an amount in respect of property that would be ineligible ("ineligible property") for a bump-up (*e.g.*, depreciable property) if the ineligible property were held directly. In the case of a tiered-partnership structure, a dissolving partnership holds a direct interest in another partnership (the "other partnership) and the member of the dissolving partnership bumps-up the cost of its undivided interest in the other partnership received on the dissolution. The Canada Revenue Agency (CRA) challenges these transactions where appropriate under existing provisions of the Act, including the general anti-avoidance rule. However, specific legislative action is warranted to explicitly prohibit such transactions. This change is similar to a change made in 2012 to limit a bump-up in the cost of property received by a corporation on the winding-up of a subsidiary (*i.e.*, see subparagraph 88(1)(d)(ii.1)).

This amendment applies in respect of partnerships that cease to exist on or after Announcement Day.

Where partnership business carried on as sole proprietorship

ITA
98(5)(b) and (c)

Subsection 98(5) of the Act contains rules which provide for a tax-deferred transfer or "rollover" of a Canadian partnership's property where the partnership ceases to exist and the property is transferred to one member of the partnership who carries on alone that business as a sole proprietor.

Paragraph 98(5)(b) provides that the cost to the proprietor of each such property is, in general, deemed to be an amount equal to the total of two amounts:

1) the cost amount to the partnership of its property, immediately before that time (i.e., immediately before the partnership ceases to exist), and
2) a cost base increase (referred to below as the "bump-up") determined under paragraph (c) if the adjusted cost base of the proprietor's partnership interest immediately before that time exceeds the total of the cost amount to the partnership immediately before that time of each property received by the proprietor and the amount of any other proceeds of the disposition of the proprietor's interest received by the proprietor (referred to below as the "excess").

Paragraph 98(5)(c) limits by two amounts the maximum bump-up that the proprietor may designate in respect of the property received from the dissolving partnership. The first limit is that the designated amount for any such property cannot exceed the amount, if any, "by which the fair market value of the property immediately after the particular time exceeds the cost amount to the partnership of the property immediately before that time". This first limit restricts the maximum bump-up to no more than the unrealized gain that the member will have in the property received from the partnership. The second limit is that the total of all amounts designated for all such capital properties (other than depreciable property) cannot exceed the amount by which the adjusted cost base of the proprietor's partnership interest immediately before that time exceeds the excess described in subparagraph 98(5)(b)(ii).

Paragraph 98(5)(c) is amended to add a new limit in subparagraph (i.1). New subparagraph (i.1) limits the amount that is "the fair market value of the property immediately after the particular time" to the sole proprietor, as referred to in subparagraph (c)(i) – the particular time being the time when the partnership has ceased to exist as per the opening words of subsection 98(5). This new limit (described in more detail below) ensures that, in general, the maximum bump-up available under subparagraph 98(5)(b)(ii) for capital property received from the dissolving partnership does not include unrealized gains and recapture income in respect of property that would be ineligible for a bump if it were held directly by the dissolved partnership (e.g. depreciable property).

New subparagraph 98(5)(c)(i.1) provides that, if the property described in subparagraph 98(5)(c)(i) is a membership interest in a partnership (the "other partnership"), the fair market value of the property – immediately after the particular time (i.e., immediately after the partnership is dissolved) – that is received by the sole proprietor is deemed to be determined by the formula **A−B**

where

A is the fair market value (determined without reference to this subparagraph) of the property immediately after the particular time,

B is the portion of the amount by which the fair market value (determined without reference to this subparagraph) of the property immediately after the particular time exceeds its cost amount to the

partnership immediately before the particular time that may reasonably be regarded as being attributable to the total of all amounts each of which is immediately after the particular time

(A) in the case of depreciable property held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the amount by which the fair market value (determined without reference to liabilities) of such depreciable property exceeds its cost amount,

(B) in the case of a Canadian resource property or a foreign resource property held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the fair market value (determined without reference to liabilities) of such Canadian or foreign resource property, or

(C) in the case of other property that is not a capital property, a Canadian resource property or a foreign resource property and that is held directly by the other partnership or held indirectly by the other partnership through one or more other partnerships, the amount by which the fair market value (determined without reference to liabilities) of such other property exceeds its cost amount.

This amendment responds to transactions under which some taxpayers are seeking to bump-up the cost of a capital property by an amount in respect of property that would be ineligible ("ineligible property") for a bump-up (*e.g.*, depreciable property) if the ineligible property were held directly. In the case of a tiered-partnership structure, a dissolving partnership holds a direct interest in another partnership (the "other partnership) and the member of the dissolving partnership bumps-up the cost of its undivided interest in the other partnership received on the dissolution. The Canada Revenue Agency (CRA) challenges these transactions where appropriate under existing provisions of the Act, including the general anti-avoidance rule. However, specific legislative action is warranted to explicitly prohibit such transactions. This change is similar to a change made in 2012 to limit a bump-up in the cost of property received by a corporation on the winding-up of a subsidiary (*i.e.*, see subparagraph 88(1)(d)(ii.1)).

This amendment applies in respect of partnerships that cease to exist on or after Announcement Date.

Clause 21
Income of a trust in certain provisions

ITA
108(3)

Subsection 108(3) provides that, for certain purposes of the Act, the income of a trust is computed without reference to the Act and (for those purposes, except the definition "income interest") without including capital dividends received by the trust. Consequential on amendments to expand the conditions under which a personal trust may be eligible to designate a property for purposes of the definition "principal residence" in section 54, subsection (3) is amended to also apply for the purposes of subclause (c.1)(iii.1)(D)(II) of that definition.

The French version is also amended to align with the English version by adding references to a "lifetime benefit trust" in subsection 60.011(1) and an "exempt foreign trust" in subsection 94(1).

This amendment applies to taxation years that begin after 2016.

Clause 22
Definitions – capital gains exemption

ITA
110.6

Paragraph (b) of the definition « *action du capital-actions d'une société agricole ou de pêche familiale* » in section 110.6 of the French version of the Act is amended to correct a typographical error.

Clause 23
Not carrying on business in Canada

ITA
115.2(2)

Section 115.2 of the Act is an interpretive rule that ensures that, provided certain conditions are met, a qualified non-resident is not considered to be carrying on business in Canada solely because of the provision of designated investment services to the non-resident by a Canadian service provider. Subsection 115.2(2) outlines the qualifying conditions and sets out the relevant applications of this interpretive rule. The rule currently applies for the purposes of subsections 115(1) and 150(1) and Part XIV (branch) tax. As such, if the conditions of section 115.2 are met, a qualified non-resident that is in receipt of designated investment services would be considered not to be carrying on business in Canada for the purposes of subsection 115(1) and, accordingly, the receipt of such services would not subject the non-resident to Part I tax.

Subsection 115.2(2) of the Act is amended to also apply this interpretive rule for the purposes of section 805 of the Regulations. This amendment ensures that Part XIII applies to amounts paid or credited to a non-resident that is considered not to be carrying on business in Canada because of subsection 115.2(2).

This amendment comes into force on Announcement Date.

Clause 24
Pension credit

ITA
118(7)

The pension credit available in subsection 118(3) of the Act 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 under section 60.03.

Subparagraph (a)(iii.1) of the definition "pension income" is amended to add payments under a "specified pension plan" (*i.e*. the Saskatchewan Pension Plan), to the extent that such payments are not already included as life annuity payments. Note that Regulation 7800 prescribes the Saskatchewan Pension Plan to be a specified pension plan.

This amendment applies to the 2019 and subsequent taxation years.

Clause 25
Small business deduction

ITA
125(7)

The definition « *entreprise de placement déterminée* » in subsection 125(7) of the French version of the Act is amended to correct a typographical error.

Clause 26
Employee life and health trust

ITA
144.1(2)(f)

Paragraph 144.1(2)(f) requires that the rights of key employees who are beneficiaries of an employee life and health trust (ELHT) are not more advantageous than those of the class of beneficiaries described in paragraph (e).

Paragraph 144.1(2)(f) is being amended to clarify the legislative intent of amendments to subsection 144.1(2) that were enacted via a 2021 Budget implementation bill. Consequential on the introduction of subparagraph 144.2(e)(ii), an alternative benefit limit applicable to key employees, paragraph 144.2(f) is amended such that it does not apply to an ELHT that satisfies the conditions in subparagraph 144.1(2)(e)(ii).

This amendment comes into force on February 27, 2018.

Clause 27
Home Buyers' Plan

ITA
146.01(2)

Subsection 146.01(2) provides a number of special rules that are relevant for the purposes of the definitions in subsection 146.01(1).

Paragraph 146.01(2)(b) applies where an individual enters into an agreement to purchase a condominium unit. This provision enables an amount withdrawn by an individual to qualify as an "eligible amount" in certain circumstances, by deeming the individual to have acquired the unit on the date that the individual is entitled to immediate vacant possession of the unit.

This special rule was intended as a relieving provision for the purpose of meeting the requirement under paragraph (c) in the definition "regular eligible amount" and paragraph (d) in the definition "supplemental eligible amount" where the individual is able to occupy but not acquire a unit prior to the "completion date". However, this provision was not intended to restrict the 30-day withdrawal requirement under paragraph (d) in the definition "regular eligible amount" and paragraph (e) in the definition "supplemental

eligible amount", nor intended to relax the residency requirement in paragraph (g) and (f) of those definitions, respectively.

