## Preface

These explanatory notes describe proposed amendments to the Income Tax Act and other legislation. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance

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

**Table of Contents**

# Income Tax Act and Income Tax Regulations

## Amendments to the *Income Tax Act* (the "Act" or "ITA") and the *Income Tax Regulations* (the "Regulations" or "ITR")

## Tax-Free First Home Savings Account

**Clause 1**

**Limitation**

ITA
18(11)(k)

Subsection 18(11) of the Act prohibits the deduction of interest expenses in respect of indebtedness incurred for the purposes of making a contribution to a registered retirement savings plan or certain other deferred income plans.

Paragraph 18(11)(k) is added to extend the prohibition on interest deductibility to money borrowed by an individual to make a contribution to a first home savings account. This change is consequential on the introduction of new section 146.6, which contains the main rules relevant to first home savings accounts.

This amendment comes into force on January 1, 2023.

**Clause 2**

**Amounts to be included in income for year**

ITA
56(1)(z.6)

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

New paragraph 56(1)(z.6) provides for the inclusion in computing a taxpayer's income for a taxation year of amounts required to be included in income under new section 146.6.

For more information, see the commentary on new section 146.6 that applies to first home savings accounts.

This amendment comes into force on January 1, 2023.

**Clause 3**

**Premium or payment**
ITA
60(i)

Section 60 lists amounts that may be deducted in computing a taxpayer's income. Paragraph 60(i) permits a deduction in respect of amounts that are deductible under section 146 (RRSP rules), subsection 146.3 (RRIF rules) or subsection 147.3(13.1).

Paragraph 60(i) is amended to add a reference to new section 146.6 of the Act that applies to first home savings accounts (FHSA). As a result, contributions to a FHSA that qualify for a deduction in accordance with the conditions set out in section 146.6 will be deductible under section 60.

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on January 1, 2023.

**Clause 4**

**Sections 74.1 to 74.3 not applicable**

ITA
74.5(12)

Subsection 74.5(12) sets out a list of specified transfers of property that are exempt from the spousal attribution rules under sections 74.1 to 74.3.

Subsection 74.5(12) is amended by adding paragraph (d) to exempt contributions to a first home savings account (FHSA) from the spousal attribution rules. If a holder of a FHSA makes a contribution to the FHSA from funds gifted by a spouse or common-law partner, then for future income inclusion purposes (i.e. when amounts are withdrawn from the FHSA), no portion of such contribution would be attributed back to the non-holder spouse who made the gift.

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on January 1, 2023.

**Clause 5**

**Transfer of funds**

ITA

146(16)

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

Consequential on the introduction of first home savings accounts (FHSA) under new section 146.6, subsection 146(16) is amended in two ways. First, paragraph (a.2) is added to permit an RRSP annuitant to transfer an amount from the RRSP to a FHSA under which the annuitant is the holder. However, paragraph (a.2) does not apply to an amount that would have been subject to the spousal attribution rule in subsection 146(8.3) if, instead of transferring the amount from an individual's RRSP to their FHSA, the amount had been paid directly to the individual. This limits the ability for amounts to be transferred on a tax-free basis from an individual's RRSP to their FHSA if spousal contributions have been made to the RRSP in the current year or two preceding years.

Second, paragraph (d) is amended to ensure that amounts transferred from an RRSP to a FHSA are not deductible when computing the income of a taxpayer under Part 1 of the Act, including not deductible under new section 146.6.

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on January 1, 2023.

**Clause 6**

**Home Buyers' Plan**

ITA
146.01(1)

**"regular eligible amount"**
**"supplemental eligible amount"**

The definitions "regular eligible amount" and "supplemental eligible amount" under subsection 146.01(1) of the Act are amended such that a taxpayer may not benefit from the tax rules applicable to the Home Buyers' Plan in respect of a particular qualifying home if the taxpayer made a qualifying withdrawal from a first home savings account in respect of that particular qualifying home.

These amendments come into force on January 1, 2023.

**Clause 7**

**Registration conditions for RRIF**

ITA
146.3(2)(f)

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

Paragraph 146.3(2)(f) is amended as a consequence of the introduction of rules applicable to first home savings accounts (FHSA). New subparagraph 146.3(2)(f)(x) will permit transfers in accordance with subsection 146.6(6) to a RRIF from a FHSA under which the RRIF annuitant is the holder.

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on January 1, 2023.

**Clause 8**

**First Home Savings Account**

ITA
146.6

New section 146.6 of the Act provides the general tax framework applicable to first home savings accounts (FHSA), including registration conditions, contribution limits, deductions of contributions, transfers to RRSPs or RRIFs, qualifying withdrawals to purchase a qualifying home, and rules related to successor holders or beneficiaries in the event of the death of a FHSA holder.

For information on taxes applicable to overcontributions made to a FHSA, see the commentary on amendments to Part XI.01 of the Act.

New section 146.6 comes into force on January 1, 2023.

**Definitions**

ITA
146.6(1)

New subsection 146.6(1) of the Act defines terms that are relevant for the purposes of new section 146.6.

**“beneficiary”**

The definition “beneficiary" refers to any individual (including an estate) or a qualified done (e.g., a registered charity) who will receive the proceeds of a FHSA after the death of the holder.

**“first home savings account or FHSA”**

“First home savings account or FHSA” is defined as an arrangement that has been registered with the Minister of National Revenue and has not ceased to be a FHSA pursuant to subsection 146.6(13).

**“FHSA carryforward”**

The definition "FHSA carryforward" measures the amount of unused "FHSA deduction limit" for FHSA contributions (and transfers from an RRSP) that an individual may carryforward from any particular year to use in future years.

An individual only begins to accumulate a FHSA carryforward once they have started their "maximum participation period" by opening their first FHSA. The FHSA carryforward is also limited to $8,000, which is the equivalent of a maximum "FHSA deduction limit" for a single year.

Subject to these limitations, the FHSA carryforward for a particular year is generally equal to the amount that an individual could contribute (or transfer from an RRSP) under the FHSA deduction limit in the previous year less actual contributions (or RRSP transfers). This is calculated by the formula A – B where:

A is the amount determined in paragraph (b) of the definition FHSA deduction limit for the preceding taxation year; and

B is the amount determined in paragraph (a) of the definition FHSA deduction limit for the preceding taxation year.

In general, variable A is the maximum amount that an individual could contribute to a FHSA during the previous year ($8,000 plus the previous year FHSA carryforward) less any transfers to a FHSA from an RRSP. Variable B is generally equal to contributions (without regard to transfers from RRSP) to a FHSA during the previous year.

**“FHSA deduction limit”**

The definition “FHSA deduction limit” determines the amount an individual may deduct, from contributions to a FHSA, in computing the individual’s income for a particular taxation year until the individual has died or their “maximum participation period” has ended. An individual is also prevented from deducting any contributions that occur after a qualifying withdrawal has been made.

An individual may contribute, or transfer from an RRSP, a combined maximum of $8,000 in a year. However, for deduction purposes, amounts transferred from an RRSP to a FHSA are not

deductible as FHSA contributions (this is because amounts contributed to an RRSP would generally already have been deductible in accordance with RRSP rules). Accordingly, for the purpose of calculating an individual's FHSA deduction limit, the $8,000 maximum amount is first reduced by transfers from RRSPs made during the year (or RRSP transfers from previous years to the extent that the transfers exceeded the available maximum FHSA deduction limit in previous years).

After accounting for RRSP transfers (if any) an individual may deduct any contributions to a FHSA made during the year up to the remaining FHSA deduction limit. An individual may also deduct any previous year's contributions, up to the amount of the maximum annual FHSA deduction limit, to the extent that the contributions exceeded the available maximum FHSA deduction limit in previous years.

Finally, overcontributions to a FHSA that have been reduced with a "designated amount" withdrawal are removed from contributions, or transfers, respectively in the FHSA deduction limit (see commentary on the definition "designated amount" in subsection 207.01(1)).

To accomplish the foregoing, the definition FHSA deduction limit determines the FHSA deduction limit with formulas. The FHSA deduction limit for a particular taxation year is the lesser of paragraphs (a), (b) and (c) of the definition.

Paragraph (a) determines the amount of contributions with the formula A + B – C where

> A is the total contributions made to a FHSA in the year by a taxpayer, excluding contributions made after a qualifying withdrawal;
>
> B is generally the amount by which the contributions made to a FHSA in the preceding year (reduced by designated amounts) exceeded the FHSA deduction limit for the preceding year; and
>
> C is an amount withdrawn in the year as a designated amount to correct an excess FHSA amount. This amount is removed from the FHSA deduction limit, effectively reversing an overcontribution that resulted from a contribution (excluding transfers from RRSPs) to a FHSA.

Paragraph (b) sets the maximum deduction limit at $8,000 plus any "FHSA carryforward". This amount may be reduced where amounts have been transferred into the FHSA from an RRSP. This is accomplished through the formula $8,000 + D – (E – F – G) where:

> D is the FHSA carryforward for the year (see the additional commentary related to that definition);
>
> E is the total of all amounts transferred to a FHSA from an RRSP at any time during or before the particular taxation year;
>
> F is the sum of amounts, one for each preceding taxation year, determined as follows:

- If the individual did not have a FHSA in the year, that year's amount is nil; or
- Otherwise, the lesser of $8,000 and the amount determined by the formula H – I, where H is the preceding taxation year's variable E, and I is the preceding year's variable F.

G is the total of all amounts transferred back to an RRSP at any time as a designated amount to correct an excess FHSA amount. This amount is removed from the FHSA deduction limit, effectively reversing an overcontribution that resulted from a transfer to a FHSA from an RRSP.

Paragraph (c) provides that an individual's FHSA deduction limit is nil after their death or after their maximum participation period has ended.

The definition FHSA deduction limit is used in subsection 146.6(5) which sets out the rules regarding deductions of contributions to a FHSA.

**"holder"**

The "holder" of an arrangement is, until the death of the individual who entered into the arrangement with the issuer, that individual. Upon the individual's death, the individual's survivor may become the holder if the individual had designated the survivor to be the successor holder and if the survivor is a qualifying individual.

See the commentary for the definition "qualifying individual" in subsection 146.6(1).

The definition "holder" is used throughout section 146.6, subsection 207.01(1), and other parts of the Act where it is necessary to refer to the individual that a FHSA belongs to. The definition "qualifying individual" determines who may be a "holder" of a FHSA. If an individual is designated as a survivor and is not a qualifying individual they must transfer or withdraw funds from the FHSA under subsection 146.6(10). For more information see the commentary for the definition "qualifying individual" in subsection 146.6(1) and subsection 146.6(10).

**"issuer"**

The "issuer" of an arrangement is the person described as the issuer in the definition "qualifying arrangement", that is, the trust company, licensed annuities provider, member of the Canadian Payments Association or credit union with which the individual referred to in that definition has entered into the arrangement.

**"maximum participation period"**

An individual's "maximum participation period" sets out the time period during which an individual may have a FHSA.

An individual's maximum participation period begins when the individual opens their first FHSA. It ends at the end of the year following the year in which the earliest of the following events occur:

- the 14th anniversary of the date the individual first opened their FHSA,
- when the individual turns 70 years old, and
- the individual first makes a qualifying withdrawal from a FHSA.

For example, if a thirty year-old individual first opens an FHSA during 2023, their maximum participation period will end at the end of 2038. However, if that individual makes a qualifying withdrawal from their FHSA during 2028, their maximum participation period will end at the end of 2029.

The definition “maximum participation period” is relevant primarily for:

- the definition “FHSA deduction limit”,
- the definition of “FHSA carryforward”,
- the qualifying arrangement conditions in subsection 146.6(2), and
- determining when an arrangement ceases to be a FHSA in subsection 146.6(13).

For more information see the commentary on the relevant subsections.

**“non-qualified investment”**

The definition “non-qualified investment” is added, consequential on the extension of the definition “qualified investment” in subsection 207.01(1) to FHSAs, to create a cross-reference to the definition “non-qualified investment” in subsection 207.01(1).

**“qualified investment”**

The definition “qualified investment” is added, consequential on the extension of the definition “qualified investment” in subsection 207.01(1) to FHSAs, to create a cross-reference to that definition.

**“qualifying arrangement”**

The definition “qualifying arrangement” sets out a number of conditions that must be met for an arrangement to be a qualifying arrangement at any particular time. Together, this definition and subsection (2) essentially provide the requirements that must be met for an arrangement to be a FHSA.

Paragraph (a) requires that the arrangement be entered into after 2022, and that it be between a “qualifying individual” (see commentary on that definition for more information) and an “issuer”.

Paragraph (b) requires that the arrangement be one of three types:

- An arrangement in trust with a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.
- An annuity contract with a licensed annuities provider. “Licensed annuities provider” is defined in subsection 248(1).
- A deposit with a person who is (or is eligible to become) a member of the Canadian Payments Association or who is a credit union that is a shareholder or a member of a body corporate referred to as a “central” in the *Canadian Payments Act*.

Paragraph (c) requires that the arrangement provide for contributions to be made under the arrangement to the issuer in consideration of, or to be used, invested or otherwise applied for the purpose of, the issuer making distributions under the arrangement to the holder.

Paragraph (d) requires that the issuer and the individual agree, at the time the arrangement is entered into, that the issuer will file with the Minister of National Revenue (“the Minister”) an election to register the arrangement as a FHSA. The election must be filed in prescribed form and manner with the Minister and include the Social Insurance Number of the qualifying individual.

Paragraph (e) requires that, at all times since the arrangement was entered into, it must comply with the conditions set out in subsection 146.6(2). Refer to the commentary on that subsection for further information.

**“qualifying home”**

A “qualifying home” is defined as a housing unit located in Canada. It also includes a share of the capital stock of a cooperative housing corporation, where the holder of the share is entitled to possession of a housing unit located in Canada. However, where the context requires, such a share means the housing unit to which the share relates.

**“qualifying individual”**

A "qualifying individual" means an individual who is at least 18 years old, resident in Canada and is a first-time home buyer. An individual is considered to be a first-time home buyer if at any time in the part of the calendar year before the account is opened or at any time in the preceding four years they did not live in a qualifying home (or what would be a qualifying home if located in Canada) that they owned.

For the purpose of opening a FHSA, subparagraph (c)(ii) of the definition "qualifying individual" expands who is considered to be a first-time home buyer to individuals who lived in and had an interest in a qualifying home (or what would be a qualifying home if located in Canada), including a beneficial interest. An exception to the expanded definition is provided for individuals who have a right to acquire less than a ten per cent interest in the qualifying home.

The definition "qualifying individual" is used in the definition "qualifying arrangement". For more information see the commentary on that new definition.

**“qualifying withdrawal”**

The definition "qualifying withdrawal" sets out the conditions required for an individual to make a tax-free withdrawal from a FHSA to purchase a first home.

Paragraph (a) requires that an individual be resident in Canada and that the individual be a first-time home buyer. An individual counts as a first-time home buyer for this purpose where, during the four calendar years preceding the particular year in which the withdrawal was made, and in the period in the particular year ending 31 days before the withdrawal was made, the individual did not live in a home that they owned.

Paragraph (b) requires that the withdrawal is made via a prescribed form that sets out the location of the qualifying home that the individual intends to occupy as a principal residence within one year of acquisition of the qualifying home.