As a result, paragraph 146.01(2)(b) is amended to clarify that this special rule does not apply to deem the date of acquisition to be the date the individual is entitled to immediate vacant possession of the unit for the purpose of paragraph (d) in the definition "regular eligible amount" and paragraph (e) of the definition "supplemental eligible amount". Instead, for the purposes of determining the latest date at which the withdrawal from the RRSP may occur, the date the individual acquired the qualifying home shall be the date the individual actually acquired the condominium unit (not the date of immediate vacant possession) for the purposes of paragraph (d) and (e) in both these definitions. Furthermore, this amendment is intended to ensure that the individual is resident in Canada until such time as the qualifying home is acquired.

This amendment comes into force on Announcement Date.

Clause 28
Right of offset

ITA
146.2(4.1)

New subsection 146.2(4.1) is added to the Act to permit, in the case of a depositary TFSA, an indebtedness of the plan holder to the issuer to be set off against the holder's interests in the TFSA, subject to the same conditions that apply under subsection 146.2(4) in the case where the holder uses his or interest in the TFSA as security for a loan. A right of offset will be permitted where: (a) the offset and indebtedness are on arm's length terms; and (b) none of the main purposes of the arrangement is to enable another person or partnership to benefit from the tax exemption provided to the TFSA.

This amendment comes into force on Announcement Date.

Tax-free Savings Account

ITA
146.2(5)

Subsection 146.2(5) of the Act describes the circumstances under which an arrangement becomes, and ceases to be, a TFSA. One of the conditions that must be met for an arrangement to be considered to be a TFSA is that, on or before the 60th day after the year in which the arrangement was entered into, the issuer file with the Minister an election (in prescribed form and manner) to register the arrangement as a TFSA.

Subsection 146.2(5) is amended to permit late filings in reasonable circumstances. Specifically, the subsection is amended to add a reference to "such later date as is acceptable to the Minister".

This amendment applies to the 2009 and subsequent taxation years.

Clause 29
Registered Retirement Income Funds

ITA
146.3(2)(e.1) and (e.2)

Where the carrier of a RRIF transfers all or part of the property held in connection with the fund to another RRIF or to a registered pension plan (RPP), paragraphs 146.3(2)(e.1) and (e.2) require the carrier to retain sufficient property to ensure that the "minimum amount" for the year is paid to the annuitant.

Paragraphs 146.3(2)(e.1) and (e.2) are amended so that the requirement that a carrier retain sufficient property to enable it to pay the minimum amount also applies in connection with transfers of property from a RRIF to a money purchase provision of an RPP, to an account under a PRPP, or to a specified pension plan (*i.e*. the Saskatchewan Pension Plan), in accordance with new subsection 146.3(14.1).

This amendment comes into force on Announcement Date.

Transfer to PRPP or RPP

ITA
146.3(14.1)(b)

Subsection 146.3(14.1) of the Act provides for the direct transfer of an amount from an annuitant's RRIF to a money purchase provision of an RPP and similar arrangements.

Paragraph 146.3(14.1)(b) is amended to replace the reference to "prescribed registered pension" by a reference to "specified pension plan" (*i.e*. the Saskatchewan pension plan, as prescribed under section 7800 of the Regulations).

This amendment comes into force on Announcement Date.

Clause 30
Trust not taxable

ITA
146.4(5)

Subsection 146.5 of the Act provides that an RDSP trust is taxable only on income from carrying on a business or income earned on non-qualified investments.

Subparagraph (b)(ii) is amended to use terminology similar to that used in subsection 146.2(6) for TFSA purposes but it continues to require that, in the case of disposition of properties that are a non-qualified investment, the RDSP trust is taxable on the capital gains (net of allowable capital losses) of the disposition of those properties.

New subparagraph 146.4(5)(b)(iii) is added for consistency in the taxation of trusts governed by registered savings plans. That subparagraph requires that the RDSP trust's income from carrying on a business or in respect of a non-qualified investment is to be calculated without reference to subsection 104(6) of the Act. Subsection 104(6) generally permits a trust to deduct, in computing its income for a taxation year, any income payable to a beneficiary in the year.

These amendments come into force on Announcement Date.

Clause 31
Registered Pension Plans

ITA
147.1(1)

"compensation"
The definition "compensation" in subsection 147.1(1) of the Act lists the types of income of a taxpayer that may be included in pensionable compensation for purposes of RPPs.

Paragraph (a) of the definition is amended in two ways:

- the paragraph is reorganized such that the existing portion before subparagraph (iii) is moved into the preamble and the existing subparagraphs (iii) and (iv) become clauses (i)(A) and (B); and
- new subparagraph (ii) excludes from a taxpayer's pensionable compensation an amount that is deducted under paragraph 8(1)(o.2) in computing the taxpayer's income under Part I.

Note that paragraph 8(1)(o.2) provides an offsetting deduction under Part I for an "excess EPSP amount" that is included in the taxpayer's income under Part XI.4.

This amendment comes into force on Announcement Date.

"money purchase provision"
The definition "money purchase provision" in subsection 147.1(1) of the Act requires that benefits in respect of a member under a money purchase provision are determined solely with reference to and provided by the member's account.

Consequential on the introduction of variable payment life annuity (VPLA) benefits under paragraph 8506(1)(e.2) and subsection 8506(13) of the Regulations, paragraph (b) is added to the definition "money purchase provision" to recognize benefits paid from a VPLA fund established under the provision.

This amendment comes into force on January 1, 2020.

Clause 32
Pooled Registered Pension Plans

ITA
147.5(2)(f)

Paragraph 147.5(2)(f) of the Act requires a pooled registered pension plan (PRPP) to include a stipulation that no right of a person under the PRPP is capable of being assigned (with exceptions in subparagraphs (i) and (ii)), charged, anticipated, given as security or surrendered.

Paragraph 147.5(2)(f) is amended by adding subparagraph (iii) to permit a qualifying survivor of a deceased PRPP member to surrender benefits to the extent permitted under the *Pooled Registered Pension Plans Act* or similar provincial law (*e.g.* where a spouse survivor surrenders a benefit entitlement so that it may be paid to surviving children).
This amendment comes into force on Announcement Date.

Member's account

ITA
147.5(12)

Subsection 147.5(12) of the Act deems an individual's account under a PRPP to be an RRSP under which the individual is the annuitant for the purposes of a number of provisions of the Act and Regulations. Subsection (12) is amended to add a reference to section 160.2 of the Act so that the joint and several tax liability rules applicable to benefits paid out of an RRSP will also apply to benefits paid out of a PRPP account.

This amendment comes into force on Announcement Date.

Post-death increase in value

ITA
147.5(18)

Subsection 147.5(18) of the Act requires that all or a portion of an amount distributed from a PRPP account after the death of the account member be included in the income of the recipient to the extent that the amount has neither been included in the income of another taxpayer nor been transferred on a tax-deferred basis in accordance with subsections 147.5(21) to (23).

The amount of the income inclusion is determined by the formula A – B. Variable A is the amount being distributed from the account under the PRPP to the taxpayer. Variable B is the amount designated by the administrator in relation to the distribution, which cannot exceed the lesser of the amount being distributed or the amount by which the fair market value of all property held in the account immediately before death exceeds the total amounts designated for variable B in relation to all other distributions.

Paragraph (b) of variable B is amended by adding a new subparagraph (iii) to ensure that variable B operates as intended in cases of distributions to multiple beneficiaries.

This amendment comes into force on Announcement Date.

Clause 33
Pension Benefits Guarantee Fund

ITA
149(1)(o.5)

New paragraph 149(1)(o.5) of the Act provides that the Pension Benefits Guarantee Fund (established under the *Pension Benefits Act* of Ontario), and any corporation established solely for investing the assets of the Pension Benefits Guarantee Fund, are exempt from tax under Part I of the Act on their income.

This amendment applies to 2022 and subsequent taxation years.

Income test for municipal corporations

ITA
149(1.2)

Paragraphs 149(1)(d.5) and (d.6) impose restrictions on subsidiaries of municipalities from earning more than ten per cent of their income outside of certain geographical boundaries. Subsection 149(1.2) of the Act excludes, for this purpose, certain income derived from agreements between municipal entities and other governmental entities.

Subsection 149(1.2) is amended to clarify that:

- the income must be derived from the activities clearly outlined in the agreement;
- the income must be paid from Canada, the province or the municipality to the entity; and
- the activities must be those normally carried out by a by a local government body.

This amendment comes into force on Announcement Date.

Clause 34
Information may be communicated

ITA
149.1(15)

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

Subsection 149.1(15) authorizes the Minister of National Revenue to communicate certain information in respect of charities. Subsection 149.1(15) applies notwithstanding section 241, which prohibits the use of communication by an official of information obtained under the Act unless specifically authorized by one of the exceptions found in that section.

ITA
149.1(15)(a)

Paragraph 149.1(15)(a) provides that, notwithstanding section 241, the Minister of National Revenue may share prescribed information that is required to be contained in the public information return under subsection 149.1(14). Paragraph 149.1(15)(a) is amended to also allow the Minister of National Revenue to share whether or not the public information return has been filed by the date required by subsection 149.1(14).

This amendment applies with respect to information returns that are required to be filed for taxation years that end after Announcement Date.

ITA
149.1(15)(b)(iii)

Paragraph 149.1(15)(b) provides that, notwithstanding section 241, the Minister of National Revenue may make available to the public in any matter deemed appropriate certain information relating to registered or previously registered charities, Canadian amateur athletic associations, and qualified donors.

Subparagraph 149.1(15)(b)(iii) provides that for any charity or Canadian amateur athletic association, the Minister may provide the effective date of the revocation, annulment or termination of the charity's or Canadian amateur athletic association's registration. Subparagraph 149.1(15)(b)(ii) is amended to provide that the Minister may also make available the effective date of any suspension.

This amendment applies as of Announcement Date.

Clause 35
Assessment

ITA
152(4)(b)(ii)

Subparagraph 152(4)(b)(ii) of the French version of the Act is amended to correct a typographical error.

Clause 36
Revoked charity to file returns

ITA
189(6.1)

Subsection 189(6.1) of the Act requires a person that is liable for a revocation tax under subsection 188(1.1) to file a return within one year from the date of issuance of either a certificate issued under the *Charities Registration (Security Information) Act* or a notice of intention to revoke the registration of a charity issued by the Minister of National Revenue. The person must file the return without notice or demand, and must estimate and pay the tax payable. Subsection 189(6.1) is amended in order to change the requirement to file the return from when the person is liable for a revocation tax under subsection 188(1.1) to when the person has had their registration as a registered charity revoked. A person will not have to file where the Minister has notified the charity that the intention to revoke has been abandoned under subsection 188(2.1).

This amendment applies in respect of taxation years that end after Announcement Date.

Provisions applicable to Part

ITA
189(8)

Subsection 189(8) is amended by the addition of a reference to subsection 188.2(2.1) in the pre-amble, making subsection 189(8) applicable to a notice of suspension issued pursuant to 188.2(2.1).

This amendment comes into force on Announcement Date.

Clause 37
Undeducted RRSP premiums

ITA
204.2(1.2)

Subsection 204.2(1.2) of the Act provides rules for determining the amount of an individual's undeducted RRSP premiums at any time. This amount is used to calculate the individual's cumulative excess amount in respect of RRSPs under subsection 204.2(1.1).

Paragraph (a) of the description of J in subsection 204.2(1.2) is amended to subtract from an individual's undeducted RRSP premiums amounts that are not received in the year but are included in the individual's income under any of subsections 146.01(4) to (6) and 146.02(4) to (6). For example, where an amount is included in the income of a taxpayer as a result of an unpaid portion of an eligible amount under the Home Buyers' Plan in subsection 146.01(4), this amount will be subtracted from the determination of the amount of undeducted RRSP premiums and as a result it will reduce the cumulative excess amount in respect of the individual's RRSP.

This amendment applies to the 2018 and subsequent taxation years.

Clause 38
Registered investments

ITA
204.5

Section 204.5 of the Act requires that the Minister of National Revenue annually publish in the Canada Gazette a list of all registered investments as of December 31 of the prior year.

Section 204.5 is amended to permit the Minister to annually make available the names of registered investments in any manner the Minister deems appropriate.

This amendment comes into force on Announcement Date.

Clause 39
Taxes in respect of registered plans - “advantage”

ITA
207.01(1)

Amounts described in the definition “advantage” in subsection 207.01(1) of the Act are subject to a special tax imposed under section 207.05. The definition of advantage is amended in two respects.

Subparagraph (a)(ii) is amended, consequential on the addition of new subsection 146.2(4.1) of the Act to exempt from “advantage” a right of set off that meets specified conditions. For further information, see the commentary on new subsection 146.2(4.1).

This amendment comes into force on Announcement Date.

Subparagraph (b)(i) is amended to exclude, from the determination of advantage, the payment (not exceeding a reasonable amount) by a controlling individual to a person or partnership that provides services described in paragraph 20(1)(bb) (investment advice or administration) to a registered plan (RDSP, RESP, RRIF, RRSP or TFSA). That is, though the payment of fees using funds other than plan assets would generally be an increase in account value, the preamble of subparagraph (b)(i) is amended to exclude the payment of fees from the transactions that are determined to result in an increase in fair market value of property held by the plan.

This amendment applies to the 2018 and subsequent taxation years.

ITA
207.01(2)

Subsection 207.01(2) is added to the Act so that the rules in Part X1.01 that apply to income earned on non-qualified investments held by registered plans will be consistent with similar rules appearing in Part 1 of the Act. Specifically, the new requirement in subsection 207.01(2) that “income includes dividends described in section 83” is consistent with the requirement in subsections 146(10.1), 146.1(5), 146.2(6), 146.3(9) and 146.4(5).

This amendment applies to dividends received on or after Announcement Date.

Clause 40
Excess EPSP amounts

ITA
207.8(2)

Subsection 207.8(2) of the Act imposes a special tax on a specified employee who has an excess EPSP amount for a taxation year.

Variable B of the formula in subsection 207.8(2) adds a tax rate equivalent to a provincial tax rate, or a 14 per cent tax rate in the case of a non-resident specified employee. Paragraph (c) of variable B is being amended as a result of the introduction (in 2016) of a 33 per cent marginal tax rate. Specifically, the reference to “14 per cent” is replaced by the percentage (rounded to the nearest half percentage) that is

determined by multiplying the “highest individual percentage” (currently 33 per cent) multiplied by the percentage under subsection 120(1) (currently 48 per cent) that is used to determine the federal surtax.

This amendment applies to the 2022 and subsequent taxation years.

Clause 41
Tax on income from Canada of non-resident persons - Application of Part XIII tax where payer or payee is a partnership

ITA
212(13.1)(a)

Subsection 212(13.1) of the Act contains a number of provisions with respect to partnerships that extend Part XIII tax to apply in particular circumstances. Existing paragraph 212(13.1)(a) deems a partnership to be a person resident in Canada for payments made by the partnership to a non-resident person if those payments are deductible in computing the partnership’s Canadian-source income.

Paragraph 212(13.1)(a) is amended to deem a partnership to be a person resident in Canada in respect of the portion (determined in relation to the partnership’s Canadian resident and non-resident members) of an amount paid or credited by the partnership to a non-resident person that is deductible in computing a member’s share of the partnership’s income or loss to the extent that the share is taxable under Part I. A member’s share would be taxable under Part I if:

- the member is a person resident in Canada; or
- the member is a non-resident person, and the share, or part of the share, is included in the member’s taxable income earned in Canada, or income that results from a section 216 election.

As a result of this amendment, the deeming rule under paragraph 212(13.1)(a) is no longer tied to payments that are deductible in computing the payer partnership’s Canadian source income. Rather, the amendment ensures that Part XIII applies to a payment made by a partnership to a non-resident person if that payment can be deducted in computing the income subject to tax under Part I of a member of the partnership. Consequential on this amendment, to ensure that the rule in paragraph 212(13.1)(a) is applied at the appropriate member level (*i.e*., the top tier level), new paragraphs 212(13.11)(b) and (c) are added to provide interpretive rules for tiered partnerships. For further details, see the commentary in relation to those paragraphs.

This amendment will apply to amounts paid or credited no earlier than the date of a future release of draft legislative proposals, which would occur after the end of the consultation period on this release.

Application of Part XIII tax where payer or payee is a partnership

ITA
212(13.1)(b)

Subsection 212(13.1) of the Act contains a number of provisions with respect to partnerships that extend Part XIII tax to apply in particular circumstances. Existing paragraph 212(13.1)(b) deems a partnership (other than a Canadian partnership) that is paid or credited an amount by a person resident in Canada to be a non-resident person in respect of that amount.

The deeming rule in paragraph 212(13.1)(b) is amended consequential on the introduction of paragraph 212(13.11)(a) and on amendments to subsection 212(13.2). As a result of the amendment, the deeming rule in amended paragraph 212(13.1)(b) does not apply where the payer of the amount is a partnership, or non-resident person, that is deemed, in respect of that amount, to be a person resident in Canada under paragraph 212(13.1)(a) or 212(13.2)(b), as the case may be.

This amendment will apply to amounts paid or credited no earlier than the date of a future release of draft legislative proposals, which would occur after the end of the consultation period on this release.

Interpretation – partnerships

ITA
212(13.11)

Subsection 212(13.11) is added to provide three interpretive rules that apply for the purposes of paragraph 212(13.1)(a).

Under paragraph 212(13.11)(a), if a partnership pays or credits an amount to another partnership (other than a Canadian partnership), the payee partnership is deemed to be a non-resident person in respect of that amount. This amendment ensures that paragraph 212(13.1)(a) applies to a payment made by a partnership to another partnership with non-resident members, where that payment would otherwise be subject to paragraph 212(13.1)(a) if it were paid to a non-resident person. In light of this more specific rule dealing with payments by one partnership to another, paragraph 212(13.1)(b) is being amended to ensure that it is not also applicable. See the commentary to that paragraph for more details.

Paragraph 212(13.11)(b) is a “look-through” rule for tiered partnerships, which ensures that paragraph 212(13.1)(a) is applied at the appropriate member level (*i.e.*, the top tier level) in the case of tiered partnerships. This rule applies iteratively in the case of multi-tiered partnerships so that a person or partnership that is – or that is deemed by this rule to be – a member of a particular partnership that is a member of another partnership is deemed to be a member of, and to have a membership interest in, the other partnership.

Paragraph 212(13.11)(c) ensures that paragraph 212(13.1)(a) is appropriately applied where a membership interest is held by a person directly or indirectly through one or more other partnerships. This rule provides that a person’s share of a partnership’s income or loss includes the person’s direct or indirect, through one or more other partnerships, share of that income or loss.

New subsection 212(13.11) will apply to amounts paid or credited no earlier than the date of a future release of draft legislative proposals, which would occur after the end of the consultation period on this release.

Application of Part XIII tax — payer subject to Part I

ITA
212(13.2)

Subsection 212(13.2) of the Act extends Part XIII tax to certain circumstances where a non-resident person has taxable income earned in Canada and deducts, in computing such income, a payment to another non-resident person. This is accomplished by treating the first non-resident – the one making the payment – as a person resident in Canada.