Paragraph (c) requires that an agreement be in place (before the withdrawal) to purchase or construct the qualifying home before October 1 of the year following the date of the withdrawal.

Paragraph (d) provides that the individual cannot have acquired the qualifying home more than 30 days before the withdrawal is made.

Paragraph (e) provides that a taxpayer may not make a qualifying withdrawal for a particular qualifying home from a FHSA if the individual had a “regular eligible amount” (as defined for the purpose of the Home Buyers’ Plan) in respect of that particular qualifying home. This means that an individual cannot use both a FHSA and the Home Buyers’ Plan in respect of the same home purchase.

**“survivor”**

Subsection 146.6(1) defines an individual to be a “survivor” of a qualifying individual (generally the holder of the FHSA) if the individual was, immediately before that other individual's death, a spouse or common-law partner of the qualifying individual.

An individual who is the holder of a FHSA may provide for a survivor to become the holder of the FHSA upon the individual's death. For more information about successor holders, see the commentary on new subsection 146.6(10).

**Qualifying arrangement conditions**

ITA
146.6(2)

New subsection 146.6(2) sets out the conditions referred to in paragraph (e) of the definition “qualifying arrangement” in subsection 146.6(1). In determining if an arrangement is a qualifying arrangement at a particular time, that paragraph requires that the conditions in subsection 146.6(2) be met from the time the arrangement was entered into until the particular time.

The conditions in subsection 146.6(2) are also relevant for the purposes of subsection 146.6(13) and (14), which provide that an arrangement ceases to be a FHSA at any time that it ceases to be administered in accordance with the conditions in subsection 146.6(2).

Under paragraph 146.6(2)(a), the arrangement must require that it be maintained for the exclusive benefit of the holder. For this purpose, any right of a person to receive a payment out of or under the arrangement only on or after the death of the holder is disregarded.

Paragraph 146.6(2)(b) requires that the arrangement prohibit, while there is a holder of the arrangement, anyone who is neither the holder nor the issuer of the arrangement from having rights under the arrangement relating to the amount and timing of distributions and the investing of funds. An arrangement ceases to have a holder on the death of the individual who entered into the arrangement or, if the individual's survivor acquires the individual's rights as holder of the arrangement (refer to the commentary on the definition “holder”), on the death of the survivor.

Paragraph 146.6(2)(c) requires that the arrangement prohibit anyone other than the holder from making contributions.

Paragraph 146.6(2)(d) requires that the arrangement permit distributions to be made to reduce the amount of tax that would otherwise be payable by the holder under section 207.021. That section imposes taxes on an “excess FHSA amount” (i.e., excess contributions and transfers from an RRSP). Note that new subsection 207.06(3) will allow the Minister of National Revenue to waive all or part of any such tax that arises as a consequence of reasonable error if other conditions are met.

Under paragraph 146.6(2)(e), the arrangement must provide that the issuer will, when directed to do so by the holder, transfer all or any part of the property held in connection with the arrangement (or an amount equal to its value) to another FHSA of the holder or to an RRSP or RRIF under which the holder is the annuitant.

If the arrangement is an arrangement in trust, paragraph 146.6(2)(f) requires that it prohibit the trust from borrowing for the purposes of the arrangement.

Under paragraph 146.6(2)(g), the arrangement must provide that it ceases to be a FHSA at the end of the holder’s (or successor holder’s) maximum participation period. See the commentary on the definition “maximum participation period” in subsection 146.6(1).

Paragraph 146.6(2)(h) requires that the arrangement comply with prescribed conditions. While no specific conditions are anticipated at this time, this provision will allow certain issues that arise in the implementation of FHSAs to be dealt with through regulations, as necessary.

**Trust not taxable**

ITA
146.6(3)

New subsection 146.6(3) provides that tax is not payable by a trust governed by a FHSA, unless the trust carries on a business or holds a “non-qualified investment” (as defined in subsection 207.01(1)). Under these circumstances, tax is payable by the trust on the amount that would be its income for the relevant taxation year if it had no income or losses other than from the businesses that it carried on in the year and the non-qualified investments that it held in the year, and no capital gains or capital losses other than from the disposition of its non-qualified investments. For this purpose, “income” includes dividends described by section 83 and the trust's taxable capital gain or allowable capital loss from the disposition of a property is equal to the full amount of the capital gain or capital loss from the disposition.

Paragraph (c) provides that the FHSA 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). 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 under the trust.

If an arrangement that governs a trust ceases to be a FHSA at any time, the trust loses its tax-exempt status. See the commentary on new subsection 146.6(14).

**FHSA deduction**

ITA
146.6(4)

Subsection 146.6(4) provides that an individual may deduct in computing their income for a taxation year an amount not exceeding the lesser of two amounts. The first amount, calculated in paragraph 146.6(4)(a) is the individual’s total undeducted “FHSA deduction limit” for the year and all preceding taxation years. The second amount, determined under paragraph 146.6(4)(b) is the lifetime limit of $40,000 (reduced by amounts transferred from an RRSP to a FHSA).

For more information see the commentary on the definition of “FHSA deduction limit” in subsection 146.6(1).

**Withdrawals included in income**

ITA
146.6(5)

New subsection 146.6(5) of the Act generally provides that amounts received by an individual from a FHSA are to be included in the income of the individual in the year. However, there are

three exceptions: qualifying withdrawals, a designated amount as defined in subsection 207.01(1), and amounts otherwise included in income.

Paragraph 146.6(5)(a) allows for the individual to make a tax-free withdrawal from a FHSA to purchase their first home as a qualifying withdrawal. For more information on the requirements to make a qualifying withdrawal see the commentary on the definition of “qualifying withdrawal” in subsection 146.6(1).

Paragraph 146.6(5)(b) allows an individual to make a non-taxable withdrawal (i.e., a designated amount) of excess FHSA amounts in order to correct an overcontribution. For more information on the requirements to make a designated amount withdrawal see the commentary on the definition of “designated amount” in subsection 207.01(1).

Paragraph 146.6(5)(c) provides that amounts already included in computing the income of the individual are excluded to avoid double taxation.

**Transfer of amounts**

ITA
146.6(6)

New subsection 146.6(6) provides conditions relating to the transfer of an amount from a FHSA to certain other registered vehicles. If those conditions are satisfied, new subsection 146.6(7) allows the transfer to be made on a tax-free basis.

Paragraph 146.6(6)(a) sets out the following individuals on whose behalf an amount may be transferred:

- the holder of the FHSA;
- a spouse or common-law partner or former spouse or common-law partner of the holder of the FHSA who is entitled to the amount as a result of a division of property after the breakdown of the marriage or common-law partnership; or
- the spouse or common-law partner at the date of the holder's death.

Paragraph (b) requires that the amount be transferred to the individual’s FHSA or to an RRSP or RRIF under which the individual is the annuitant.

In the case where the holder (or deceased holder) has an excess FHSA amount (as defined in subsection 207.01(1) of the Act), paragraph 146.6(6)(c) limits the transfer to an amount equal to the value of the property less the excess FHSA amount.

For more information, see the commentary on the new definition “excess FHSA amount” in subsection 207.01.

**Tax-free transfer**

ITA

146.6(7)

New subsection 146.6(7) provides for a tax-free transfer of an amount out of a FHSA if the transfer satisfies the conditions in subsection 146.6(6). Specifically, subsection 146.6(7) provides that such an amount transferred on behalf of an individual shall not be included in computing the individual's income and that no taxpayer may claim a deduction in respect of the amount.

**Taxable transfer**

ITA
146.6(8)

Subsection 146.6(8) provides rules that apply where an amount is transferred on behalf of an individual from a FHSA to a FHSA, RRSP or RRIF otherwise than in accordance with subsection 146.6(6). In this case, the amount so transferred is deemed to have been paid from the FHSA directly to the holder of the FHSA and to have been contributed by the individual who is holder or annuitant of the transferee plan to the FHSA or RRSP (including a deemed transfer to an RRSP in the case that the amount had been transferred to a RRIF), as applicable. As a consequence, the amount is included in the FHSA holder's income and the rules with respect to the deductibility of contributions to a FHSA or RRSP will apply. In addition, the special tax under Part X.1 on excess contributions to an RRSP may be payable.

**Security for a loan**

ITA
146.6(9)

New subsection 146.6(9) prevents a FHSA from being used as security for a loan. It requires the holder of a FHSA to include in their income the fair market value of any property of the FHSA that is pledged as security for a loan.

**Successor holder**

ITA
146.6(10)

New subsection 146.6(10) of the Act permits the holder’s survivor (i.e., the surviving spouse or common-law partner), if they are designated as a successor holder and are a qualifying individual (as defined in subsection 146.6(1)), to choose to keep the deceased holder’s FHSA or to transfer it to a RRSP or RRIF by the end of the year following death. If the survivor chooses to keep the deceased holder’s FHSA, the survivor is deemed to enter into a new qualifying arrangement in respect of the FHSA.

If the survivor is not a qualifying individual, then paragraph 146.6(10)(b) prohibits the survivor from becoming a successor holder, and the survivor must either transfer the FHSA property (to

an RRSP or RRIF of the survivor) or receive a taxable distribution from the deceased holder's FHSA.

**Distribution on death**
ITA
146.6(11)

New subsection 146.6(11) of the Act requires that, after the death of the holder, any individual (including the estate of the holder) who receives a distribution from the FHSA shall include the amount in computing their income for the year. Note that an election made in accordance with subsection 146.6(12) may in some cases shift the tax liability from the holder's estate to a beneficiary of the estate if conditions in that subsection are met.

**Deemed transfer or distribution**

ITA
146.6(12)

New subsection 146.6(12) of the Act deals with situations in which an amount paid from a deceased holder's FHSA to the holder's estate would have been eligible for a tax-free transfer under subsection 146.6(6) to a survivor (spouse or common-law partner), or would have been taxable to a beneficiary if the amount had been paid directly to the beneficiary from the FHSA, to the extent that the recipient has a beneficial interest under the deceased holder's estate.

New paragraph 146.6(12)(a) allows the legal representative of a deceased holder's estate and the survivor to jointly designate (via a prescribed form) to have the FHSA proceeds that were paid to the estate treated as having been transferred under subsection 146.6(6) from the FHSA of the deceased holder to a FHSA, RRSP or RRIF of the survivor.

Alternatively, new paragraph 146.6(12)(b) allows the legal representative of a deceased holder's estate and the survivor to jointly designate (via a prescribed form) to have the FHSA proceeds that were paid to the estate treated as having been paid directly to the survivor as a beneficiary. In that case, the amount is included in the survivor's income for the year in which the survivor received the payment, as required by subsection 146.6(11).

New paragraph 146.6(12)(c) deems the amount received by the legal representative (the estate) from the FHSA to be reduced for the purposes of subsection 146.6(11). As a result, the legal representative does not need to include the amount received in computing the income of the estate to the extent that the amount has been designated by either paragraphs 146.6(12)(a) or 146.6(12)(b).

**Arrangement ceasing to be a FHSA**

ITA
146.6(13)

New subsection 146.6(13) of the Act sets out the circumstances under which a FHSA will cease to be a FHSA. The FHSA will cease to be a FHSA at the earliest of the following times listed in paragraph (a):

- the end of the maximum participation period of the last holder;
- the end of the year following the year of death of the last holder;
- when the arrangement ceases to be a qualifying arrangement (as defined in subsection 146.6(1)); and
- when the arrangement ceases to be administered in accordance with the conditions set out in subsection 146.6(2).

Paragraph (b) provides discretion to the Minister of National Revenue to declare a cessation date later than the times listed in paragraph (a). This is generally meant to act as a relieving provision in appropriate circumstances.

**Rules applicable on FHSA cessation**

ITA
146.6(14)

New subsection 146.6(14) of the Act outlines the consequences of an arrangement ceasing to be a FHSA.

Paragraph 146.6(14)(a) specifies that subsection 146.6(3) stops applying to the arrangement. As a result, the former FHSA is no longer exempt from tax on its income.

In addition, under paragraph 146.6(14)(b), the taxpayer who was the holder immediately before the arrangement ceased to be a FHSA is required to include an amount equal to the fair market value of all property of the FHSA in computing their income for the taxation year.

**Regulations**

ITA
146.6(15)

New subsection 146.6(15) allows the Governor in Council to make regulations requiring issuers to file information returns relating to FHSAs. In this regard, new section 219 of the Regulations requires FHSA issuers to make annual information returns and other information returns.

**Clause 9**

**Miscellaneous exemptions**

ITA
149(1)

Section 149 of the Act provides that no tax is payable under Part I on certain persons' taxable income for a period in a taxation year during which the person is a person listed in that section.

Consequential on the introduction of rules applicable to first home savings accounts under new section 146.6, paragraph (u.4) is added to subsection 149(1) to provide a Part I tax exemption to a trust governed by a first home savings account.

This amendment comes into force on January 1, 2023.

**Clause 10**

**Withholding**
ITA
153(1)

Section 153 of the Act requires the withholding of tax from certain payments described in paragraphs 153(1)(a) to (t). The person making such a payment is required to remit the amount withheld to the Receiver General.

Consequential on the introduction of rules relating to first home savings accounts (FHSA) under new section 146.6, paragraph (v) is added to subsection 153(1) to require the withholding of tax on payments out of or under a FHSA if required by section 146.6 to be included in computing a taxpayer’s income (under subparagraph 153(1)(v)(i)).

Similarly, subparagraph 153(1)(v)(ii) requires withholding on payments out of an arrangement that ceased to be a FHSA by application of subsection 146.6(13).

This amendment comes into force on January 1, 2023.

**Clause 11**

**Joint and several liability**

ITA 160.2(2.3)

New subsection 160.2(2.3) provides that a taxpayer who receives benefits out of another person's first home savings account is jointly and severally liable for the portion of that other person's tax that is attributable to those benefits. The Minister may assess the taxpayer for such a liability under subsection 160.2(3).

ITA 160.2(4)

Subsection 160.2(4) is amended to apply to the new subsection 160.2(2.3) and to reference a holder of a first home savings account. This subsection ensures that where there are joint and severally liable taxpayers that a payment by one taxpayer will generally reduce the liability of the other.

**Clause 12**

**Taxes in respect of registered plans**

ITA
207.01(1)

Part XI.01 of the Act provides taxes that are applicable to registered plans in certain situations, such as where they hold investments that are not qualified investments for the particular plan.

Subsection 207.01(1) contains definitions that apply in Part XI.01 and in Part XLIX of the *Income Tax Regulations*. It is amended consequential on introduction of new section 146.6, which contains the main rules relevant to first home savings accounts (FHSA).

These amendments comes into force on January 1, 2023.

**"designated amount"**

The new definition "designated amount" is used in the formula in the definition "excess FHSA amount" to reduce an individual's excess FHSA amount.

A "designated amount" provides an individual the ability to correct an overcontribution to a FHSA; either by returning an amount to an RRSP or reversing a direct contribution through a tax-free withdrawal. Amounts that are withdrawn tax-free cannot be deducted under subsection 146.6(4) (for more information see commentary on that subsection). A designated amount may be withdrawn from a FHSA tax-free under paragraph 146.6(5)(b).