Existing subsection 212(13.2) applies in respect of any portion of a payment (other than one to which subsection 212(13) applies – a rule that can have the same effect as subsection 212(13.2), in certain circumstances) made by one non-resident person to another non-resident person that is deductible in computing the first non-resident's taxable income earned in Canada (as determined in accordance with Division D of Part I of the Act) from any source that is neither a treaty-protected business nor a treaty-protected property (*e.g.*, business income earned by a non-resident through a permanent establishment in Canada, or a capital gain from the disposition by a non-resident of real property situated in Canada).

Subsection 212(13.2) is amended to also address situations where a non-resident person earns Canadian-source rent or timber royalty income and elects under section 216 to be taxed on that income on a net basis under Part I of the Act as though they were a resident of Canada.

Subsection 212(13.2) is also amended to address amounts paid or credited by a non-resident person to a partnership (other than a Canadian partnership). In those circumstances, it deems the payer non-resident person to be a person resident in Canada, and the payee partnership to be a non-resident person, for the purposes of Part XIII.

In light of this more specific rule dealing with payments to a partnership, paragraph 212(13.1)(b) is being amended to ensure that it is not also applicable. See the commentary to that paragraph for more details.

These amendments apply to amounts paid or credited after 2022.

Application of Part XIII to authorized foreign bank

ITA
212(13.3)

Subsection 212(13.3) of the Act treats an authorized foreign bank as being resident in Canada for the purposes of any amount paid or credited to or by the bank with respect to its Canadian banking business. As a result, an authorized foreign bank does not pay tax under section 212 on, for example, interest payments its Canadian banking business receives from non-arm's length residents of Canada. On the other hand, the bank is responsible for withholding the tax payable by a non-resident person to whom the bank makes a taxable payment. Under existing subsection 212(13.3), an authorized foreign bank is also deemed to be resident in Canada with respect to the application of the definition "Canadian partnership" in paragraph 212(13.1)(b), with respect to a partnership interest held by the bank in the course of its Canadian banking business.

Subsection 212(13.3) is amended in three respects. First, the preamble is amended to clarify that the subsection treats an authorized foreign bank as being a person resident in Canada. Second, consequential on the introduction of paragraph 212(13.11)(a) and the amendments to subsection 212(13.2), which also

refer to the definition “Canadian partnership”, paragraph 212(13.3)(b) is amended to make reference to those provisions.

The third amendment to subsection 212(13.3) is the addition of new paragraph 212(13.3)(c). This paragraph provides that an authorized foreign bank is deemed to be a person resident in Canada for the purposes of paragraph 212(13.1)(a) in respect of a membership interest in a partnership that is held by the bank in the course of its Canadian banking business. This ensures that, where an authorized foreign bank has a membership interest in a partnership that is held by the bank in respect of its Canadian banking business, the bank will be treated, for the purposes of paragraph 212(13.1)(a), as a Canadian resident member of the partnership such that amounts that are deductible in computing the bank’s share of the partnership’s income or loss will be included in the portion of the amount with respect to which the partnership is deemed to be a person resident in Canada under paragraph 212(13.1)(a).

These amendments will apply to amounts paid or credited no earlier than the date of a future release of draft legislative proposals, which would occur after the end of the consultation period on this release.

Clause 42
FA Dumping – paid-up capital reinstatement

ITA
212.3(9)(b)(ii)

Subsection 212.3(9) of the Act allows a reinstatement of paid-up capital (PUC) in respect of a class of shares of a corporation resident in Canada (CRIC) or a qualifying substitute corporation (referred to in that subsection as the “particular corporation”) in certain circumstances where the PUC was initially reduced by operation of paragraph 212.3(2)(b) or subsection 212.3(7). The amount of PUC to be reinstated is the lesser of two amounts, set out in paragraphs 212.3(9)(a) and (b). The amount for paragraph 212.3(9)(b) will vary depending on whether it is computed under subparagraph 212.3(9)(b)(i) or (ii). The two subparagraphs correspond to the two different situations that qualify for the PUC reinstatement. If subparagraph 212.3(9)(b)(i) does not apply, subparagraph 212.3(9)(b)(ii) determines the amount for the purposes of paragraph 212.3(9)(b).

The amount determined under subparagraph 212.3(9)(b)(ii) is generally the fair market value of property received, by the particular corporation or a corporation resident in Canada that does not deal at arm’s length with the particular corporation (referred to in the subparagraph as the “recipient corporation”), in respect of shares of, or debts owing by, a subject corporation that can be traced to the investment that resulted in the prior reduction of PUC of shares of the particular corporation and is determined by the formula A x B/C.

The underlying concept is that these receipts of property represent a return of amounts invested in the subject corporation, and thus justify a reinstatement of the PUC, subject to the restrictions described below.

The description of A is amended in two main respects.

First, clause (B) of the description of A is amended to correct a typographical error in the reference to the shares of the subject corporation that were acquired on the investment, to ensure that these are referred to consistently within paragraph 212.3(9)(b) as the “acquired shares”.

This amendment applies in respect of transactions and events that occur after March 28, 2012.

Second, the description of A is amended to clarify that the receipt of property by the recipient corporation as a result of any of the transactions or events enumerated in the description does not lead to a reinstatement of PUC to the extent the property is received by the recipient corporation:

- as a result of an investment, made by the recipient corporation, to which either the "more closely connected business" exception (in subsection 212.3(16)) or one of the reorganization exceptions (in subsection 212.3(18)), from subsection 212.3(2), applies, or
- as proceeds from a disposition of property to a corporation resident in Canada, for which the acquisition is an investment to which one of those exceptions applies (or to a partnership of which such a corporation is a member).

These restrictions reflect a policy that PUC is not intended to be reinstated to the extent the original investment that resulted in the reduction of PUC has, in effect, been replaced with another investment in a foreign affiliate or transferred to a new CRIC, or another investment in a foreign affiliate has been received as a distribution, without subsection 212.3(2) applying in respect of the other investment or acquisition.

This amendment, in effect, ensures that, in respect of all the various transactions and events enumerated in the description of A, the PUC reinstatement is subject to restrictions similar to those in existing subclauses (A)(I) and (II) and sub-subclauses (C)(I)1 and 2 of the description of A. Those existing provisions restrict PUC reinstatement only in respect of a subset of the enumerated transactions – namely, dispositions of shares described in existing clause (A), and repayments and dispositions of debts described in existing sub-clause (C)(I)).

The existing rules do not expressly restrict PUC reinstatement in respect of dividends or returns of capital on foreign affiliate shares (i.e., the transactions described in existing clause (B)), or in respect of payments of interest on foreign affiliate debt (i.e., the transactions described in existing subclause (C)(II)). This amendment extends the restrictions to all such transactions, in recognition that, given the policy underlying subparagraph 212.3(9)(b)(ii) and the foreign affiliate dumping rules more generally, there is no principled basis to distinguish between such transactions and the dispositions of shares, and dispositions and repayments of debt, to which the restrictions already apply.

In addition to the changes described above, the description of A is also restructured. The various transactions and events currently set out in clauses (A) to (C) are re-numbered as subclauses (A)(I) to (III), respectively. The restrictions that deny the PUC reinstatement in the circumstances described above, are consolidated in clause (B).

Finally, the description of A is amended to clarify that the term "recipient corporation" refers to either the particular corporation or a corporation resident in Canada that does not deal at arm's length with the particular corporation, for the purposes of applying the description of A.

If multiple properties are received on a transaction or event described in any of subclauses (A)(I) to (III), PUC reinstatement is denied only in respect of those properties that are acquired "as a result of" an investment to which an exception in subsection 212.3(16) or (18) applies. For example, if a particular corporation transfers shares of a subject corporation to another subject corporation under subsection 85.1(3), in exchange for a combination of shares of the other subject corporation and non-share consideration (*e.g.*, cash), the non-share consideration would not be considered to have been received "as a result of" an investment to which subsection 212.3(18) applies. Thus, PUC reinstatement would be denied to the extent of the fair market value of the shares of the other subject corporation received on the transfer.

This amendment applies in respect of transactions and events that occur on or after Announcement Date.

Clause 43
Deemed payments

ITA
214(3)(g)

Paragraph 214(3)(g) of the Act is repealed. That paragraph has not been relevant since registered home ownership savings plans rules formerly set out in section 146.2 of the Act were replaced by rules related to TFSAs.

Clause 44
Foreign reporting – definitions

ITA
233.3(1)

Section 233.3 of the Act provides reporting requirements in respect of foreign property. Subsection 233.3(1) defines a number of terms for the purpose of the section.

"specified Canadian entity"
The existing definition "specified Canadian entity" generally refers, in paragraph (a), to a taxpayer resident in Canada that is not listed in any of subparagraphs (a)(i) to (viii) (*i.e.*, generally excludes tax exempts), and, in paragraph (b), to a partnership (other than a partnership all of whose members are listed in subparagraphs (a)(i) to (viii)) less than 90 percent of the income of which is allocable to non-resident members.

Paragraph (b) of the definition "specified Canadian entity" is amended to expand the exception for partnerships, such that, in general terms, a partnership will be a specified Canadian entity only if less than 90 percent of the partnership's income is allocable to members that are non-resident persons or are listed in any of subparagraphs (a)(i) to (viii). Consequential on this change, the parenthetical carve-out in paragraph (b), for partnerships all of the members of which are taxpayers referred to in any of subparagraphs (a)(i) to (viii), is deleted as it is redundant.

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

"specified foreign property"
The definition "specified foreign property" enumerates the properties that are, as well as those that are not, generally subject to the foreign property reporting requirements under section 233.3. Paragraph (n) of that definition excludes from "specified foreign property" an interest in a trust that meets the conditions in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1). Interests in foreign pension plans are generally excluded under paragraph (n), but only if they meet the condition, in paragraph (b) of the "exempt trust" definition, that they be exempt from income tax in the foreign jurisdiction in which they are resident.