A "designated amount" is defined as an amount, not exceeding an individual's excess FHSA amount at a particular time, that is designated by the individual in prescribed form and manner that is either

- a transfer to an RRSP, which may only be designated to the extent it does not exceed the total amount the individual transferred from an RRSP to a FHSA prior to the particular time (paragraph (a)), or
- a withdrawal, which may only be designated to the extent that it does not exceed the total amount of direct FHSA contributions the individual has made (paragraph (b)).

For further details see commentary on the definition "excess FHSA amount" in subsection 207.01(1).

**"excess FHSA amount"**

The new definition "excess FHSA amount" is used for the special tax imposed under section 207.021 on excess FHSA contributions. The amount of the tax under section 207.021 is determined on the basis of an individual's highest "excess FHSA amount" in a particular month.

An excess FHSA amount is determined by a formula, which in principle, is simply the total of an individual's actual FHSA contributions and transfers (from an RRSP) at a particular time less the individual's contribution limits at that time.

In contrast to other registered accounts, an individual's contribution limits take into account the ability to carry forward a certain amount of unused contributions from previous years. As a result, it is necessary to calculate an individual's allowable contributions by totaling the actual amounts the individual contributed to a FHSA (including RRSP transfers) in each year, up to the annual limit of $8,000 (plus any "FHSA carryforward" as defined in subsection 146.6(1)) and the lifetime limit of $40,000.

An individual's excess FHSA amount is then reduced by the total of all taxable withdrawals and all "designated amounts" (also defined in subsection 207.01(1)). Designated amounts allow an individual to correct an excess FHSA contribution by essentially reversing a contribution or a transfer from an RRSP.

To be more precise, the excess FHSA amount is calculated for an individual at a particular time with the formula A + B – C – D – E. Variable A is the total of all of an individual's direct contributions to a FHSA, and variable B is the total of all transfers from an RRSP to a FHSA.

Variable C is the individual's total contributions and transfers up to the particular time, up to the $40,000 lifetime limit (paragraph (a)), which is calculated with an additional formula $8,000 + F + G + H - I (paragraph (b)).

In this formula the $8,000 and variable F (the "FHSA carryforward") represents the current taxation year's deductible contributions. Variable G and variable H are the total of all contributions, and RRSP transfers to a FHSA, in prior taxation years. Finally, variable I is the "excess FHSA amount" at the end of the preceding year.

In effect, variable C allows the individual's excess FHSA amount to be reduced by up to $8,000 each year to account for the individual's new FHSA room. For example, if an individual makes an overcontribution to their FHSA in December, variable C should apply to reduce their excess FHSA amount in the following January.

Variable D is the total of the individual's "designated amounts" made before the particular time.

Variable E is the total withdrawals that are taxable under subsection 146.6(5) plus amounts deemed to be included in income under subsection 146.6(14) at the cessation of the FHSA, at or before the particular time.

Designated amounts and taxable withdrawals are two ways in which an individual may take steps to reduce their "excess FHSA amount".

For further details on the tax implications of a "excess FHSA amount", refer to the commentary on section 207.021.

For further information about the "FHSA carryforward", see the commentary in subsection 146.6(1) related to that definition. For further information about “designated amounts” that reduce an excess FHSA amount, see the commentary in subsection 207.01(1) related to that definition.

**“qualified investment”**

The definition “qualified investment” in subsection 207.01(1) sets out the types of property a TFSA is permitted to hold. This definition is amended to add FHSAs. If a FHSA holds a property that is not a qualified investment, there are generally unfavourable tax consequences, in particular, there is a 1% monthly tax added under subsection 207.04.

**“registered plan”**

This definition provides a common term for the plans that are subject to Part XI.01 of the Act, namely RRIFs, RRSPs and TFSAs. This definition is amended to add FHSAs.

**Clause 13**

**Tax payable on excess FHSA amount**

ITA
207.021

Section 207.021 imposes a special tax on an individual’s excess FHSA amount. The tax is imposed on a monthly basis and is equal to one per cent of the highest excess FHSA amount during each particular month. The tax applies until such time as the excess FHSA amount is eliminated.

For more information, see the commentary on the definitions “excess FHSA amount” and “designated amount” in subsection 207.01(1).

This amendment comes into force on January 1, 2023.

**Clause 14**

**Waiver of tax payable**

ITA
207.06(3)

New subsection 207.06(3) of the Act allows the Minister of National Revenue to waive all or part of any tax on an excess FHSA amount under section 207.021 provided that the Minister is satisfied that the liability arose because of reasonable error and the individual arranges, without

delay, for an amount equivalent to the excess FHSA amount (plus any income reasonably attributable to it) to be withdrawn (or transferred to an RRSP, as the case may be).

This amendment comes into force on January 1, 2023.

**Clause 15**

**Tax on income from Canada of non-resident persons**

ITA
212(1)

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

Subsection 212(1) is amended by adding new paragraph (y) to provide that payments made to a non-resident of Canada out of a first home savings account are subject to this tax.

For more information on the rules that apply to first home savings accounts, see the commentary on new section 146.6.

This amendment comes into force on January 1, 2023.

**Clause 16**

**Definitions**

ITA
248(1)

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

**"first home savings account" or "FHSA"**

Subsection 248(1) is amended to add the definition "first home savings account" or "FHSA", consequential on the introduction of rules applicable to the first home savings account under new section 146.6 of the Act. The definition has the meaning assigned by subsection 146.6(1).

This amendment comes into force on January 1, 2023.

**Clause 17**

**Definitions**

ITR
100(1)

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” is amended to add new paragraph (q), which references a payment described in new paragraph 153(1)(v) of the Act.

This amendment is consequential on the introduction of the first home savings account under new section 146.6 of the Act. It comes into force on January 1, 2023.

For more information see the commentary on new paragraph 153(1)(v) of the Act and on subsection 103(6) of the Regulations.

**Clause 18**

**Lump sum payments**

ITR
103(6)

Subsection 103(6) of the Regulations defines a “lump sum payment” for the purposes of subsection 103(4), which sets out the amount of tax that is required to be withheld from such payments. This subsection is amended to add amounts required to be withheld under new paragraph 153(1)(v) of the Act (to the list of lump sum payments), which is either a payment out of a first home saving account (FHSA) that is included in a taxpayer’s income or a payment out of an arrangement that ceased to be a FHSA due to subsection 146.6(13). For more information see the commentary on new paragraph 153(1)(v).

This amendment is consequential on the introduction of the first home savings account under new section 146.6 of the Act. It comes into force on January 1, 2023.

**Clause 19**

**Date returns to be filed**

ITR
205(3)

Where information returns prescribed in subsection 205(3) are filed late, subsection 162(7.01) of the Act provides for a graduated penalty (lower than the standard $25 per day per information return that otherwise applies in the Act and Regulations). Subsection 205(3) is amended to add the “First Home Savings Account Annual Information Return” to the list of prescribed returns for the purposes of subsection 162(7.01).

This amendment comes into force on January 1, 2023.

**Clause 20**

**Electronic filing**

ITR
205.1(1)

Section 205.1 of the Act provides that where an information return is prescribed and where over 50 of one type of a prescribed information return is filed in a taxation year, the return must be filed electronically through the internet.

Subsection 205.1(1) is amended to add the "First Home Savings Account Annual Information Return" to the list of prescribed forms that must be electronically filed.

This amendment comes into force on January 1, 2023.

**Clause 21**

**Distribution of taxpayers' portion of returns**

ITR
209

Subsection 209(1) of the Regulations is amended to require issuers of information returns described in subsection 219(2) (FHSA slip) to send two copies of the information return to the taxpayer to which it relates.

This amendment comes into force on January 1, 2023.

**Clause 22**

**Information returns – FHSA**
ITR
219

New section 219 of the Regulations sets out the requirements for filing information returns in respect of first home savings accounts (FHSAs).

These amendments come into force on January 1, 2023.

ITR
219(1)

New subsection 219(1) requires the issuer of a FHSA to file an annual information return in respect of the FHSA. The return is required to be filed on or before the last day of February of the following calendar year (by virtue of existing subsection 205(1) of the Regulations).

ITR
219(2)

New subsection 219(2) requires the filing of an information return in respect of any of the following transactions related to a FHSA:

- The holder makes a contribution to a FHSA;
- An amount has been transferred to the FHSA from an RRSP by the holder;
- An amount is required to be included in income of a taxpayer under section 146.6 of the Act;
- The holder makes a qualifying withdrawal from the FHSA; and
- The holder designates an amount under the definition “designated amount” in subsection 207.01(1).

ITR
219(3)

New subsection 219(3) applies if, at any time, a FHSA acquires or disposes of a non-qualified investment or property held by a FHSA trust becomes or ceases to be a non-qualified investment. Subsection 219(3) requires the issuer of the FHSA to so notify the holder of the FHSA in prescribed form and manner (on or before the last day of February of the following year). This notification requirement is intended to ensure that the holder is provided with sufficient information to comply with their tax obligations under Part XI.01 of the Act in connection with the non-qualified investment. It is expected that the issuer will be required to report the same information to the CRA on the FHSA annual information return.

**Clause 23**

**Qualified investments for registered plans**

ITR
4900

Section 4900 lists a number of types of property that are prescribed to be qualified investments for trusts governed by various types of registered savings plans.

Consequential on the introduction of rules applicable to the first home savings account (FHSA) under new section 146.6 of the Income Tax Act, subsections 4900(5), (14) and (15) of the Regulations are amended by adding a reference to “FHSA” so that that the property described in those subsections will be a qualified investment if held under a FHSA.

These amendments come into force on January 1, 2023.

**Clause 24**

**First home savings account**

Canada Deposit Insurance Corporation Act (Schedule)
5(3.1)

Section 5 of the Schedule to the *Canada Deposit Insurance Corporation Act* (CDIC Act) establishes rules of deposit insurance for registered retirement savings plans, registered retirement income funds, tax-free savings accounts, registered education savings plans, and registered disability savings plans.

New subsection 5(3.1) of the Schedule to the CDIC Act introduces a new rule of deposit insurance for first home savings accounts that mirrors those in subsections 5(1) to (5) of the Schedule to the CDIC Act.

This amendment comes into force on January 1, 2023.

## Home Buyers' Tax Credit

**Clause 1**

**First-time home buyers' tax credit**

ITA
118.05(3)

Subsection 118.05(3) provides for the calculation of the non-refundable First-Time Home Buyers' Tax Credit for the taxation year in which a qualifying home in respect of the individual is acquired. The credit of $750 is determined by applying the appropriate percentage (as defined in subsection 248(1)) for the taxation year, which is currently 15%, to $5,000.

Subsection (3) is amended to double the credit to $1,500 (determined by applying the appropriate percentage for the taxation year to $10,000).

This amendment applies to the 2022 and subsequent taxation years.

## Multigenerational Home Renovation Tax Credit

**Clause 1**

**Credits – Multigenerational Home Renovation Tax Credit**

ITA
108(1.1)

Subsection 108(1) defines a testamentary trust as being a trust that arises on and as a consequence of the death of an individual, except where certain events occur that cause the trust to be re-characterized as an inter-vivos trust. One of these exceptions is where a contribution is

made to an otherwise testamentary trust. Subsection 108(1.1) excludes certain expenditures made by a beneficiary of a testamentary trust from being considered a contribution to the trust.

Subsection 108(1.1) is amended to add a “qualifying expenditure” (as defined by new subsection 122.92(1) for the purposes of the Multigenerational Home Renovation Tax Credit) made by a beneficiary of a testamentary trust. This means that a qualifying expenditure in respect of a home renovation will not be considered a contribution to the trust.

This amendment comes into force on January 1, 2023.

**Clause 2**

**Multigenerational Home Renovation Tax Credit**

ITA
122.92

New section 122.92 of the Act introduces the Multigenerational Home Renovation Tax Credit and provides a refundable tax credit that may be claimed by seniors, adult persons with disabilities and other eligible individuals in respect of the qualifying expenditures directly attributable to qualifying renovations made to an eligible dwelling.

These amendments apply to the 2023 and subsequent taxation years. Expenditures must be paid after December 31, 2022, and must be in respect of services performed or goods acquired after that date.

**Definitions**

ITA
122.92(1)

New subsection 122.92(1) of the Act sets out definitions that apply for the purpose of the Multigenerational Home Renovation Tax Credit.

**“eligible dwelling”**

An “eligible dwelling” of a qualifying individual generally means a housing unit located in Canada that is owned by the qualifying individual, or a qualifying relation of the qualifying individual. The housing unit may also be owned by a trust under which the qualifying individual or qualifying relation is a beneficiary.

To qualify for the Multigenerational Home Renovation Tax Credit for a renovation period taxation year, the housing unit must be ordinarily inhabited, or be reasonably expected to be ordinarily inhabited, within twelve months after the end of the renovation period

- by the qualifying individual, and

- by a qualifying relation of the qualifying individual.

An eligible dwelling includes the land subjacent to the housing unit and up to 1/2 hectare of contiguous land (or such greater area of land that the individual establishes is necessary for the use and enjoyment of the housing unit as a residence).

**“eligible individual”**

An “eligible individual” in respect of an eligible dwelling may claim the Multigenerational Home Renovation Tax Credit in a renovation period taxation year. In general terms, an “eligible individual” is:

a) an individual who ordinarily resides, or intends to ordinarily reside, in the eligible dwelling within twelve months after the end of the renovation period and who is
   – a qualifying individual,
   – the cohabitating spouse or common-law partner of a qualifying individual, or
   – a qualifying relation of a qualifying individual; or

b) a qualifying relation, of a qualifying individual, who
   – owns the eligible dwelling, or
   – is the beneficiary of a trust that owns the eligible dwelling.

**“individual”**

For the purposes of the rules relating to the Multigenerational Home Renovation Tax Credit, an “individual” does not include a trust.

**“qualifying expenditure”**

A “qualifying expenditure” of an individual means a reasonable outlay or expense that is made or incurred by the individual, during the renovation period, that is directly attributable to a qualifying renovation of an eligible dwelling in respect of which the individual is an eligible individual.

A qualifying expenditure includes the cost of goods acquired or services received and includes an outlay or expense for permits required for the qualifying renovation, as well as outlays or expenses for the rental of equipment used in the course of the qualifying renovation.

Certain expenditures do not qualify for the Multigenerational Home Renovation Tax Credit under this definition, including expenditures

a) for annual, recurring or routine repair or maintenance;
b) to acquire a household appliance;
c) to acquire an electronic home-entertainment device;
d) that are costs for housekeeping, security monitoring, gardening, outdoor maintenance or similar services;

e) for financing costs in respect of the qualifying renovation;
f) for goods or services provided by a person not dealing at arm's length with the qualifying individual or the eligible individual, unless the person is registered for the purposes of the Goods and Services Tax; and
g) to the extent that the outlay or expense can reasonably be considered to have been reimbursed.

Unlike the Home Accessibility Tax Credit in section 118.041, an outlay or expense made or incurred by an eligible individual for the purposes of the Multigenerational Home Renovation Tax Credit is not intended to also qualify for the Medical Expense Tax Credit under section 118.2. The same amount cannot be claimed under both credits due to the restriction in paragraph 248(28)(b) of the Act.

**"qualifying individual"**

A "qualifying individual" is an individual who is

- 65 years or older at the end of the renovation period taxation year; or
- an adult person in respect of whom an amount is deductible under subsection 118.3(1) of the Act (generally referred to as the "disability tax credit") in computing tax payable for a renovation period taxation year, or would be so entitled if the restriction for attendant care in paragraph 118.3(1)(c) were disregarded.