Paragraph (n) of the definition "specified foreign property" is amended to also exclude from that term – and thus from the reporting requirements under section 233.3 – certain superannuation and pension plans that are resident for income tax purposes in Australia or New Zealand. Absent this amendment, such plans would not qualify for the exclusion under paragraph (n) because they are not exempt from income tax in their country of residence, but rather are subject to a reduced rate of income tax. This amendment puts

these Australian and New Zealand plans on the same footing as most other foreign pension plans for the purposes of the foreign reporting requirements under section 233.3.

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

Clause 45
Social Insurance Number

ITA
237(1)(b)

Subsection 237(1) obliges every individual who is required to file an income tax return and does not have (and has not already applied for) a Social Insurance Number, to apply for a Social Insurance Number for the purpose of filing the return.

The English version of paragraph 237(1)(b) is amended to render its language gender-neutral.

Clause 46
Interpretation - "term preferred share"

ITA
248(1)

In general, a "term preferred share" is a share which can reasonably be regarded as a debt substitute. Under subsection 112(2.1) of the Act, dividends received by a specified financial institution on a term preferred share acquired by it in the ordinary course of its business are not deductible in computing its taxable income – they do not qualify for the intercorporate dividend deduction. Subsection 138(6) provides for the same result for dividends received by a life insurer. Paragraphs (i.1) and (j) of the definition "term preferred share" in subsection 248(1) contain specific anti-avoidance rules (SARs) that address situations where steps are taken with the intent of avoiding the application of subsection 112(2.1) or 138(6).

Paragraph 258(3)(a) is a rule that is similar to subsection 112(2.1) except that it, among other things, denies the deduction that would otherwise be available in respect of dividends received by a specified financial institution resident in Canada from foreign affiliates.

The definition "term preferred share" in subsection 248(1) is amended, in two places, to include references to paragraph 258(3)(a) to allow the SARs contained in paragraphs (i.1) and (j) of the definition to apply equally to dividends received by a specified financial institution from foreign affiliates as from Canadian-resident corporations.

These amendments apply in respect of amounts received on or after Announcement Date.

Clause 47
Interpretation

ITA
249.1(1)

Subsection 249.1(1) of the French version of the Act is amended to correct a typographical error.

Clause 48
Corporate tax-attribute trading

ITA
256.1

Section 256.1 of the Act provides certain rules that relate to a number of other provisions in the Act meant to constrain the trading of corporate tax attributes among arm's length persons.

Definitions

ITA
256.1(1)

"attribute trading restriction"
An "attribute trading restriction" is defined to be a restriction on the use of a tax attribute arising on the application, either alone or in combination with other provisions, of various sections and subsections of the Act. The definition "attribute trading restriction" is amended to clarify that it is meant to refer to a loss restriction event in section 251.2.

"specified provision"
A "specified provision" is defined to be any of the various provisions of the Act that generally restrict the deductible amount of a corporate tax attribute on an acquisition of control of the corporation. The definition "specified provision" is amended to clarify that it is meant to refer to a loss restriction event in section 251.2.

These amendments are deemed to have come into force on Announcement Date.

Deemed acquisition of control

ITA
256.1(6)

Subsection 256.1(6) provides an anti-avoidance rule that deems the tax attribute trading restrictions to apply in certain circumstances. It applies, in general, if, at any time as part of a transaction or event or series of transactions or events, control of a particular corporation is acquired by a person or group of persons and it can reasonably be concluded that one of the main reasons for the acquisition of control is so that a specified provision does not apply to one or more corporations.

In general terms, subsection 256.1(6) is meant to counter complex tax avoidance structures under which corporate tax attributes are traded by arm's length persons in circumstances where the corporation (the loss corporation) that has undeducted tax attributes acquires control of a profitable corporation. In such a

case, the loss corporation (and its related and affiliated corporations) would, for example, be “one or more corporations” referred to in the subsection, which when applicable applies to “each of those corporations”.

Subsection 256.1(6) is amended to substitute the phrase “transaction or event or any transaction or event in the series of transactions or events” for the phrase “acquisition of control of one or more corporations”. This change is meant to clarify that the subsection applies when one of the main reasons of any transaction or event is so that a specified provision does not apply to one or more corporations.

Subsection 256.1(6) is deemed to have come into force on Announcement Date.

Clause 49
Functional currency tax reporting – “qualifying currency”

ITA
261(1)

The functional currency tax reporting rules contained in section 261 of the Act allow certain Canadian resident corporations to report their Canadian tax results in one of four foreign currencies. Those four currencies are set out in the definition “qualifying currency” in subsection 261(1).

The definition “qualifying currency” is amended to add a fifth foreign currency, that of Japan.

This amendment applies to taxation years that begin after 2019.

Anti-avoidance

ITA
261(18)

Subsection 261(18) of the Act is an anti-avoidance rule aimed at preventing taxpayers from using property transfers between corporations (including on the amalgamation of two corporations) to achieve inappropriate tax consequences under the functional currency tax reporting rules. This goal is achieved by allowing the Minister of National Revenue to direct that the Canadian tax results of a corporation for one or more taxation years be determined using a particular currency of its choosing, where certain conditions are met. One of these conditions, contained in subparagraph 261(18)(c)(i), addresses situations where the transfer of property happens, or would happen in the absence of subsections 261(16) and (17), in a functional currency year of the transferor and the transferee has a different tax reporting currency, which could either mean the transferee reports in Canadian dollars or in another foreign currency.

Subparagraph 261(18)(c)(i) is amended to also address situations where the transferee reports in a functional currency at the time of the property transfer and the transferor has a different tax reporting currency, including the Canadian dollar. For example, the anti-avoidance rule will now potentially apply to an amalgamation of two Canadian dollar tax reporters to form a new corporation that is a functional currency tax reporter. This is especially important because of the way the amalgamation rules (in subsection 261(17)) allow some tax results to be retroactively restated in the elected functional currency. Thus, if one of the main purposes of such an amalgamation is to achieve this kind of retroactive tax planning, the anti-avoidance rule would be expected to apply.

This amendment applies in respect of transfers of property that occur on or after Announcement Date.

Functional currency stop-loss rule

ITA
261(20)

Subsections 261(20) and (21) of the Act operate together as a stop-loss rule to protect against potential abuses of the functional currency tax reporting regime. Subsection 261(20) sets out three conditions for the operative rule in subsection 261(21) to apply in determining a taxpayer's income, gain or loss for a taxation year in respect of a transaction (a "specified transaction") entered into between a taxpayer and a related corporation. Where subsection 261(21) applies, each fluctuation in value referred to in paragraph 261(20)(c) is, for the purposes of determining the taxpayer's income, gain or loss in respect of the specified transaction, deemed not to have occurred.

Subsection 261(20) is amended to replace its references to a related corporation with references to a related person. This amendment ensures that corporations that enter into specified transactions with a related individual will also be subject to the stop-loss rule.

This amendment applies in respect of "accrual periods", within the meaning of subsection 261(20), that begin on or after Announcement Date. The intention is to apply the amended rule only to loans and other transactions that are entered into on or after Announcement Date.

Clause 50
Schedule – Listed corporations

ITA

The schedule lists, for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the Act, certain corporations as financial institutions. The definition "financial institution" is relevant for a number of purposes. Most importantly, corporations that are financial institutions compute their capital for the purpose of Part I.3 differently from other corporations.

The schedule is amended to provide that Ford Credit Canada Limited, a listed corporation for the purposes of paragraph (g) of the definition "financial institution" in subsection 181(1) of the Act, is replaced by Ford Credit Canada Company Compagnie Crédit Ford du Canada to reflect the name change.

This amendment comes into force on January 9, 2017.

Income Tax Regulations

Clause 51
Interpretation – "remuneration"

Income Tax Regulations (the Regulations or ITR)
100

Part I of the Regulations provides rules concerning deductions at source that must be withheld on specified amounts of "remuneration" paid to a taxpayer.

The definition "remuneration" in subsection 100(1) of the Regulations is amended by adding new paragraph (h.1) to include any amount paid from an employee life and health trust that is required by paragraph 56(z.2) of the Act to be included in the taxpayer's income.

This amendment comes into force on Announcement Date.

Clause 52
Non-resident payer deemed to be person resident in Canada

ITR
202(6)

Subsection 202(6) of the Regulations provides a rule setting out the circumstances under which information returns are required to be filed by a non-resident in connection with payments to another non-resident. Subsection 202(6) is amended to more specifically refer to paragraph 212(13.2)(b) of the Act and to add a new reference to paragraph 212(13.3)(a) of the Act. For further information, please refer to the commentary on subsections 212(13.2) and (13.3) of the Act.

This amendment applies to amounts paid or credited after 2022.

Clause 53
Date returns to be filed

ITR
205(3)

This amendment is consequential to the amendment to section 214.2 which provides greater certainty about the obligation of PRPP administrators to file annual information returns. "PRPP Contribution Information Return" is added to the list of annual information returns that must be submitted to the CRA.

For more information, see the commentary for section 214.2 of the Regulations.

This amendment comes into force on January 1, 2022

Clause 54
Electronic filing

ITR
205.1

This amendment is consequential to the amendment to section 214.2, which refers to the obligation of PRPP administrators to file annual information returns. PRPP contribution receipts will be added to require administrators to file electronically the contribution receipt referred to in section 214.2 of the Regulations.

For more information, see the commentary on section 214.2 of the Regulations.