**"qualifying relation"**

A "qualifying relation" of a qualifying individual for a renovation period taxation year means an individual who is

- at least 18 years of age by the end of the year; and
- at any time in the year, a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece or nephew of the qualifying individual or the qualifying individual's cohabiting spouse or common-law partner.

**"qualifying renovation"**

A "qualifying renovation" means a renovation or alteration of, or addition to, an eligible dwelling of a qualifying individual that

- is of an enduring nature and integral to the eligible dwelling; and
- is undertaken to enable the qualifying individual to reside in the dwelling with a qualifying relation of the qualifying individual, by establishing a secondary unit within the dwelling for occupancy by the qualifying individual or the qualifying relation.

**"renovation period"**

A "renovation period" means a period in respect of a qualifying renovation

- that begins at the time that the municipality or local authority where the eligible dwelling is located permits or authorizes the commencement of the qualifying renovation; and
- ends at the time of completion of the qualifying renovation.

**“renovation period taxation year”**

A “renovation period taxation year” means the taxation year in which the renovation period in respect of a qualifying renovation ends.

**“secondary unit”**

A “secondary unit” means a self-contained housing unit that has a private entrance, kitchen, bathroom and sleeping area.

The secondary unit must meet applicable local requirements, if any, to qualify as a secondary dwelling unit, along with any other conditions prescribed for purposes of the Multigenerational Home Renovation Tax Credit.

**Qualifying Expenditure Rules**

ITA
122.92(2)

New subsection 122.92(2) of the Act sets out a special rule for the purpose of the Multigenerational Home Renovation Tax Credit, in cases where qualifying expenditures are incurred by a trust under which an eligible individual is a beneficiary.

Subsection (2) provides that the qualifying expenditures of an eligible individual in respect of an eligible dwelling include an outlay or expense made or incurred by a trust under which the eligible individual is a beneficiary, to the extent of the share of that outlay or expense that is reasonably attributable to the eligible dwelling, having regard to the amount of the outlays or expenses made or incurred in respect of the eligible dwelling. For this rule to apply, the outlay or expense must have been a qualifying expenditure of the eligible individual, if it had been made or incurred by that individual, and the trust has notified that individual of the amount of the outlay or expense attributable to the eligible dwelling.

**Deemed overpayment**

ITA
122.92(3)

New subsection 122.92(3) of the Act provides for the calculation of a refundable Multigenerational Home Renovation Tax Credit that may be claimed by an eligible individual who is a resident of Canada. The credit is determined as the appropriate percentage (currently defined in subsection 248(1) as 15%) of the portion of qualifying expenditures incurred by the

individual in respect of a qualifying renovation ending in the taxation year. Subject to additional limits set out under subsection 122.92(4), the total qualifying expenditures that can be claimed by an individual cannot exceed $50,000.

An individual who is not resident in Canada is not entitled to claim the credit.

**Limits**

ITA
122.92(4)

New subsection 122.92(4) of the Act sets out certain limits in relation to qualifying expenditures for purposes of the Multigenerational Home Renovation Tax Credit. Subsection (4) provides that:

- a qualifying individual is entitled to one qualifying renovation in their lifetime; and
- a maximum of $50,000 of qualifying expenditures may be claimed by all taxpayers in respect of the same qualifying renovation.

If the amount that could otherwise be claimed by two or more individuals exceeds $50,000, in total, in respect of the same qualifying individual or qualifying renovation, and the individuals cannot agree as to the amount each may claim, the Minister of National Revenue may fix the portions that they claim.

**Effect of Bankruptcy**

ITA
122.92(5)

New subsection 122.92(5) of the Act applies where an individual becomes bankrupt in a particular calendar year. It provides that, notwithstanding subsection 128(2) of the Act, any reference to the taxation year of the individual in section 122.92 is deemed to be a reference to the calendar year. Where an individual becomes bankrupt, subsection 128(2) divides the calendar year in which the bankruptcy occurs into two taxation years: one that runs from January 1 to the day before the bankruptcy; and a second that begins on the day of the bankruptcy and runs to December 31. The effect of subsection 122.92(5) is that the bankrupt individual will be required to claim the credit in the second taxation year, regardless of whether the qualifying renovation ended in the first or second taxation year.

**Special rules in the event of death**

ITA
122.92(6)

New subsection 122.92(6) of the Act provides special rules that apply where an individual dies during a calendar year in order to preserve access to the Multigenerational Home Renovation

Tax Credit. Specifically, if an eligible individual or qualifying individual dies during a calendar year, that deceased individual is deemed to be:

- a resident of Canada from the time of death until the end of the year if, immediately before death, the deceased individual was resident in Canada;
- the same age at the end of the year as the individual would have been if the individual were alive at the end of the year; and
- the cohabiting spouse or common-law partner of another individual (referred to as the "surviving spouse") at the end of the year if,
  - immediately before death, the deceased individual was the cohabiting spouse or common-law partner of the surviving spouse, and
  - the surviving spouse is not the cohabiting spouse or common-law partner of another individual at the end of the year.

In addition, any return of income filed by a legal representative of the deceased individual is deemed to be a return of income filed by the individual.

## Residential Property Flipping Rule

**Clause 1**

ITA
12(12)

Subsection 12(12) of the Act provides a deeming rule that results in a gain on the disposition of a flipped property (defined in new subsection 12(13)) being fully taxable as ordinary income. The deeming rule applies if the disposition would have otherwise resulted in a capital gain in the absence of this deeming rule and the principal residence exemption. Since the rule effectively recharacterizes capital gains as fully taxable ordinary income, it does not apply to dispositions that would otherwise result in ordinary income. The rule will also not apply to dispositions that would result in a loss. Treating the taxpayer's gain as business income is achieved by a deeming rule providing that, throughout the period that the taxpayer owned the flipped property

- the taxpayer is deemed to carry on a business that is an adventure or concern in the nature of trade with respect to the flipped property;
- the flipped property is deemed to be inventory of the taxpayer's business; and
- the flipped property is deemed not to be capital property of the taxpayer.

This amendment applies in respect of dispositions that occur after 2022.

ITA
12(13)

Subsection 12(13) provides the definition "flipped property" which is relevant for new subsection 12(12) and the "non-capital loss" definition in subsection 111(8). Being a flipped

property is a characteristic of the property that attaches to the property in its disposition and flows through to the new income deeming rule in subsection 12(12) and will deny a non-capital loss through subsection 111(8).

A flipped property of a taxpayer is a housing unit that:

- is located in Canada;
- would not be inventory of the taxpayer if the definition “inventory” was read without reference to new subsection 12(12) (to prevent circularity); and
- was owned by the taxpayer for less than 365 consecutive days prior to the disposition of the property.

The definition has a number of exclusions that relate to the reason for the disposition. A property will not be a flipped property if the disposition can reasonably be considered to occur due to, or in anticipation of, one or more of the following events:

- the death of the taxpayer or a person related to the taxpayer;
- one or more persons related to the taxpayer joining the taxpayer’s household or the taxpayer joining the household of a related person;
- the breakdown of the marriage or common-law partnership of the taxpayer if the taxpayer has been living separate and apart from their spouse or common-law partner for at least 90 days prior to the disposition;
- a threat to the personal safety of the taxpayer or a related person;
- the taxpayer or a related person suffering from a serious illness or disability;
- an eligible relocation of the taxpayer or the taxpayer’s spouse or common-law partner, if that definition was read without reference to the requirements for the new work location and the new residence to be in Canada;
- an involuntary termination of the employment of the taxpayer or the taxpayer’s spouse or common-law partner;
- the insolvency of the taxpayer; or
- the destruction or expropriation of the property.

This amendment applies in respect of dispositions that occur after 2022.

**Clause 2**

ITA
111(8)

Subsection 111(8) sets out definitions that apply for the purposes of section 111, which contains rules relating to loss carryovers. The definition “non-capital loss” in this subsection applies for the purposes of the Act because of subsection 248(1).

Paragraph (a) of the description of E in the definition “non-capital loss” is amended to provide that a taxpayer’s loss for the year excludes a loss from the disposition of a flipped property. As such, a taxpayer’s disposition of a flipped property will not result in a non-capital loss.

This amendment applies in respect of dispositions that occur after 2022.

## Medical Expense Tax Credit for Surrogacy and Other Expenses

**Clause 1**

**Medical Expenses**

ITA
118.2(2)(v)

Section 118.2 provides rules for determining the amount which may be claimed, as a tax credit, in respect of an individual's medical expenses. Subsection 118.2(2) contains a list of expenditures that qualify as medical expenses for the purpose of claiming the medical expense tax credit in section 118.2.

New paragraph 118.2(2)(v) adds to the list of eligible medical expenses amounts paid to a fertility clinic or donor bank in Canada as a fee or other amount paid or payable, to obtain sperm or ova to enable the conception of a child by the individual, the individual’s spouse or common-law partner or a surrogate mother on behalf of the individual. Through this amendment, expenses for the acquisition of sperm or ova for use by an individual in order to become a parent would be eligible for the medical expense tax credit.

This measure applies to the 2022 and subsequent taxation years.

**Surrogacy Expenses**

ITA
118.2(2.21)

In Canada, while it is illegal to pay consideration to surrogate mothers or donors, they may receive reimbursement from intended parents of certain out-of-pocket expenses, including some medical expenses. Under current tax rules, reimbursements by the intended parents of medical expenses with respect to surrogate mothers or donors are not currently eligible to be claimed as medical expenses.

Consequential on the introduction of paragraph 118.2(2)(v), new subsection 118.2(2.21) would apply in relation to the medical expense tax credit to include in an individual’s medical expenses, certain amounts paid by the individual or the individual’s spouse or common-law partner for the purpose of the individual becoming a parent. To qualify, an amount must be:

- a reimbursed expenditure for the purpose of surrogacy, donating sperm or ova, or maintenance and transport of an in vitro embryo, as described under any of sections 2 to 4 of the Reimbursement Related to Assisted Human Reproduction Regulations; or
- paid in respect of a surrogate mother or donor, and that would be an expenditure under any of sections 2 to 4 of those Regulations if it was paid to the surrogate mother or donor.

In addition, to qualify as a medical expense of the individual, the amount must also be

- an amount that would be a medical expense of the individual under subsection (2), if the amount had been paid in respect of a good or service provided to the individual or the individual's spouse or common-law partner; and
- an expense incurred in Canada.

This measure applies to the 2022 and subsequent taxation years.

## Annual Disbursement Quota for Registered Charities

**Clause 1**

**Definitions**

ITA
149.1(1)

Section 149.1 provides the rules that must be met for charities to obtain and keep registered status. Subsection 149.1(1) contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act.

**"disbursement quota"**

The "disbursement quota" for a taxation year of a charitable foundation or charitable organization is defined in subsection 149.1(1) for the purpose of determining the amount that the charity is required, under subsection 149.1(2), (3) or (4), to spend in a taxation year on charitable activities or by way of gifts made by it that are qualifying disbursements.

The disbursement quota generally requires that a charity spend annually 3.5% of the prescribed amount of all assets owned by the charity at any time in the 24 months immediately preceding the taxation year that were not used in charitable programs or administration of the charity, but only if that amount exceeds $25,000 for charitable foundations and $100,000 for charitable organizations.

The "prescribed amount" is determined under sections 3701 and 3702 of the *Regulations*.
The "disbursement quota" is amended to increase the disbursement quota rate from 3.5 per cent to 5 per cent for the portion of property not used in charitable activities or administration that exceeds $1 million.

This definition applies to taxation years beginning on or after January 1, 2023.

**Exclusions**

ITA
149.1(1.1)

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

New paragraph (d) provides that expenditures on administration and management of the charity shall not be considered "charitable activities carried on by the organization itself" for the purposes of satisfying the disbursement quota. This provision excludes expenditures for management, administration and fundraising from satisfying the disbursement quota requirements.

Whether a particular expenditure relates to management, administration and fundraising will be a factual determination based on the activities and practices of the organization.
This amendment applies to taxation years beginning on or after January 1, 2023.

**Revocation of registration of registered charity**

ITA
149.1(4.1)(d)

Paragraph 149.1(4.1)(d) of the English version of the Act is amended to correct a typographical error.

This amendment is deemed to have come into force on June 23, 2022.

**Reduction**

ITA
149.1(5)

Subsection 149.1(5) currently authorizes the Minister of National Revenue, upon application by a registered charity, to reduce the disbursement requirements of that charity for a particular year by deeming a specified amount to be an amount expended by the charity in the year on charitable activities carried on by it.

Subsection (5) is amended to deem the amount specified by the Minister to reduce the disbursement quota instead. This amendment is intended to improve transparency with respect to charities that have a reduction to their disbursement quota, and to better reflect actual expenditures on charitable activities. The CRA will continue to be permitted to publicly disclose

information related to charities that request a reduction to their disbursement quota under subsection 241(3.2).

This amendment applies to charities in respect of taxation years beginning on or after January 1, 2023.

**Accumulation of property**

ITA
149.1(8)

Subsection 149.1(8) allows a registered charity, with the approval of the Minister of National Revenue, to accumulate property for a particular purpose, such that the amount accumulated will satisfy the charity's disbursement quota as defined under subsection 149.1(1).

Subsection 149.1(8) is repealed in respect of applications made on or after January 1, 2023.

**Clause 2**

**Certain qualified donees**

ITA
241(3.2)

Section 241 contains a general prohibition on the use or communication by an official of taxpayer information obtained under the Act. Various provisions of the Act authorize specific exceptions to this rule. For example, subsection 241(3.2) permits an official to release, to any person, certain information relating to an organization that was at any time a registered charity.

New paragraph 241(3.2)(i) permits an official to release information that a registered charity has filed under subsection 149.1(5) as well as any response to such an application (e.g., a request to reduce the disbursement requirements of that charity).

Consequential on this amendment, the reference to subsection 149.1(5) in paragraph 241(3.2)(h) is struck out.

This amendment comes into force on January 1, 2023.

## Borrowing by Defined Benefit Pensions Plans

**Clause 1**

**Borrowing**

ITR
8502(i)

Paragraph 8502(i) prohibits a registered pension plan (RPP) from borrowing money except in limited circumstances.

Paragraph 8502(i) is amended consequential on the introduction of paragraph 8502(i.2), a new borrowing limit applicable to defined benefit RPPs (other than individual pension plans). Specifically, the preamble of paragraph 8502)(i) is amended such that it applies only to money purchase provisions and to individual pension plans.

This amendment comes into force on May 1, 2022.

**Borrowing by defined benefit pension plan**

ITR
8502(i.2)

New paragraph 8502(i.2) establishes a new borrowing limit applicable to defined benefit provisions of registered pension plans (other than individual pension plans), in lieu of the rule under paragraph 8502(i) which restricts borrowing to terms not exceeding 90 days.

Subparagraph 8502(i.2)(i) permits borrowing for the purpose of acquiring income producing real property, provided that the amount borrowed (together with indebtedness incurred as a consequence of the acquisition of the property) does not exceed the cost of the property, and that no plan assets other than the real property are used as security for the borrowed money. This rule is identical to the rule in paragraph 8502(i) (which is amended to apply to money purchase provisions and individual pension plans).