This amendment comes into force on January 1, 2022

Clause 55
PRPP contributions – annual return

ITR
214.2

Section 214.2 is added to the Regulations to require an administrator of a PRPP to prepare and file on or before May 1 of each year an annual return (*i.e*. a contribution receipt) for each account of a member under the PRPP that has been credited with contributions made (i) by an employer in the preceding taxation year of the member and (ii) by the member in the preceding contribution year (March 1 to February 28).

New section 214.2 is intended to provide greater certainty about the obligation of PRPP administrators to file annual information returns. Previously, a deeming rule under subsection 147.5(12) of the Act (*i.e*. a PRPP member's account is deemed to be an RRSP account for various purposes of the Act and Regulations), combined with section 214.1 of the Regulations (*i.e*. RRSP annual information), has required PRPP administrators to prepare and file contribution receipts on an annual basis.

For more information on filing requirements, see the commentary on subsection 205(3) and section 205.1 of the Regulations.

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

Clause 56
Prescribed donees

ITR
3504

Section 3504 of the Regulations sets out the entities that qualify as "prescribed donees" for the purposes of subparagraphs 110.1(2.1)(a)(ii) and 118.1(5.4)(a)(ii) of the Act.

Paragraph 3504(a) currently prescribes Friends of the Nature Conservancy of Canada, Inc., a charity established in the United States of America.

Paragraph 3504(a) is updated as a consequence of successive changes to the name of the referenced charity in the United States of America. Effective December 7, 2015, the charity became known as American Friends of Nature Conservancy of Canada, Inc., and on October 16, 2018, as Friends of the Nature Conservancy of Canada, Inc.

Clause 57
Mining Taxes

ITR
3900

Section 3900 prescribes amounts that are deductible in computing a taxpayer's income for a taxation year in respect of taxes on income from mining operations.

ITR
3900(2)

Subsection 3900(2) provides that, for the purpose of paragraph 20(1)(v) of the Act, the amount that is allowed to be deducted in respect of taxes on income from mining operations of a taxpayer for a taxation year is the total of all eligible taxes paid or payable by the taxpayer on the income of the taxpayer for the taxation year from mining operations and on a non-Crown royalty included in computing the income of the taxpayer for the taxation year.

Subsection 3900(3) defines eligible tax. An eligible tax is generally levied by a province or territory on income from mining operations in the province or territory. Under current law, eligible taxes may only be deducted in a taxation year if those taxes are in respect of income earned during that year from mining operations. Eligible taxes paid in a taxation year that are in respect of income from mining operations in a prior taxation year are not deductible in the year of payment and, if the prior taxation year to which they relate is beyond the normal reassessment period for that prior year (*i.e.*, statute-barred), such taxes could also not be deducted in the prior taxation year. This result occurs because the mining taxes do not relate to income from mining operations during the year of payment and the taxation year to which the mining taxes relate can no longer be reassessed.

Subsection 3900(2) is amended in three respects. First, the subsection is reworded for clarity and to be consistent with the amendment to paragraph 20(1)(v) of the Act.

Second, paragraph (b) is amended to ensure that an amount in respect of eligible taxes paid in a year in respect of income from mining operations in a previous year can be deducted in the year of payment if:

- the amount would have been deductible in computing the income of the taxpayer for the previous taxation year;
- the amount has not been deducted in computing the income of the taxpayer for a previous taxation year; and
- the return of income of the taxpayer for the previous taxation year cannot be reassessed to take into account a deduction in respect of the eligible tax (*e.g.*, because the previous taxation year is statue-barred and a valid waiver of reassessment beyond the normal reassessment period for the previous taxation year has not been filed by the taxpayer).

Third, new paragraph (c) is introduced to allow deduction of interest paid in the year to the province or territory on any deductible eligible taxes.

EXAMPLE

XCo has mining operations in a province and has a December 31 year-end. XCo self-assessed its mining taxes for 2005-2010 taxation years as shown in the table below. The province audited the mining operations of XCo in 2014 and recalculated XCo's mining taxes for each of the 2005-2010 taxation years. As a result of the amendments to subsection 3900(2) of the Regulations, XCo will be permitted to deduct, for the purpose of paragraph 20(1)(v) of the Act, the following amounts in each of the years as follows:

Year	Self-assessed Mining Taxes	Audited Mining Taxes	Difference	Additional deductible Mining Taxes And Year	Interest paid in 2014	Deductible Interest in 2014	Note
2005	$60	$100	$40	$14 in 2014	$8	$2.80	1
2006	$70	$100	$30	$19.50 in 2006	$7	$4.55	2
2007	$75	$100	$25	$25 in 2007	$6	$6	3
2008	$80	$100	$20	$20 in 2014	$4	$4	4
2009	$90	$100	$10	$10 in 2014	$2	$2	4
2010	$95	$100	$5	$5 in 2010	$1	$1	5

Assumptions: XCo has sufficient income from mining operations to be able to claim the deductions for the mining taxes and the interest without limitations. XCo has elected to claim the deduction for the additional mining taxes and interest paid by filing an election (for the taxation year of payment of 2014) in a timely manner with the Minister of National Revenue.

Notes:

1. The 2005 taxation year is statute-barred and a valid waiver of reassessment beyond the normal reassessment period has not been filed for the 2005 taxation year. The resource allowance was phased-out between 2003 and 2006. As a result, in 2005, XCo was prohibited from deducting 65 per cent of the mining taxes it paid since a deduction of 65 per cent of the otherwise deductible resource allowance was permitted. Amended paragraph 3900(2)(b) permits the deduction of $14 of eligible taxes in 2014, being 35 per cent of $40 and the new paragraph 3900(2)(c) permits the deduction of $2.80 of interest in 2014, being 35 per cent of $8.
2. XCo filed a valid waiver of reassessment of the statue-barred period beyond the normal reassessment period for the 2006 taxation. The resource allowance was phased-out between 2003 and 2006. As a result, in 2006, XCo was prohibited from deducting 35 per cent of the mining taxes it paid since a deduction of 35 per cent of the otherwise deductible resource allowance was permitted. Paragraph 3900(2)(a) permits the deduction of $19.50 of eligible taxes in 2006, being 65 per cent of $30 and the new paragraph 3900(2)(c) permits the deduction of $4.55 of interest in 2014, being 65 per cent of $7.
3. XCo filed a valid waiver of reassessment of the statue-barred period beyond the normal reassessment period for the 2007 taxation year and is therefore able to deduct in 2007, the actual mining taxes paid in the amount of $25 in respect of that taxation year. New paragraph 3900(2)(c) permits the deduction of $6 of interest in 2014.
4. The 2008 and 2009 taxation years are statute-barred and therefore the deduction of both the eligible taxes and interest in respect of those years is permitted by amended paragraph 3900(2)(b) and new paragraph 3900(2)(c) only in 2014, the year of payment.
5. The 2010 taxation year was not beyond the normal reassessment period in 2014, at the time of the conclusion of the audit of mining operations of XCo by the province. The return of income for XCo's 2010 taxation year was reassessed to allow for the deduction of the eligible taxes. The new paragraph 3900(2)(c) permits the deduction of $1 of interest paid in 2014.

Clause 58
Prescribed rate of interest

ITR
4301

Paragraph 4301(b.1) of the Regulations prescribes the rate of interest that applies for the purposes of subsection 17.1(1) of the Act. The French version is amended to correct a typographical error by replacing the words “selon le sous-alinéa a)(i)” with “selon l’alinéa a)” and by adding the words “au sous-alinéa (i) de cet alinéa”. This error occurred when the provision was enacted effective March 29, 2012.

This amendment is deemed to have come into force on March 29, 2012.

Clause 59
Pension Benefit Guarantee Fund

ITR
4802(1)(f.1)

New paragraph 4802(1)(f.1) of the Regulations adds the Pension Benefit Guarantee Fund (established under the *Pension Benefits Act* of Ontario), and any corporation established to invest the assets of the Pension Benefit Guarantee Fund, to the list of prescribed persons who are permitted to invest in tax-exempt pension corporations.
This amendment applies to 2022 and subsequent taxation years.

Clause 60
Qualified investments for registered plans

ITR
4900(1)

Part 49 of the Regulations sets out a list of qualified investments for trusts governed by registered savings plans (e.g., registered retirement savings plans, tax-free savings accounts, among others).

Subsection 4900(1) is amended, by adding paragraph (i.14), so that qualified investments (for registered plans) include economic development corporations and corporations and venture capital corporations that are registered under Alberta’s *Investing in a Diversified Alberta Economy Act*.

The amendment comes into force on April 14, 2016.

ITR
4900(2)

Subsection 4900(2) of the Regulations is amended in two ways. First, the reference to “Fitch, Inc.” is replaced by a reference to “Fitch Ratings, Inc.”, to reflect a legal name change of one of the credit rating agencies that may determine if certain investments are “qualified investments” for registered plans. Second, paragraph (f) is added to recognize the foreign subsidiaries and affiliates that perform credited rating services in jurisdictions outside Canada on behalf of the credit rating agencies listed in paragraphs 4900(2)(a) to (e).

This amendment comes into force on Announcement Date.

Clause 61
Prescribed distributions

ITR
5600

Section 5600 of the Regulations prescribes foreign spin-off distributions for the purpose of the foreign spin-off tax-deferred distribution rule in section 86.1. Section 86.1 requires that various conditions be met before a distribution is considered to be an “eligible distribution”. The various conditions ensure, among other things, that Canadian shareholders of foreign corporations are not treated more favourably with respect to a foreign distribution than Canadian shareholders receiving similar distributions from a Canadian corporation.