Subparagraph 8502(i.2)(ii) provides a new borrowing limit that is supplementary to borrowing to acquire income producing real property. At any time that a new amount is borrowed, the aggregate of outstanding borrowed amounts (excluding amounts borrowed to acquire real property in accordance with 8502(i.2)(i)) and the new borrowed amount may not exceed the lesser of the two amounts determined under clauses 8502(i.2)(ii)(A) and (B).

The amount determined under clause 8502(i.2)(ii)(A) is equal to the formula 0.20 (A – B). Variable A is the value of the plan assets held under the defined benefit provision. Variable B is the amount of all outstanding borrowings in respect of the provision (including borrowing to acquire real property). Variables A and B are determined at the start of the plan’s fiscal period in which an amount is borrowed.

The amount determined under clause 8502(i.2)(ii)(B) is equal to the formula 1.25 x C – (D – E). Variable C is equal to the going concern actuarial liabilities under the defined benefit provision determined on the effective date of the plan’s most recent actuarial report. Variable D and E are equal to variables A and B determined under clause 8502(i.2)(ii)(A).

The amount determined under clause 8502(i.2)(ii)(B) is equal to the amount by which 125% of the plan’s actuarial liabilities (determined at the time the last actuarial valuation report was

prepared) exceeds the plan's net assets (i.e., assets net of loan balances) at the start of the plan's fiscal year. This limit will ensure that the borrowing limit will be less than 20% of assets (the limit from clause (A)) when a plan's funded ratio (i.e. the ratio of assets to pension liabilities) exceeds 105% and that new borrowing must cease when the funded ratio exceeds 125%.

This amendment applies to amounts borrowed on and after April 7, 2022.

**Illustration of the new borrowing limit**

At the start of its 2022 fiscal year, a pension plan has $10 billion of assets, of which $2 billion is real property encumbered by $1 billion of debt. The existing debt meets the conditions in subparagraph 8502(i.2)(i). The plan's actuarial liabilities determined in a 2021 actuarial valuation report was $8.5 billion.

Loan # 1

On September 1, 2022, the administrator of the plan borrows $1.3 billion dollars.
The limit on borrowed money under subparagraph 8502(i.2)(ii) at the time of the loan is determined as the lesser of:

0.2 (A – B), and
1.25 x C – (D – E)

= the lesser of
0.2 ($10 billion – $1 billion) = $1.8 billion, and
1.25 x $8.5 billion – ($10 billion - $1 billion) = **$1.625 billion**

The $1.3 billion dollars loan does not exceed the limit of $1.625 billion and thus is permissible. Assuming a new actuarial valuation report is not prepared in 2022, the plan administrator may borrow an additional $325 million in 2022.

Loan #2

At the start of its 2024 fiscal year, the pension plan has $13 billion of assets, $2 billion of which is real property encumbered by $900,000 in debt that meets the conditions in subparagraph 8502(i.2)(i). The unpaid balance on the September 2022 loan is $1.1 billion. An actuarial valuation report effective January 1, 2023 reveals actuarial liabilities of $9 billion.

The limit on additional borrowing for 2024 is the lesser of 0.2 (A – B) and 1.25 x C – (D – E), minus the outstanding balance of $1.1 billion from the 2022 loan.

= the lesser of
0.2 ($13 billion assets – $2 billion loans) = $2.2 billion, and
1.25 x $9 billion – ($13 billion - $2 billion) = $250 million.

= $250 million minus $1.1 billion = **nil**

The outstanding $1.1 billion balance on the loan from 2022 exceeds the amounts determined under clauses 8502(i.1)(ii))(A) and (B). As a result, no additional borrowing (other than to acquire real property) is permitted in year 2024.

The balance on the 2022 loan need not be reduced to the $250 million limit calculated above. Note that subparagraph 8502(i.1)(ii) applies "at any time that an amount is borrowed" and that the $1.3 billion loan in 2022 was within the limits of subparagraph (ii) at that time.

## Reporting Requirements for RRSPs and RRIFs

**Clause 1**

**Distribution of taxpayers' portions of returns**

ITR
209(1)

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

Subsection 209(1) is amended consequential on subsections 214(1.1) and 215(2.1) of the Regulations that require the fair market value of each registered retirement savings plan (RRSP) and registered retirement income fund (RRIF) be reported to the Canada Revenue on an annual basis. Specifically, subsection 209(1) is amended to exclude subsections 214(1.1) and 215(2.1), such that when a financial institution reports (to the CRA) the fair market value of an RRSP or RRIF, it need not provide copies of the return to the taxpayer.

This amendment applies to the 2023 and subsequent taxation years.

**Clause 2**

**Registered retirement savings plans**

ITR
214(1.1)

Subsection 214(1) of the Regulations requires the issuer of a RRSP to file an information return in prescribed form (i.e., a T4RSP) to report an amount paid out of a RRSP that is required to be included in the taxpayer's income under subsection 146(8) or that is an eligible withdrawal under the Homebuyers' Plan or Lifelong Learning Plan.

Section 214 is amended by adding new subsection 214(1.1) to require the issuer of a RRSP to annually report to the Canada Revenue Agency the fair market value of all property held by the plan at the end of the calendar year.

A consequential amendment to subsection 209(1) of the Regulations specifies that the financial institution is not required to give copies of the information to the taxpayer who is the annuitant of the RRSP.

This amendment applies to the 2023 and subsequent taxation years.

**Clause 3**

**Registered retirement income funds**

ITR
215(2.1)

Subsection 215(2) of the Regulations requires the carrier of a registered retirement income fund (RRIF) to file an information return in prescribed form (i.e., on a T4RIF) in respect of a payment out of a fund that is required to be included in computing the annuitant's income.

Section 215 is amended by adding new subsection 214(2.1) to require the carrier of a RRIF to annually report to the Canada Revenue Agency the fair market value of all property held by the RRIF at the end of the calendar year.

A consequential amendment to subsection 209(1) of the Regulations specifies that the financial institution is not required to give copies of the information to the taxpayer who is the annuitant of the RRIF.

This amendment applies to the 2023 and subsequent taxation years.

## Canada Recovery Dividend and Additional Tax on Banks and Life Insurers

**Clause 1**

**Rules applicable**

ITA
87(2)

Subsection 87(2) provides a number of application rules for corporations that have been formed on an amalgamation of one or more predecessor corporations.

New paragraph (xx) is consequential on the introduction of Part VI.2. New Part VI.2 provides for a special tax on bank and life insurer group members equal to 15% of their taxable income (in excess of $1 billion) for the 2021 taxation year. This amendment ensures that for the purposes of

calculating Part VI.2 tax, the amalgamated corporation is treated as being the same corporation as its predecessor corporations.

This amendment applies to the 2022 and subsequent taxation years.

**Clause 2**

**Winding-up**

ITA
88(1)

Subsection 88(1) provides rules that apply where a subsidiary has been wound up into its parent corporation.

Paragraph 88(1)(e.2) provides that a number of the rules that apply to amalgamations under section 87 also apply, with certain modifications, to windings-up under subsection 88(1). This paragraph is amended to add a reference to new Part VI.2 in order to provide for the parent on a winding up to be deemed to be a continuation of its subsidiary.

This amendment applies to the 2022 and subsequent taxation years.

**Clause 3**

**Additional Tax on Banks and Life Insurers**

New section 123.6 imposes an additional amount of tax on the taxable income of certain bank or life insurer group members. Each corporation that is a bank or life insurer group member must add to its tax otherwise payable for a year under Part I an amount equal to 1.5% of the corporation's taxable income that is in excess of $100 million allocated among group members.

New section 123.6 applies to taxation years that end after April 7, 2022. However, for a taxation year that includes April 7, 2022, the amount of tax payable under subsection 123.6(2) is prorated based on the number of days in the taxation year that are after April 7, 2022.

**Definitions**

ITA
123.6(1)

New subsection 123.6(1) contains definitions that apply for purposes of section 123.6.

**"bank or life insurer group member"**

The term “bank or life insurer group member” means a bank, a life insurance corporation that carries on business in Canada, or any financial institution (as defined in subsection 190(1)) that is related to a bank or life insurance corporation that carries on business in Canada.

**Additional tax payable**

ITA
123.6(2)

New subsection 123.6(2) provides that a corporation that is a “bank or life insurer group member” at any time during the taxation year is liable to pay an additional amount of tax under Part I.

The amount of the additional tax payable is determined by the formula 1.5% x (A – B).

Variable A is the corporation’s taxable income (or in the case of a non-resident corporation, taxable income earned in Canada).

Variable B determines the amount of the $100 million income deduction (for the purposes of these technical notes, referred to as the “income deduction”) that the corporation is entitled to. If a corporation is not related to any other bank or life insurer group member at the end of the taxation year, the corporation is entitled to the full income deduction applied against its taxable income when determining the amount of the additional tax payable.

Alternatively, if the corporation is related to another bank or life insurer group member at the end of the taxation year, the income deduction may be allocated among the related group members in accordance with subsection (3).

In addition, if a corporation’s taxation year is a short year (i.e., less than 51 weeks), the income deduction is reduced to the proportion of the amount that the number of days in the short year is of 365.

**Related group**

ITA
123.6(3)

New subsection 123.6(3) provides that if a corporation is a bank or life insurer group member at any time during the taxation year and is related to another bank or life insurer group member at the end of the taxation year (referred to together as the “related group”), the corporation can file an agreement in prescribed form with the Minister of National Revenue to allocate the $100 million income deduction among the related group members.

The agreement to allocate the income deduction among the related group must be filed by the corporation at the same time as the filing of the corporation’s return of income for the year.

In the case where one or more corporations part of a related group have multiple taxation years ending in the same calendar year, the income deduction allocated among the related group must not exceed $100 million for all taxation years of the related group members that end in the same calendar year.

**Allocation by Minister**

ITA
123.6(4)

New subsection 123.6(4) provides that if a corporation does not file with the Minister of National Revenue an agreement to allocate the income deduction among the related group for a taxation year, the Minister may request that the corporation make an allocation. If an allocation is not made within 30 days after receiving the Minister's request, the Minister may determine the allocation of the income deduction among the related group members for a taxation year.

**Allocation**

ITA
123.6(5)

New subsection 123.6(5) provides that the amount of the income deduction allocated to each bank or life insurer group member for a taxation year is the lesser of: (i) the amount allocated under the agreement which was filed with the Minister by the corporation pursuant to subsection (3), or (ii) the amount allocated by the Minister pursuant to subsection (4).

In the case where the corporation does not file an allocation agreement and the Minister makes no allocation for the group members, subsection (5) provides that no income deduction is available to the bank or life insurer group members for the taxation year.

**Anti-avoidance**

ITA
123.6(6)

New subsection 123.6(6) introduces an anti-avoidance rule to address certain tax planning that may reduce or eliminate a corporation's additional tax payable under section 123.6.
More specifically, if a corporation that is a bank or life insurer group member pays an amount, directly or indirectly, to a non-arm's length person that is not a bank or life insurer group member (for example, where the recipient is related to the payer corporation but is not subject to the additional tax), and it is reasonable to consider that one of the purposes of this payment was to reduce the corporation's additional tax payable under subsection 123.6(2), the amount is deemed not to have been deducted in computing the corporation's taxable income for the purposes of this section.

**Clause 4**

**General**

ITA
161(1)

Subsection 161(1) provides that interest is payable by taxpayers on unpaid taxes for a taxation year. Subsection 161(1) is amended to add a reference to new Part VI.2. This amendment is intended to integrate Part VI.2 for the purposes of determining a corporation's tax payment obligations.

This amendment applies to the 2022 and subsequent taxation years.

**Clause 5**

**Deduction**

ITA
190.1(3)

Subsection 190.1(3) provides a credit under Part VI in respect of a corporation's tax payable under Part I.

Paragraph 190.1(3)(a) is amended as a consequence of the introduction of the Part VI.2 tax. This amendment will permit a corporation to reduce any Part VI tax liability for a taxation year by the amount of Part VI.2 tax that is payable in that taxation year. The credit must be determined in accordance with subsection 191.5(9), meaning that the amount of the credit in any given year will be limited to the portion of the Part VI liability that is actually required to be paid under that section. This amendment will only be relevant for the 2022 to 2026 taxation years, as the amount of the Part VI.2 tax liability is to be paid over five years.

This amendment applies to the 2022 and subsequent taxation years.

**Clause 6**

**PART VI.2 – Canada Recovery Dividend**

New Part VI.2 imposes a temporary additional tax on the taxable income of certain bank or life insurer group members. Each corporation that was a bank or life insurer group member during its 2021 taxation year is subject to this additional tax. The additional tax is computed as 15% of the corporation's 2020 and 2021 average taxable income that is in excess of $1 billion allocated among group members. Any Part VI.2 tax liability is payable over five years.

New Part VI.2 applies to the 2022 and subsequent taxation years.

**Definitions**

ITA
191.5(1)

New subsection 191.5(1) contains definitions that apply for purposes of section 191.5.

**“bank or life insurer group member”**

The term “bank or life insurer group member” means a bank, a life insurance corporation that carries on business in Canada, or any financial institution (as defined in subsection 190(1)) that is related to a bank or life insurance corporation that carries on business in Canada.

**Tax payable**

ITA
191.5(2)

New subsection 191.5(2) provides that a corporation that is a “bank or life insurer group member” at any time during the 2021 taxation year is liable to pay an amount of tax under Part VI.2 for its 2022 taxation year.

The amount of Part VI.2 tax is determined by the formula 15% x [(A / 2) – B].

Variable A is the sum of the corporation’s 2020 and 2021 taxable income (or in the case of a non-resident corporation, 2020 and 2021 taxable income earned in Canada). The amount of taxable income is determined in accordance with Part I, however, for the purposes of this computation, it excludes any non-capital losses or net capital losses applied to reduce the corporation’s 2020 or 2021 taxable income. If a corporation has more than one 2020 or 2021 taxation year, its taxable income for each taxation year is included in calculating variable A (see notes on subsection 191.5(4)).

Variable A is divided by 2 in order to apply the Canada Recovery Dividend to the average taxable income earned in the corporation’s 2020 and 2021 taxation years.

Variable B determines the amount of the $1 billion income deduction (for the purposes of these technical notes, referred to as the “income deduction”) that the corporation is entitled to.

If a corporation is not related to any other bank or life insurer group member at the end of the 2021 taxation year, the corporation is entitled to the full income deduction to be applied against its taxable income.

Alternatively, if the corporation is related to another bank or life insurer group member at the end of the 2021 taxation year, the income deduction may be allocated among the related group members in accordance with subsection 191.5(5).

**Multiple 2022 taxation years**

ITA
191.5(3)

New subsection 191.5(3) provides that if a corporation that is a bank or life insurer group member has more than one 2022 taxation year, the latest 2022 taxation year is used for the purposes of computing tax payable under subsection 191.5(2).

**Multiple 2020 and 2021 taxation years**

ITA
191.5(4)

New subsection 191.5(4) provides a proration rule for a corporation that has multiple 2020 or 2021 taxation years if the total number of days in all 2020 or 2021 taxation years is greater than 365 days. In this case, the amount determined under paragraphs (a) and (b) of variable A of subsection 191.5(2) is reduced to the proportion that 365 is of the total number of days in all the 2020 or 2021 taxation years.