Certain distributions under the U.S. *Internal Revenue Code* are considered acceptable without the need for prescription. Because there is not the same familiarity with the way in which other countries approach the taxation of spin-off transactions, there is an additional requirement that a non-U.S. foreign spin-off be prescribed. Section 5600 is amended to prescribe the following:

- The distribution by Svenska Cellulosa Aktiebolaget SCA (publ), on June 15, 2017 to its common shareholders, of common shares of Essity Aktiebolag (publ). Each corporation is a resident of Sweden.
- The distribution by Modern Times Group MTG AB, on March 28, 2019 to its common shareholders, of common shares of Nordic Entertainment Group AB. Each corporation is a resident of Sweden.
- The distribution by Novartis AG, on April 9, 2019 to its common shareholders, of common shares of Alcon Inc. Each corporation is a resident of Switzerland.

This amendment is deemed to have come into force on June 15, 2017.

Clause 62
Medical expense tax credit

ITR
5700

Paragraph 5700(z.3) of the English version of the Regulations is amended to correct a typographical error.

Clause 63
Foreign affiliates – packaging of assets for sale

ITR
5907(2.01)

Subsection 5907(2.01) of the Regulations is intended to apply to transactions that would otherwise be structured as direct asset sales between a foreign affiliate of a taxpayer and an arm's length party but that are instead, for foreign commercial reasons, structured or "packaged" as share sales. In certain circumstances, subsection 5907(2.01) overrides the tax rollover exceptions in subparagraphs 5907(2)(f)(ii) and (j)(iii) and subsection 5907(5.1). Where subsection 5907(2.01) applies, it ensures that any unrealized value in packaged assets to be disposed of to an arm's length purchaser will be eligible for surplus recognition when transferred between foreign affiliates of the taxpayer. For existing subsection 5907(2.01) to apply, among other things, the only consideration received in respect of the transfer of the packaged assets between the affiliates must be shares of a foreign affiliate of the taxpayer.

Subsection 5907(2.01) is amended in two ways. First, it is amended to clarify that the shares received as consideration for the packaged assets by the transferor must be shares of the transferee. Second, paragraph 5907(2.01)(a) is amended to relax the conditions for the application of subsection 5907(2.01), to allow the consideration received by the transferor to include an assumption of debts that arise in the ordinary course of the business to which the transferred assets relate.

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

Foreign affiliates – deductions in computing income or loss from an active business

ITR
5907(2.7)

In general terms, subsection 5907(2.7) of the Regulations provides that, where amounts are included under subparagraph 95(2)(a)(i) or (ii) of the Act in computing the income or loss from an active business of a particular foreign affiliate and these amounts are in respect of amounts paid or payable to the particular affiliate by a payer that is another foreign affiliate (or a partnership of which the other affiliate is a member), the amounts paid or payable to the particular affiliate by the payer are required to be deducted in computing the payer's earnings or loss from an active business (unless they have already been deducted under paragraph 5907(2)(j)) for the earliest taxation year in which the amounts were paid or payable.

Subsection 5907(2.7) is amended, consequential on the introduction of new subsection 95(3.03) of the Act, to provide that amounts paid or payable by a payer affiliate are also to be deducted in computing the payer's earnings or loss from an active business for the earliest taxation year in which the amounts were paid or payable where an amount in respect of those amounts paid or payable is not included in

computing the foreign accrual property income of a foreign affiliate of a taxpayer because of subsection 95(3.03) of the Act. This amendment ensures symmetry in the treatment of the payer and payee affiliates in cases where subsection 95(3.03) applies. For more information, see the commentary on subsection 95(3.03) of the Act.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2016.

Clause 64
Prescribed share

ITR
6204(1)

Subsection 6204(1) of the Regulations sets out the requirements for a share to be a prescribed share for the purposes of the deduction under paragraph 110(1)(d) of the Act.

Paragraph 6204(1)(b) is amended to expand the listed exceptions to the requirement that the corporation or a specified person (within the meaning assigned by subsection 6204(3)) in relation to the corporation cannot reasonably be expected to, within two years after the time the share is sold or issued, redeem, acquire or cancel the share in whole or in part, or reduce the paid-up capital of the corporation in respect of the share. Specifically, new subparagraph 6204(1)(b)(iv) provides that a share is not precluded from being a prescribed share where the redemption, acquisition or cancellation of the share of the corporation, or the reduction in the paid-up capital of the corporation in respect of the share, arises as a consequence of an exchange to which subsection 51(1) of the Act applies or a disposition to which subsection 86(1) of the Act applies, if the corporation provides no consideration for the share other than shares of the capital stock of the corporation that are prescribed shares.

This amendment applies to the 2012 and subsequent taxation years.

Clause 65
Prescribed venture capital corporation

ITR
6700

Paragraph 12(1)(x) of the Act provides that certain inducements, reimbursements, contributions, allowances and assistance received by a taxpayer in the course of earning income from a business or property must be included in income to the extent that the particular amounts have not otherwise been included in income or reduced the cost of the property or the amount of an outlay or expenses.

Among other things, an exception to this treatment is provided for financial assistance received for the acquisition of shares of a prescribed venture capital corporation listed in section 6700 of the Regulations.

Section 6700 is amended to add references to include:

- corporations (including incorporated cooperative associations) registered under section 2 of Prince Edward Island's *Community Economic Development Equity Tax Credit Act*; and
- eligible business corporations and venture capital corporations registered under Alberta's *Investing in a Diversified Alberta Economy Act*.

The amendment adding a reference to entities registered under Prince Edward Island's program is effective from August 1, 2011, when the program commenced.

The amendment adding a reference to entities registered under Alberta's program is effective as of April 14, 2016, when the program commenced.

Clause 66
Prescribed labour-sponsored venture capital corporations

ITR
6701

Section 6701 provides a definition of the term "prescribed labour-sponsored venture capital corporation" for the purposes of certain sections of the Act.

Section 6701 is amended to remove the reference to Ontario's *Community Small Business Investment Funds Act*, given that the government of Ontario has eliminated its labour-sponsored venture capital corporation program.

This amendment comes into force on Announcement Date.

Clause 67
Prescribed plan or arrangement

ITR
6802

Section 6802 of the Regulations sets out the list of prescribed plans or arrangements that are excluded from the definition "retirement compensation arrangement" in subsection 248(1) of the Act.

Section 6802 is amended by adding a new paragraph (i) to prescribe the pension deficit funding trust and the partnership established under a 2017 court-sanctioned plan of arrangement for U.S. Steel Canada Inc. under the *Companies' Creditors Arrangement Act*. Accordingly, that trust and partnership are prescribed to be excluded from the definition "retirement compensation arrangement".

This amendment comes into force on June 1, 2017.

Clause 68
Accrued interest on debt obligations

ITR
7000(1)(c)

Paragraphs 7000(1) (a) to (d) of the Regulations describe debt obligations that are prescribed debt obligations for the purposes of subsection 12(9) of the Act. Where a taxpayer has acquired an interest in a prescribed debt obligation, an amount determined in a manner prescribed under subsection 7000(2) is deemed to accrue as interest on the debt obligation in each taxation year in which the taxpayer holds an interest in the obligation.

Paragraph 7000(1)(c) describes a debt obligation with an increasing interest rate, other than one described under paragraph (a) or (b). Paragraph 7000(2)(c.1) applies to prescribe the manner by which to determine the amount deemed to accrue annually as interest on such obligation where certain conditions are met, including that the rate of interest stipulated to be payable in respect of each period throughout which the obligation is outstanding be fixed at the date of issue.

Paragraph 7000(1)(c) is reorganized and amended by adding two new subparagraphs. Under new subparagraph (c)(i), a debt obligation described under paragraph (a) or (b) will continue to be excluded from the type of debt obligations described under paragraph (c). A new exclusion is made under subparagraph (c)(ii) for a debt obligation that is issued by, or by an agency of, the Government of Canada or a province and in respect of which paragraph (2)(c.1) would otherwise apply.

This amendment applies to debt obligations issued on or after October 16, 1996.

Clause 69
Prescribed intermediate zone

ITR
7303.1(2)

Individuals who live in prescribed areas in northern Canada for at least 6 consecutive months in a year may claim the Northern Residents Deductions for that year under section 110.7 of the Act. Section 7303.1 of the Regulations describes those areas of northern Canada.

Subsection 7303.1(2) of the Regulations is amended to add a reference to Haida Gwaii, consequential to the Queen Charlotte Islands being renamed in 2010.

Clause 70
Interpretation

ITR
8300(1)

“excluded contribution”
The definition “excluded contribution” in subsection 8300(1) of the Regulations describes certain amounts transferred to an RPP that are disregarded in determining pension credits under a money purchase provision or under a defined benefit provision of a specified multi-employer plan. The definition is amended to add a reference to paragraph 60(j.1) of the Act, such that an amount transferred in accordance with that paragraph to an RPP is an excluded contribution.

This amendment comes into force on Announcement Date.

“period of reduced services”
The definition “period of reduced services” in subsection 8300(1) of the Regulations is amended to replace the reference to “temporary absence” with a reference to “eligible period of temporary absence”, a defined term in subsection (1).

For more information, see the commentary for section 8507 of the Regulations.

This amendment comes into force on Announcement Date.

Clause 71
Past service benefits

ITR
8304(5.1)(b) and (g)

Subsection 8304(5.1) of the Regulations contains conditions to be satisfied in order for the modified PSPA rules in subsection 8304(5) to apply in determining an individual's provisional PSPA.

If the past service period was pensionable service under a former defined benefit provision immediately before the past service event, paragraph 8304(5.1)(b) requires that the individual cease to be a member in relation to a former defined benefit provision at the time of the past service event or, where a certification of the CRA is required in connection with the past service benefits, within 90 days after certification.