**Related group**
ITA
191.5(5)

New subsection 191.5(5) provides that if a corporation is a bank or life insurer group member at any time during a 2021 taxation year and is related to another bank or life insurer group member at the end of the year (referred to together as the "related group"), the corporation may file an agreement in prescribed form (see technical notes on subsection 191.5(8)) with the Minister of National Revenue in order to allocate the $1 billion income deduction among the related group members.

**Allocation by Minister**

ITA
191.5(6)

New subsection 191.5(6) provides that if a corporation does not file with the Minister of National Revenue an agreement to allocate the income deduction among the related group, the Minister may request that the corporation make an allocation. If the corporation does not make an allocation within 30 days after receiving the Minister's request, the Minister may determine the allocation of the income deduction among the related group members for the taxation year.

**Allocation**

ITA
191.5(7)

New subsection 191.5(7) provides that the amount of the income deduction allocated to each bank or life insurer group member is the lesser of: (i) the amount allocated under the agreement which was filed with the Minister by the corporation pursuant to subsection (5), or (ii) the amount allocated by the Minister pursuant to subsection (6).

In the case where the corporation does not file an allocation agreement and the Minister makes no allocation for the group members, subsection (7) provides that no income deduction is available to the bank or life insurer group members for the taxation year.

**Return**

ITA
191.5(8)

New subsection 191.5(8) requires that a corporation liable to pay tax under Part VI.2 for the 2022 taxation year must file a prescribed form containing prescribed information with the Minister of National Revenue. The prescribed form must be filed with the corporation's return of income for the 2022 taxation year.

**Instalments**

ITA
191.5(9)

New subsection 191.5(9) requires a corporation liable to pay tax under Part VI.2 for the 2022 taxation year to pay 1/5 of the amount on or before its balance-due day for the 2022 and each of the four subsequent taxation years.

**Administrative provisions**

ITA
191.6

New section 191.6 provides that certain provisions of Part I relating to assessments, payments, appeals and various other procedural and administrative matters are also applicable to Part VI.2.

## Investment Tax Credit for Carbon Capture, Utilization and Storage

**Clause 1**

**Investment tax credit**

ITA
12(1)(t)

Section 12 provides for the inclusion of various amounts in computing the income of a taxpayer for a taxation year from a business or property.

The amount deducted from tax in respect of the investment tax credit reduces the tax basis of the related expenditure—that is, the undepreciated capital cost of depreciable property, the adjusted cost base of certain interests in a partnership or a trust, the amount of deductible scientific research expenditures, or the amount of qualified Canadian exploration expenditures. To the extent that such reductions in tax basis do not take place, paragraph 12(1)(t) requires the amount of any credit claimed to be included in the taxpayer's income. Because a claim of a tax credit can produce such an income inclusion thereby affecting tax otherwise payable and the amount of investment tax credit which may be claimed in a year, the calculations can very often become circular. Accordingly, an income inclusion under paragraph 12(1)(t) is only required in a taxation year following the year in which the related investment tax credit is claimed.

Paragraph 12(1)(t) is amended to reflect the introduction of the new CCUS tax credit, by adding a reference to new subsection 127.44(2), under which the new credit is provided.

This amendment applies to taxation years ending after 2021.

**Clause 2**

**Deemed capital cost of certain property**

ITA
13(7.1)

Section 13 provides a number of special rules related to the treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance (CCA) regulations.

Subsection 13(7.1) provides for reductions in the capital cost of a depreciable property equal to the amounts of deducted investment tax credits and certain other government assistance in respect of the property.

Subsection (7.1) is amended by adding two references to new subsection 127.44(2), in the preamble and in paragraph (e). These amendments are consequential on the introduction of the new CCUS tax credit under section 127.44. They will result in a reduction in the capital cost of depreciable property where the CCUS tax credit is claimed.

These amendments apply to taxation years ending after 2021.

**Ascertainment of Carbon Capture Utilization and Storage property and project**

ITA
13(18.2)

New subsection 13(18.2) provides that, in determining whether a process is a CCUS process (as defined under subsection 1104(2) of the *Income Tax Regulations*) or whether property meets the criteria set out in the regulations in respect of prescribed CCUS property, any technical guide published by the Department of Natural Resources applies conclusively with respect to engineering and scientific matters.

Prescribed CCUS property is defined in new section 8200.2 of the Regulations as property described in new CCA Classes 57 and 58 of Schedule II to the Regulations.

The new subsection is deemed to have come into force on January 1, 2022.

**Definitions**

ITA
13(21)

**“undepreciated capital cost”**

Element I of the definition of “undepreciated capital cost” (UCC) reduces the UCC of the depreciable property of a class by the amount of any investment tax credit claimed in respect of a property which was in the class in the year where that credit was claimed subsequent to the disposition of the property. Because an investment tax credit claim reduces the balance of the class and may cause it to become negative, thereby giving rise to an income inclusion for a year which, in turn, may affect the amount of the credit which can be claimed, this calculation can become circular where the credit reduces UCC in the same year as that in which the credit is claimed. Accordingly, a reduction of the UCC of the class is required only for taxation years following the year in which a related credit is claimed.

Element I of the definition is amended, by adding a reference to new subsection 127.44(2), consequential on the introduction of the CCUS tax credit under section 127.44.

This amendment applies to taxation years ending after 2021.

**Clause 3**

**Application of paragraph 20(1)(a)**

ITA
20(1.11)

Paragraph 20(1)(a) specifies that any deduction for a capital cost of a property can only be taken as is permitted by the regulations. New subsection 20(1.11) provides that if the expenditure is incurred by the taxpayer on account of capital and described in Class 59 or 60 of Schedule II to the Regulations, the expense or cost is deemed to be an amount in respect of the capital cost to the taxpayer of property for the purposes of paragraph 20(1)(a).

This amendment applies to expenses or costs incurred or property acquired after 2021.

**Clause 4**

**Carbon Capture, Utilization and Storage Tax Credit**

ITA
127.44

New section 127.44 provides an investment tax credit for certain expenditures incurred in respect of carbon capture, utilization and storage projects. It is deemed to have come into force on January 1, 2022, and will generally apply to qualifying expenditures incurred on or after that date and before 2041.

**Definitions**

ITA
127.44(1)

Subsection 127.44(1) provides various definitions relevant for the purpose of determining the CCUS investment tax credit (the CCUS tax credit) of a taxpayer.

The definitions in this subsection are deemed to have come into force on January 1, 2022.

**“CCUS project”**

A CCUS project has the meaning assigned by subsection 1104(2) of the regulations.

**“captured carbon”**

Captured carbon means captured carbon dioxide that would otherwise be released into the atmosphere, or is captured directly from the ambient air.

**“dedicated geological storage”**

Dedicated geological storage means a geological formation capable of permanently storing captured carbon in a province or territory within Canada, in an offshore area of Canada or in a jurisdiction outside Canada, that has sufficient environmental laws and enforcement (if prescribed by the regulations at the time a relevant expenditure is incurred) to ensure that captured carbon is permanently stored. However, dedicated geological storage does not include a geological formation if captured carbon is used for enhanced oil recovery.

**“eligible use”**

An eligible use in the context of carbon capture, utilization and storage means captured carbon dioxide that is stored in, or otherwise used for dedicated geological storage or for producing

concrete using a qualified concrete storage process. For more information, see the definitions to "dedicated geological storage" and "qualified concrete storage process" in this new subsection 127.44(1).

**"ineligible use"**

An ineligible use in the context of carbon capture, utilization and storage means captured carbon dioxide stored in, or otherwise used for, enhanced oil recovery or any other purpose that is not an eligible use (as defined above).

**"non-government assistance"**

Non-government assistance has the same meaning as in subsection 127(9) of the Act.

**"project plan"**

A project plan is a plan for a CCUS project that reflects a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the project and describes the quantity of captured carbon that the CCUS project is expected to support for storage, in each calendar year over the life of the project, in eligible use and ineligible use. In addition, the plan must contain information required in guidelines published by the Minister of Natural Resources and be filed with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources.

**"qualified CCUS expenditure"**

A qualified CCUS expenditure is any expenditure that is a qualified carbon capture expenditure, qualified carbon transportation expenditure, qualified carbon storage expenditure or qualified carbon use expenditure. See the commentary to those definitions for more detail.

**"qualified CCUS project"**

A qualified CCUS project means a CCUS project of a taxpayer that meets the following five conditions:

1. The project is expected to support the capture of carbon dioxide in Canada.
2. An initial project evaluation has been issued by the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources, in respect of the project following the filing of most recent project plan for the project.
3. Based on the project's most recently filed project plan, in each of the project's first 20 years of operation, the proportion of the quantity of captured carbon the project is expected to support for storage or use in eligible use equals or exceeds 10% of the quantity of captured carbon the project is expected to support for storage or use in both eligible use and ineligible use during the year.
4. The project complies with all federal, provincial and municipal environmental laws, by-laws and regulations applicable in respect of the project.

5. If the project is operated to service a facility that existed on April 7, 2022, it cannot be undertaken for the purpose of complying with emission standards that apply, or will apply, under the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations.

As noted above, in order to qualify, a CCUS project must be expected to support the capture of carbon dioxide in Canada. It may do this by incorporating one or more parts of a CCUS process. The following are examples of projects that would generally be expected to satisfy this condition if undertaken in Canada:

- capturing carbon dioxide from a single site and transporting it up to the point where it connects to a transportation hub;
- transporting carbon captured from multiple sites (i.e. a transportation hub);
- storing or using captured carbon;
- capturing carbon dioxide from a single site, transporting the captured carbon and storing or using the captured carbon; and
- transporting and storing or using carbon captured from multiple sites (i.e., a transportation and storage hub).

**“qualified carbon capture expenditure”**

The definition of “qualified carbon capture expenditure” is relevant to determining the amount of the taxpayer’s CCUS tax credit under subsection (5). In general terms, it represents a portion of the taxpayer’s capital expenditures incurred in the year to acquire property that is used for the capture aspect of a CCUS project (in contrast to property used in other parts of a CCUS project, such as for transportation, storage or use). The portion of capture expenditures that qualify is determined by the proportion of captured carbon that the CCUS project is expected to support for storage or use in eligible uses compared to ineligible uses.

More specifically, a “qualified carbon capture expenditure” is the portion of an expenditure incurred in the year by the taxpayer to acquire a property in respect of a qualified CCUS project, determined by the formula A x (B + C + D + E).

Variable A represents the capital cost to the taxpayer of the property acquired by the taxpayer in the year that is property described in paragraph (a) of Class 57 in Schedule II to the regulations, or paragraph (d), (e) or (f) of Class 57 in relation to equipment described in paragraph (a) of Class 57. Property described in these paragraphs is the type of property that is used for, or related to, the capture aspect of a CCUS project. To be included in variable A, the Minister of Natural Resources must verify that the relevant property is described in one of the paragraphs referred to in the previous two sentences.

Property located outside of Canada is excluded, such that expenditures for property outside of Canada do not qualify for the CCUS tax credit (the same restriction exists for the other categories of qualified CCUS expenditures).

Variable B represents the percentage of the quantity of carbon dioxide that the qualified CCUS project is expected to support for storage or use in eligible use over the first five years of the project's operation (represented by variable F) divided by the aggregate quantity of captured carbon the project is expected to support for storage or use in both eligible use and ineligible use over the project's first five years of operation (represented by variable G) based on the project's most recent project plan filed with the Minister of Natural Resources before the time the expenditure is incurred.

Variable C represents the percentage of the quantity of carbon dioxide that the qualified CCUS project is expected to support for storage or use in eligible use over the sixth to tenth years of the project's operation (represented by variable H) divided by the aggregate quantity of captured carbon the project is expected to support for storage or use in both eligible use and ineligible use over the project's sixth to tenth years of operation (represented by variable I) based on the project's most recent project plan filed with the Minister of Natural Resources before the time the expenditure is incurred.

Variable D represents the percentage of the quantity of carbon dioxide that the qualified CCUS project is expected to support for storage or use in eligible use over the eleventh to fifteenth years of the project's operation (represented by variable J) divided by the aggregate quantity of captured carbon the project is expected to support for storage or use in both eligible use and ineligible use over the project's eleventh to fifteenth years of operation (represented by variable K) based on the project's most recent project plan filed with the Minister of Natural Resources before the time the expenditure is incurred.

Variable E represents the percentage of the quantity of carbon dioxide that the qualified CCUS project is expected to support for storage or use in eligible use over the sixteenth to twentieth years of the project's operation (represented by variable L) divided by the aggregate quantity of captured carbon the project is expected to support for storage or use in both eligible use and ineligible use over the project's sixteenth to twentieth years of operation (represented by variable M) based on the project's most recent project plan filed with the Minister of Natural Resources before the time the expenditure is incurred.

Each of variables B, C, D and E are divided by four and then aggregated in order to determine the expected overall eligible use proportion over the first twenty years of the qualified CCUS project's operation.

Expenditures for property used in other parts of a CCUS project may be qualified carbon transportation expenditures, qualified carbon storage expenditures or qualified carbon use expenditures. The definition of qualified carbon transportation expenditure is essentially the same as the definition of qualified carbon capture expenditure, except that the property included in variable A of each definition references different paragraphs in Class 57, thus covering different types of property.

The definitions of qualified carbon use expenditures and qualified carbon storage expenditures are also very similar, except that the property covered by each of those definitions must be used *solely* to support the storage or use of captured carbon to produce concrete using a qualified

concrete storage process (in the case of a qualified carbon use expenditure) or to support storage in dedicated geological storage (in the case of a qualified carbon storage expenditure). The classification of expenditures between the different categories is relevant to determining the rate of the CCUS tax credit. Pursuant to the definition of "specified percentage" in subsection (1), qualified carbon capture expenditures benefit from a higher rate relative to other types of expenditures.

Subsection (8) contains additional rules for calculating the amount of a taxpayer's qualified carbon capture expenditures. Pursuant to that subsection, certain amounts are excluded from, or may reduce, the taxpayer's qualified CCUS expenditures. See the commentary related to subsection (8) for more discussion.

**"qualified carbon storage expenditure"**

The definition of "qualified carbon storage expenditure" is relevant to determining the amount of the taxpayer's CCUS tax credit under subsection (5). In general terms, it represents a portion of the taxpayer's capital expenditures related to property used for the storage of captured carbon (being property described in paragraph (c) of Class 57 in Schedule II to the regulations, or paragraph (d), (e) or (f) of Class 57 in relation to equipment described in paragraph (c) of Class 57). As with the other categories of qualified expenditures, expenditures must be verified by the Minister of Natural Resources as being in respect of property described in those paragraphs. The property must also be situated in Canada.

In addition, expenditures will only qualify if they are expenditures to acquire property that is expected to support storage of captured carbon *solely* in a manner described in paragraph (a) of the definition of "eligible use" in subsection (1). That means the property must be expected to be used to support the storage of captured carbon in dedicated geological storage. Unlike with other types of qualified expenditures for capture and transportation, there is no ability to prorate the expenditure to the extent that it relates in part to an eligible use and in part to an ineligible use.

See the commentary on the definition of "qualified carbon capture expenditure" for more detail.

**"qualified carbon transportation expenditure"**

The definition of "qualified carbon transportation expenditure" is relevant to determining the amount of the taxpayer's CCUS tax credit under subsection (5). In general terms, it represents a portion of the taxpayer's capital expenditures related to property used for the transportation of captured carbon (being property described in paragraph (b) of Class 57 in Schedule II to the regulations, or paragraph (d), (e) or (f) of Class 57 in relation to equipment described in paragraph (b) of Class 57). The portion of transportation expenditures that qualify is determined by the proportion of captured carbon that the CCUS project is expected to support for storage or use in eligible uses compared to ineligible uses during the first twenty years of the project's operation (based on the project's most recent project plan filed with the Minister of Natural Resources before the time the expenditure is incurred).

The definition of qualified carbon transportation expenditure is essentially the same as the definition of qualified carbon capture expenditure, except for the type of property that falls within variable A of the formula in each definition. See the commentary on the definition of "qualified carbon capture expenditure" for more detail.

**"qualified carbon use expenditure"**

The definition of "qualified carbon use expenditure" is relevant to determining the amount of the taxpayer's CCUS tax credit under subsection (5). In general terms, it represents the taxpayer's capital expenditures related to property that is part of the "use" phase of a CCUS process (being property listed in Class 58 in Schedule II to the regulations).Qualified carbon use expenditures must be verified by the Minister of Natural Resources as being in respect of property described in Class 58. The property must also be situated in Canada.

Expenditures will only qualify if they are expenditures to acquire property that is expected to support storage or use of captured carbon *solely* in a manner described in paragraph (b) of the definition of "eligible use" in subsection (1). That means the property must be expected to be used to support the storage or use of captured carbon to produce concrete using a qualified concrete storage process. Unlike with other types of qualified expenditures for capture and transportation, there is no ability to prorate the expenditure to the extent that it relates in part to an eligible use and in part to an ineligible use.

See the commentary on the definition of "qualified carbon capture expenditure" for more detail.

**"qualified concrete storage process"**

The qualified concrete storage process is a process by which at least 60% of the carbon dioxide that is injected into concrete is expected to be mineralized and permanently stored in the concrete. This definition is relevant to the definition "eligible use". Pursuant to paragraph (b) of that definition, captured carbon is considered to have been used in an eligible use if it is used for producing concrete using a qualified concrete storage process.

**"specified percentage"**

The definition "specified percentage" is used to determine the amount of a taxpayer's CCUS tax credit. Under subsection (5), the taxpayer's CCUS tax credit for a taxation year is the specified percentage of each type of qualified CCUS expenditure incurred by the taxpayer in the year. The specified percentage is different depending on the type of qualified CCUS expenditure. For a qualified carbon capture expenditure, the rate also varies based on whether the carbon is captured directly from the ambient air.

For expenses incurred after 2021 and before 2031, the rate for a qualified carbon capture expenditure is 60% if incurred to capture carbon directly from ambient air or 50% in any other case. Both rates drop by half for expenditures incurred after 2030 and before 2041.
For all other types of qualified CCUS expenditures (being qualified carbon transportation expenditures, qualified carbon storage expenditures and qualified carbon use expenditures) the

rate is 37 ½% (for expenditures incurred after 2021 and before 2031) or 18 ¾% (for expenditures incurred after 2030 and before 2041).

For all expenditures made after 2040 the rate is zero.

**Reduction of Part I tax**

ITA
127.44(2)

New subsection 127.44(2) of the Act provides for the deduction of a CCUS tax credit by a taxpayer from tax otherwise payable by the taxpayer under Part I of the Act. A taxpayer's CCUS tax credit for the year is determined under subsection (5).

**Deemed payment of Part I tax**

ITA
127.44(3)

New section 127.44 of the Act provides for the CCUS tax credit. Pursuant to subsection (2), a taxpayer may deduct their CCUS tax credit to reduce their Part I tax liability. To the extent that the CCUS tax credit is not fully deducted under subsection (2), it is deemed under the new subsection 127.44(3) to be paid on account of the taxpayer's tax under Part I on the balance-due day for the taxation year. This makes the CCUS tax credit refundable in situations where the credit exceeds the taxpayer's liability under Part I of the Act.

**Deemed deduction**

ITA
127.44(4)

New subsection 127.44(4) of the Act deems the amount that is paid under subsection (3) to have been deducted from the taxpayer's tax otherwise payable under subsection (2). This deeming rule applies for purposes of paragraph 12(1)(t), subsection 13(7.1) and variable I of the definition "undepreciated capital cost" in subsection 13(21) of the Act. It causes these rules to operate in the same manner whether the CCUS credit is received as a deduction against tax otherwise payable under subsection (2) or as a refund under subsection (3).

**CCUS tax credit**

ITA
127.44(5)

Subsection (5) effectively defines the amount of a taxpayer's CCUS tax credit that can be claimed under subsection (2) or (3). A taxpayer's CCUS tax credit is the specified percentage of each type of qualified CCUS expenditure incurred by the taxpayer in the year (being qualified

carbon capture expenditures, qualified carbon transportation expenditures, qualified carbon storage expenditures, and qualified carbon use expenditures).

For more detail, see the commentary for the definitions “specified percentage”, “qualified carbon capture expenditure”, “qualified carbon transportation expenditure”, “qualified carbon storage expenditure”, and “qualified carbon use expenditure” in new subsection 127.44(1).

**Change to project or eligible use**

ITA
127.44(6)

New subsection 127.44(6) of the Act requires a taxpayer to file a new project plan for a qualified CCUS project of the taxpayer with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources, if there has been a change to the project, and the Minister of Natural Resources requests the taxpayer to file a new project plan for the project. The new project plan is also required to be filed if there has been a reduction (as compared to the most recent project plan for the project) of more than 5% in the quantity of captured carbon that the project is expected to support for storage or use in eligible use during any five year period over the life of the project.

**Qualified CCUS project determination**

ITA
127.44(7)

New subsection 127.44(7) of the Act provides that for the purpose of the definition of qualified CCUS project in subsection (1), the Minister of National Revenue may, in consultation with the Minister of Natural Resources, determine whether one or more CCUS projects of a taxpayer is one project or multiple projects. This could be relevant, for example, to determining what portion of a taxpayer’s expenditures are qualified carbon capture expenditures, qualified carbon transportation expenditures, or qualified carbon use expenditures, because each of those definitions takes into account the proportion of captured carbon that a particular qualified CCUS project will support for use in eligible uses compared to ineligible uses. This proportion could change depending on what is determined to be part of a particular qualified CCUS project.

**Reductions to qualified CCUS expenditures**

ITA
127.44(8)

New subsection 127.44(8) of the Act is relevant to calculating a taxpayer’s qualified CCUS expenditures (being qualified carbon capture expenditures, qualified carbon transportation expenditures, qualified carbon storage expenditures, and qualified carbon use expenditures).

Paragraph (a) causes certain expenditures to be excluded from these definitions. In particular, the following amounts must be excluded when calculating a taxpayer's qualified CCUS expenditure:

- Any amount incurred by the taxpayer before 2022 or after 2040.
- Any amount in respect of any expenditure incurred to acquire property that was previously used by any person or partnership, or for which a CCUS tax credit was previously deducted or claimed, or sought to be deducted or claimed, by any person in respect of the property to which the expenditure relates.
- Any amount in respect of an expenditure incurred for a feasibility study or front-end engineering study or an equivalent study.
- An amount capitalized by virtue of section 21.

In addition, an otherwise eligible qualified CCUS expenditure is to be reduced by any amount of non-government assistance that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive in respect of the qualified CCUS expenditure for the year (including an expenditure incurred by a trust or partnership of which the taxpayer is a beneficiary or a member).

**Additions to qualified CCUS expenditures**

ITA
127.44(9)

New subsection 127.44(9) of the Act applies if a taxpayer repaid (or has not received and can no longer reasonably be expected to receive) in a particular taxation year, an amount of non-government assistance that was applied to reduce the amount of a qualified CCUS expenditure (the "reduced expenditure") under one of paragraphs (a) to (d) (the "relevant paragraph") of that definition for a preceding taxation year. The amount of the reduced expenditure is added to the amount otherwise determined to be the taxpayer's qualified CCUS expenditure (under the relevant paragraph of that definition) for the particular year.

**Partnerships**

ITA
127.44(10)

The CCUS tax credit is intended to apply to partnerships and partners in generally the same manner as other investment tax credits under section 127. New subsection 127.44(10) of the Act applies if a taxpayer in a particular taxation year is a member of a partnership, and a CCUS tax credit would be determined in respect of the partnership for its taxation year that ends in the particular taxation year. Subsection (10) states that subsections 127(8) to (8.5) are applicable, with such modifications as the circumstances require, to determine the portion of the CCUS tax credit that is the partner's share of the CCUS tax credit for the particular taxation year.

**Unpaid amounts**

ITA
127.44(11)

New subsection 127.44(11) of the Act ensures that if an expenditure that is unpaid on the day that is 180 days after the end of the taxation year of a taxpayer in which the expenditure is incurred, for the purposes of the new section 127.44, the expenditure is deemed to have been incurred at the time it is paid.

**Clause 5**

ITR
1100

Section 1100 of the *Income Tax Regulations* (the "Regulations") is amended to introduce various Capital Cost Allowance (CCA) classes relevant for carbon capture, utilization and storage. These amendments apply to property acquired after 2021.

ITR
1100(1)

Paragraph 1100(1)(a) of the Regulations provides various declining-balance CCA rates applicable to certain classes of depreciable property. It is amended by adding new subparagraphs 1100(1)(a)(xliii) to (xlvi), which set the general CCA rate for Classes 57 to 60. The rates are 8% (for Class 57), 20% (for Class 58), 100% (for Class 59) and 30% (for Class 60).

ITR
1100(2)

Subsection 1100(2) of the Regulations provides rules for computing the CCA deduction in respect of a property for the year in which the property first becomes available for use. Subsection 1100(2) has two main parts. The first part, as expressed by elements A and B, relates to the enhanced first-year CCA in respect of "accelerated investment incentive property" of a taxpayer, as defined in subsection 1104(4), and property included in Classes 54 and 55, relating to "zero-emission vehicles", as defined in subsection 248(1) of the Act. The second part, as expressed by element C, is the so-called "half-year rule", which applies to any other depreciable property and limits a taxpayer's CCA claim to one-half of the otherwise applicable amount, for the year in which the property first becomes available for use.

Subsection 1100(2) is amended to add a reference to Class 59 in paragraph (a) of element A of the formula in the subsection. Since the CCA rate for Class 59 is already 100%, this amendment excludes property included in Class 59 from being eligible for the enhanced first-year CCA.

**Clause 6**
**Definitions**

ITR
1104(2)

Subsection 1104(2) of the Regulations sets out definitions that apply for the purposes of Part XI of the Regulations and Schedule II to the Regulations.

Subsection 1104(2) is amended consequential on the introduction of new classes 57 to 60. Classes 57 to 60 are relevant for determining various CCA classes for property used in carbon capture, utilization and storage. The following new definitions are introduced which are relevant for determining whether a property qualifies for inclusion in the new Classes 57 or 58.

These new definitions are deemed to have come into force on January 1, 2022.

**“captured carbon”**

Captured carbon means captured carbon dioxide that would otherwise be released into the atmosphere, or is captured from the ambient air.

**“CCUS process”**

CCUS process means the process of carbon capture, utilization and storage that includes the capture of carbon dioxide that would otherwise be released into the atmosphere, or from the ambient air. A CCUS process must also include the storage or use of the captured carbon.

**“CCUS project”**

A CCUS project means a project that is intended to support a CCUS process by:

- capturing carbon dioxide that would otherwise be released into the atmosphere, or from the ambient air,
- transporting captured carbon, or
- storing or using captured carbon.

A CCUS project may include one or more of the components listed above, provided it supports a CCUS process.

**CCUS process determination**

ITR
1104(19)

New subsection 1104(19) of the Regulations provides the authority to the Minister of National Revenue, on the recommendation of the Minister of Natural Resources, to determine whether a particular process, for the purpose of the definition of CCUS process in subsection (2), constitutes a carbon capture, utilization and storage process.

Subsection 1104(19) of the Regulations is deemed to have come into force on January 1, 2022.

**Clause 7**

**Prescribed CCUS property**

ITR
8200.2

The new section 8200.2 describes a prescribed CCUS property for the purpose of subsection 13(18.2) of the Act. A prescribed CCUS property is any property described in Class 57 or 58 in Schedule II to the Regulations.

Section 8200.2 of the Regulations is deemed to have come into force on January 1, 2022.

**Prescribed dedicated geological storage jurisdiction**

ITR
8200.3

Section 8200.3 of the Regulations is relevant to paragraph (a) of the definition "dedicated geological storage" in subsection 127.44(1) of the Act. It prescribes the jurisdictions where projects are eligible for the tax credit.

Currently Alberta and Saskatchewan are prescribed jurisdictions. In addition, any other province, territory, offshore area, or jurisdiction outside of Canada may be determined by the Minister of Environment, in which case that location would become a prescribed jurisdiction.

Section 8200.3 of the Regulations is deemed to have come into force on January 1, 2022.

**Clause 8**

ITR
Schedule II

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

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

**Class 8**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 8 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 8.

**Class 17**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 17 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 17.

**Class 41**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 41 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 41.

**Class 41.1**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 41.1 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 41.1.

**Class 41.2**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 41.2 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 41.2.

**Class 43**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 43 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 43.

**Class 49**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 49 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 49.

**Class 53**

ITR
Schedule II

Consequential on the introduction of Classes 57 and 58, the preamble to Class 53 in Schedule II to the Regulations is amended to add references to the new Classes. This amendment ensures that a property that is included in Classes 57 or 58 is not included in Class 53.

**Class 57**

ITR
Schedule II

Class 57 in Schedule II to the Regulations describes certain property that is part of a CCUS project. Generally speaking, such property includes equipment (including monitoring or control equipment) that is to be used solely for capturing carbon dioxide, for transporting captured carbon or for storage of captured carbon in a geological formation. For these purposes, captured carbon means carbon dioxide that would otherwise be released into the atmosphere, or is captured directly from the ambient air, and carbon storage does not include storage for the purpose of enhanced oil recovery.

Class 57 also includes power generation or heat production equipment that solely supports the CCUS process (as defined in subsection 1104(2) of the Regulations) and equipment that is to be used for preparing or compressing captured carbon for transportation.

A building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment that is to be used solely for capturing, transporting or storing carbon dioxide is also included in Class 57.

In addition, property that is used solely to convert another property so that the converted property could be used for capturing carbon dioxide, for transporting captured carbon or for storage of

captured carbon in a geological formation is also included in Class 57. Class 57 also includes property used to refurbish other Class 57 property.

However, Class 57 does not include equipment that is required for hydrogen production, natural gas processing or acid gas injection, even if such equipment is part of a CCUS project.

Class 57 is relevant for determining whether property is eligible for CCUS tax credit under section 127.44 of the Act. Expenditures (referred to as the qualified carbon capture expenditure, qualified carbon transportation expenditure, or qualified carbon storage expenditure in subsection 127.44(1) of the Act) for certain type of properties included in Class 57 could qualify for investment tax credits of up to 60%. For further details, refer to commentary accompanying the definitions of these different types of expenditures in new subsection 127.44(1) of the Act.

Class 57 is eligible for an 8 per cent CCA rate and is deemed to have come into force on January 1, 2022.