Paragraph 8304(5.1)(g) defines a “money purchase transfer” in relation to an individual and a past service event. This definition is relevant in determining variable C in the modified PSPA formula in subsection 8304(5).

Paragraphs 8304(5.1)(b) and (g) are amended to ensure that:

- the modified PSPA calculation in subsection 8304(5) will apply in instances where an individual has not ceased to be a member of the former defined benefit provision merely because paragraph 8503(3)(a)(v.1) requires the property to be transferred to the new pension plan in two or more stages; and
- the balance of property that is required to be transferred to the new pension plan will not constitute a “money purchase transfer” for the first past service event.

For example, assume that an individual joins the pension plan of a new employer in 2018 and that: (i) the individual has 10 years of pensionable service under the former pension plan; (ii) the present value of the benefit entitlement in the former plan is $100,000, (iii) the new pension plan is willing to provide credit for the 10 years of past service; (iv) the former employer’s plan has a funded ratio of 80 per cent; (v) the provincial pension standards legislation restricts the initial transfer to $80,000 (80 per cent of the present value); and (v) the $20,000 balance is transferred to the new employer’s pension plan in 2022 when the plan has become 100 per cent funded.

In that example, the new employer’s pension plan would credit 8 years of past pensionable service in 2018 (upon receipt of $80,000) and would credit 2 years of past pensionable service in 2022 (upon receipt of $20,000). For the purposes of determining a “money purchase transfer” associated with the 2018 past service event, the $20,000 not transferred in 2018 is not included.

These amendments apply to past service events that occur after 2012.

Clause 72
Annual information returns

ITR
8409

Subsection 8409(1) of the Regulations is amended to reflect the new name of Ontario's pension regulatory authority.

Subsection 8409(2) of the Regulations is amended to update the list of provincial regulators of registered pension plans that have entered into an agreement with the CRA to require that plan administrators annually file a joint information return in respect of the plan. New paragraphs (f) to (j) add five additional provincial pension regulators that have entered into agreements with the CRA regarding annual information returns.

This amendment is deemed to have come into force on June 8, 2019.

Clause 73
Interpretation

ITR
8500(1)

"consumer price index"
The definition "consumer price index" in subsection 8500(1) of the Regulations is amended to clarify that the index "for Canada" is the appropriate index for purposes of Part 85 of the Regulations.

This amendment comes into force on Announcement Date.

"eligible period of reduced pay"
Paragraph (a) of the definition "eligible period of reduced pay" in subsection 8500(1) of the Regulations is amended to require three months of employment by a member (instead of 36 months) before prescribed amounts of compensation (paragraph (b) of the definition "compensation" in subsection 147.1(1) of the Act) can be included in respect of the member for the period, subject to section 8507 of the Regulations.

This amendment comes into force on January 1, 2022.

Clause 74
Conditions applicable to registered pension plans

ITR
8502(b)(v.1)

Paragraph 8502(b)(v.1) is amended consequential on new paragraph 6802(i) of the Regulations to permit a trust described in paragraph 6802(i) (*i.e.* a pension deficit funding trust) to make contributions to RPPs sponsored by U.S. Steel Canada Inc.

This amendment comes into force on June 1, 2017.

Assignment of rights

ITR
8502(f)

Paragraph 8502(f) requires an RPP to include a stipulation that no right of a person under the plan is capable of being assigned, charged, anticipated, given as security or surrendered. A number of exceptions are listed.

Subparagraph 8502(f)(ii) is split into clause (A) which preserves an existing exemption for a reduction of benefits to avoid plan revocation and a new clause (B) to permit a dependant (as defined in subsection 8500(1)) of a deceased plan member to relinquish an entitlement to survivor benefits. For example, provincial pension standards legislation often permits a surviving spouse to relinquish an entitlement to survivor benefits so that children of the deceased member may become entitled to benefits.

This amendment comes into force on Announcement Date.

Clause 75
Defined benefit provisions

ITR
8503(2)(o)

Subsection 8503(2) of the Regulations describes, for the purposes of paragraph 8502(c), the benefits that may be provided under a defined benefit provision of an RPP and imposes conditions with respect to those benefits.

New paragraph 8503(2)(o) permits a defined benefit plan to provide retirement benefits (generally for a short fixed period) to replace retirement benefits that otherwise would have been payable under the provision to an individual who is a plan member or surviving spouse (or common-law partner). Three conditions must be satisfied in order for benefits under paragraph (o) to be payable. First, a medical doctor or nurse practitioner must certify that the individual has a significantly shortened life expectancy. Second, the retirement benefits payable under paragraph (o) must replace retirement benefits that otherwise would have been payable to the member or surviving spouse (*e.g.* lifetime retirement benefits). Third, the present value of the benefits must not exceed the present value of the benefits being replaced.

This amendment is deemed to have come into force on September 30, 2015.

IPP – minimum withdrawal

ITR
8503(26)

Under subsection 8503(26) of the Regulations, an individual pension plan becomes a revocable plan at the end of a year if the amount paid to each member or beneficiary under the plan who had attained 71 years of age before the year is less than the “IPP minimum amount” (as defined in subsection 8500(1)). Specifically, the amount paid to each such individual must not be less than the greater of the retirement benefits payable to the individual and the IPP minimum amount.

Where the IPP minimum amount is greater than the retirement benefits, it was not intended (when the new condition was introduced in 2012) that paying amounts greater than retirement benefits would cause the plan to have a funding deficit at the end of the year. Accordingly, paragraph 8503(26)(c) is amended such that the amount determined under that paragraph is the lesser of the IPP minimum amount and the actuarial surplus under the plan at the beginning of the year.

This amendment applies to the 2012 and subsequent taxation years.

Clause 76
Variable payment life annuity

ITR
8506(1)(e.2)

Paragraph 8506(1)(e.2) of the Regulations sets out the conditions that must be met for variable payment life annuity (VPLA) benefits to be considered permissible under a money purchase provision of a registered pension plan.

Clause 8506(1)(e.2)(iii)(A) is amended in two ways. First, the reference to “retirement benefits” (payable in periodic amounts) is replaced by a reference to “benefits” to reflect that some of the permissible VPLA benefits are lump sum benefits. Second, the reference to benefits payable under paragraph 8506(1)(g) is removed. Accordingly, the sole type of lump sum benefit payable from a VPLA fund to the survivor of a deceased member is a commuted benefit payable to a survivor, as described in paragraph 8506(1)(i). This amendment comes into force on January 1, 2020.

Clause 77
Periods of reduced pay

ITR
8507

Subparagraph 8507(3)(a)(i) is amended to replace the reference to “temporary absence” with a reference to “eligible period of temporary absence”, a defined term in subsection 8300(1).

This amendment comes into force on Announcement Date.

ITR
8507(3)(b)

Paragraph 8507(3)(b) of the Regulations defines a “period of parenting” for the purposes of the computation of prescribed compensation under subsection 8507(2). That paragraph is amended to expand the eligible period to 18 months (from the previous reference to 12 months) after the birth or adoption of a child, to complement recent changes to the *Employment Insurance Act* that provide benefit coverage for up to 18 months of parenting leave.

This amendment is deemed to have come into force on December 3, 2017.

ITR
8507(7)(b)

Paragraph 8507(7)(b) is amended to replace the reference to “temporary absence” with a reference to “eligible period of temporary absence”, a defined term in subsection 8300(1).

This amendment comes into force on Announcement Date.

Clause 78
Designated laws

ITR
8513

Section 8513 of the Regulations is amended to reflect a reorganization of section 21 in the *Pension Benefits Standards Act*. Specifically, the reference to “subsection 21(2)” of that Act is replaced by a reference to “section 21”.

This amendment is deemed to come into force on July 1, 2011.

Clause 79
Prohibited investments

ITR
8514

Subsection 8514(2) of the Regulations sets out a number of exceptions to the list of prohibited investments for RPPs.

New subparagraph (f) provides an exception for RPPs that are not individual pension plans (as defined in subsection 8500(1) of the Regulations). If the principal activity of an employer who participates in the RPP is to manage the investments or provide investment advice to the entities described in subparagraphs (f)(i) to (iii), the RPP will generally not be prohibited from investing in the shares or debt of a person (or having an interest in a partnership) that operates at non-arm’s length from that employer (the investment manager or advisor). For example, where an RPP deals with (often controls) an investment management company whose employees are members of the RPP and where that investment manager does not legally deal at arm’s-length from pooled funds or partnerships that it has created, new paragraph 8514(2)(f) will not prohibit the RPP from investing in those funds and partnerships.

This amendment is deemed to come into force on June 1, 2017.

Clause 80
Prescribed payment card corporation share not mark-to-market property

ITR
9002.1

Section 9002.1 prescribes, for the purposes of paragraph (b) of the definition “excluded property” in subsection 142.2(1) of the Act, certain property as prescribed payment card corporation shares.

A prescribed payment card corporation share of a taxpayer at any time means a share of the capital stock of a particular corporation if, at that time, the particular corporation is MasterCard International Incorporated, MasterCard Incorporated, or Visa Inc. (listed in paragraph 9002.1(a)), and the share meets the following conditions (listed in paragraph 9002.1(b)):

- it is of a class of shares that is not listed on a stock exchange;
- it is not convertible into or exchangeable for a share of the class of the capital stock of a corporation that is listed on a stock exchange; and
- it was issued by the particular corporation to the taxpayer or to a person related to the taxpayer.

Paragraph 9002.1(a) is amended to provide that a share of Interac Corp. may qualify as a prescribed payment card corporation share when the share meets the conditions listed in paragraph 9002.1(b).

This amendment comes into force on January 29, 2018.