**Class 58**

ITR
Schedule II

Class 58 in Schedule II to the Regulations describes certain property that is part of a CCUS project. Such property includes equipment that is used solely for using carbon dioxide in industrial production (including monitoring and control equipment and refurbished equipment). For the purposes of Class 58, industrial production includes carbon dioxide storage for enhanced oil recovery.

Class 58 also includes a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment for using carbon dioxide in industrial production.

In addition, property that is used solely to convert another property so that the converted property could be used for using carbon dioxide in industrial production is also included in Class 58.

Class 58 is relevant for determining whether property is eligible for the CCUS tax credit under section 127.44 of the Act. Expenditures for certain properties included in Class 58 (referred to as qualified carbon use expenditures in new subsection 127.44(1) of the Act) could qualify for an investment tax credit of 37 ½% (for expenditures incurred after 2021 and before 2031) or 18 ¾% (for expenditures incurred after 2030 and before 2041).

Class 58 is eligible for a 20 per cent CCA rate and is deemed to have come into force on January 1, 2022.

**Class 59**

ITR

Schedule II

Class 59 in Schedule II to the Regulations provides for a 100 per cent CCA rate for certain property. The property includes certain types of expenditures relating to carbon capture, utilization and storage. The expenditures that could be included in Class 59 are the type of expenses that are similar to Canadian exploration expenses in the context of mining or oil and gas (Canadian exploration expense is defined in subsection 66.1(6) of the Act.

Specifically, Class 59 includes any expense for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon in Canada, including such an expense that is a geological, geophysical or geochemical expense.

Class 59 also includes an expense for environmental studies or community consultations, including studies or consultations that are undertaken to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon.

Class 59 excludes an expense relating to enhanced oil recovery or that is described in Class 60.

Class 59 is deemed to have come into force on January 1, 2022 and only expenditures incurred after 2021 are included in Class 59.

**Class 60**

ITR
Schedule II

Class 60 in Schedule II to the Regulations provides for a 30 per cent CCA rate for certain property. The property includes certain types of expenditures relating to carbon capture, utilization and storage. The expenditures that could be included in class 60 are the type of expenditures that are similar to Canadian development expenses in the context of mining and oil or gas (Canadian development expense is defined in subsection 66.2(5) of the Act).

Specifically, Class 60 includes any expenditure incurred by a taxpayer in drilling, converting or completing a well in Canada for the permanent storage of captured carbon. Any expenditure in drilling or converting a well in Canada for the purposes of monitoring pressure changes or other phenomena in captured carbon permanently stored in a geological formation is also included in Class 60. In addition, Class 60 also includes an expenditure in building a temporary access road to the well or preparing a site in respect of the well that is to be used for carbon storage.

For the purposes of Class 60, a well does not include a well that could also be used for enhanced oil recovery.

Class 60 is deemed to have come into force on January 1, 2022 and only expenditures incurred after 2021 are included in Class 60.

## Clean Technology Tax Incentives – Air-Source Heat Pumps

**Clause 1**

**Interpretation**

ITR
5202

Section 5202 of the Regulations defines a number of terms that apply for the purposes of Part LII of the Regulations (except as otherwise provided in sections 5203 or 5204 of the Regulations) and are therefore relevant in determining a corporation's zero-emission technology manufacturing and processing profits for a taxation year (for the purposes of the zero-emission technology manufacturing deduction in section 125.2).

**"qualified zero-emission technology manufacturing activities"**

The definition "qualified zero-emission technology manufacturing activities" in section 5202 describes the activities that may qualify for the zero-emission technology manufacturing deduction. Subparagraph (a)(i) of this definition is amended by adding new Clause (a)(i)(E.1) to include as a qualified zero-emission technology manufacturing activity the manufacturing or processing of air-source heat pumps.

In order to be eligible under clause (E.1), the air-source heat pump equipment must be designed for space or water heating. Furthermore, as per the preamble in paragraph (a), the manufacturing or processing of air-source heat pumps must meet the definition "qualified activities" in section 5202 which, in general, means activities performed in Canada in connection with the manufacturing or processing of goods for sale or lease. Furthermore, pursuant to the restriction in subparagraph (a)(ii) of the "qualified zero-emission technology manufacturing activities" definition, the manufacturing or processing of general purpose components or equipment suitable for integration in equipment other than air-source heat pumps is excluded.

The manufacturing or processing of equipment that is a component of air-source heat pump equipment may be included under paragraph (a) of the "qualified zero-emission technology manufacturing activities" definition if such property is purpose-built or designed exclusively to form an integral part of the air-source heat pump equipment pursuant to clause (I) of the definition (provided the activity is not subject to one of the restrictions).

This amendment applies as of January 1, 2022.

**Clause 2**

**Deduction for Depreciation**

ITR
Schedule II

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

Class 43.1 (30% CCA rate)

Class 43.1 in Schedule II currently provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment. Under certain conditions, Class 43.2 provides an accelerated CCA rate of 50% per year (on a declining-balance basis) for property otherwise included in Class 43.1. Furthermore, a temporary enhanced deduction in subsection 1100(2) of the Regulations applies to certain Class 43.1 and 43.2 property acquired after November 20, 2018 and available for use before 2028.

Under Clause (d)(i)(A) of Class 43.1 in Schedule II, active solar heating equipment and equipment that is part of a ground-source heat pump system may be eligible under that Class. Clause (d)(i)(A) is amended by adding subclause (III) to expand Class 43.1 eligibility (and by extension Class 43.2 eligibility) to equipment that is part of an air-source heat pump system that transfers heat from the outside air. Eligible equipment may include refrigerant piping, energy conversion equipment, thermal energy storage equipment, control equipment and equipment designed to enable the system to interface with other heating and cooling equipment. Consistent with other eligible equipment included under subparagraph (d)(i), only air-source heat pump equipment that is used by a taxpayer (or a lessee of the taxpayer) primarily for the purpose of heating an actively circulating liquid or gas is eligible.

Clause (d)(i)(B) ensures that any of the following property is not included in Class 43.1 as part of the active solar heating, or ground-source heat pump equipment:

- a building or a part of a building (other than a solar collector that is not a window and that is integrated into a building);
- energy equipment that backs up equipment described in subclause (A)(I) or (II); or
- equipment that distributes heated air or water in a building.

Consequential to the expansion of Class 43.1 to air-source heat pump equipment, clause (B) is amended to incorporate a reference to new subclause (A)(III).

These amendments apply to property acquired after April 6, 2022, that has not been used or acquired for use before April 7, 2022.

## Critical Mineral Exploration Tax Credit

### Clause 1

### Definitions

ITA
66.1(6)

**“cumulative Canadian exploration expense”**

In the formula in the definition of “cumulative Canadian exploration expense” (CCEE), element L requires the reduction of a taxpayer’s CCEE pool in the taxation year by the investment tax credit claimed by the taxpayer under subsection 127(5) or (6) in a preceding year in respect of a qualified Canadian exploration expenditure, a pre-production mining expenditure or a flow-through mining expenditure.

The description of L is amended to provide that a taxpayer’s CCEE is also reduced by any investment tax credit claimed by the taxpayer in respect of a “flow-through critical mineral mining expenditure” of the taxpayer. (See the commentary to the new definition “flow-through critical mineral mining expenditure” in subsection 127(9) for further details.)

This amendment is deemed to have come into force on April 7, 2022.

**Clause 2**

**Investment Tax Credit**

ITA
127(5)(a)

Subsection 127(5) permits a taxpayer to deduct an “investment tax credit”, as defined in subsection 127(9), from Part I tax otherwise payable for a taxation year. The amount deductible by the taxpayer under this subsection cannot exceed the lesser of the total amounts provided in paragraphs (a) and (b).

The total amount in paragraph 127(5)(a) is computed by adding the total amounts described in subparagraphs (i) and (ii) .

The total provided under subparagraph 127(5)(a)(i) generally includes the taxpayer’s investment tax credit at the end of the year in respect of property acquired before the end of the taxation year and certain expenditures defined in subsection 127(9) for the taxation year or a preceding taxation year. The total amount under subparagraph 127(5)(a)(ii) is the lesser of (A) the taxpayer’s investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year and certain expenditures defined in subsection 127(9) for a subsequent taxation year, and (B) the amount, if any, by which the taxpayer’s tax otherwise payable under Part I for the year exceeds the amount determined under subparagraph (i).

Subparagraph 127(5)(a)(i) is amended to ensure that the taxpayer’s investment tax credit at the end of the year in respect of the taxpayer’s flow-through critical mineral mining expenditure (as

newly defined in subsection 127(9)) for the year or a preceding taxation year may also be deducted in computing the taxpayer's tax payable for the year.

Clause 127(5)(a)(ii)(A) is amended to ensure that the investment tax credit in respect of the taxpayer's flow-through critical mineral mining expenditure for a subsequent year may also be deducted in computing the taxpayer's tax payable under Part I.

See the commentary to the new definition "flow-through critical mineral mining expenditure" in subsection 127(9) for further details.

These amendments are deemed to have come into force on April 7, 2022.

**Definitions**

ITA
127(9)

**"critical mineral"**

The new definition "critical mineral" is added to subsection 127(9). This definition provides that, for the purposes of subsection 127(9), a "critical mineral" is copper, nickel, lithium, cobalt, graphite, a rare earth element, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, a platinum group metal, or uranium.

The term "critical mineral" is relevant to paragraph (a) of the new definition "flow-through critical mineral mining expenditure" in subsection 127(9) as critical minerals must be the primary target of the exploration activities described in that definition. The definition "critical mineral" is relevant to determining a taxpayer's investment tax credit in respect of specified surface "grass-roots" exploration for the minerals specified in the "critical mineral" definition. (This credit is referred to as the "critical mineral exploration tax credit".) The critical mineral exploration tax credit is added to paragraph (a.21) of the definition of "investment tax credit" in subsection 127(9).

For more information on the critical mineral exploration tax credit, see the commentary to the definitions "flow-through critical mineral mining expenditure" and "investment tax credit" in subsection 127(9).

This amendment is deemed to have come into force on April 7, 2022.

**"flow-through critical mineral mining expenditure"**

The definition "flow-through critical mineral mining expenditure" is added to subsection 127(9) to define expenses for which a 30% investment tax credit is provided under new paragraph (a.21) of the definition "investment tax credit" in subsection 127(9) (referred to in this commentary as the "critical mineral exploration tax credit" or "CMETC"). The CMETC is only available to a taxpayer who is an individual (other than a trust).

In general terms, a flow-through critical mineral mining expenditure of a taxpayer for a taxation year means a Canadian exploration expense (CEE) incurred in conducting exploration that primarily targets critical minerals that is considered by the Act to have been incurred by the taxpayer in the year as a result of a renunciation by a corporation under an agreement for the issue of a flow-through share and that meets certain additional conditions set out in paragraphs (a) to (f) of the definition “flow-through critical mineral mining expenditure”.

The term “flow-through share” is defined in subsection 66(15). A flow-through share is generally a share of the capital stock of a principal-business corporation that is issued to a person pursuant to an agreement in writing under which the corporation agrees to incur resource expenses and to renounce those expenses to that person. In general terms, the principal business of a principal-business corporation is exploration and development of minerals or other resources. Subsection 66(12.6) permits such a principal-business corporation to renounce its CEE to its flow-through shareholders. In general, where a corporation renounces CEE to a shareholder, the shareholder is deemed by subsection 66(12.61) to have incurred CEE on the effective date of the renunciation.

A flow-through share is subject to the prescribed share rules in section 6202.1 of the Income Tax Regulations, which cause a “prescribed share” not to qualify as a flow-through share. These rules are intended to ensure that flow-through shares represent genuine risk capital. Indemnification or similar agreements to provide any assistance, indemnity or guarantee in the amount of an investment tax credit claimed, or sought to be claimed, in respect of a flow-through share typically would not represent genuine risk capital and may, as a result, cause the share to be a prescribed share and not a flow-through share.

Paragraph (a) of the definition “flow-through critical mineral mining expenditure” requires that the expense be CEE incurred after April 7, 2022 by a corporation in conducting mining exploration activity from or above the surface of the earth primarily targeting critical minerals.

The definition of CEE refers to the terms “mineral” and “mineral resource”, which are defined in subsection 248(1) and used in the Act and Income Tax Regulations for the purposes of determining a taxpayer’s mining income. The definition of “critical mineral” is added to subsection 127(9) and provides an exhaustive list of minerals that are “critical minerals” for the purposes of subsection 127(9).

Mining exploration activity that primarily targets critical minerals means exploration activities that target mineral deposits containing mostly (i.e., more than 50%) critical minerals.

Paragraph (b) of the definition “flow-through critical mineral mining expenditure” provides that certain types of CEE are expenses under the definition. More specifically, only expenses described in paragraph (f) of the definition “Canadian exploration expense” in subsection 66.1(6) are considered to be expenses for the purposes of the “flow-through critical mineral mining expenditure” definition. Expenses that do not meet the condition in this paragraph are expenses incurred in respect of

(A) trenching, if one of the purposes of the trenching is to carry out preliminary sampling (other than specified sampling, as defined in subsection 127(9)),
(B) digging test pits (other than digging test pits for the purpose of carrying out specified sampling), and
(C) preliminary sampling (other than specified sampling).

This paragraph provides the same requirements as paragraph (b) of the "flow-through mining expenditure" definition in subsection 127(9).

Paragraph (c) of the definition "flow-through critical mineral mining expenditure" provides that eligible expenses must be renounced under a flow-through share agreement (as described in subsection 66(12.6)) made after April 7, 2022 and on or before March 31, 2027. This paragraph provides a similar requirement to paragraph (c) of the "flow-through mining expenditure" definition in subsection 127(9).

The condition provided in paragraph (d) of the definition "flow-through critical mineral mining expenditure" is relevant where expenses renounced by the corporation to the taxpayer (or to a partnership of which the taxpayer is a member) were not actually incurred by the corporation. Such circumstances can occur where the expenses are deemed to have been incurred by the corporation as a result of a renunciation by another corporation under subsection 66(12.6) of the Act (referred to in this commentary as the "prior renunciation") to the corporation. Paragraph (d) requires that, in such cases, the prior renunciation be made under an agreement that is described in subsection 66(12.6) and is made between the corporations after April 7, 2022 and before March 31, 2027. This paragraph provides a similar requirement to paragraph (d) of the "flow-through mining expenditure" definition in subsection 127(9).

Paragraph (e) of the definition "flow-through critical mineral mining expenditure" provides that the expense must be certified, in prescribed manner and form, by a "qualified engineer or geoscientist" (as newly defined in subsection 127(9)) as an expense that will be incurred pursuant to an exploration plan that primarily targets critical minerals. The certification must not be made more than 12 months prior to the time that the agreement that is described in subsection 66(12.6) is made. The qualified engineer or geoscientist must act reasonably in their professional capacity, in completing the certification. This condition is intended to protect both individual taxpayers (who may invest in flow-through shares on the understanding that their investment will be eligible for the CMETC) and the integrity of the Canadian income tax system.

Paragraph (f) of the definition "flow-through critical mineral mining expenditure" provides that the expenditure is not an expense that the taxpayer has sought to deduct from its tax otherwise payable for the taxation year under subsection 127(5) in respect of the METC. This condition is intended to prevent taxpayers from claiming both the METC and the CMETC in respect of the same expense, or from claiming the METC and subsequently amending their claim in order to claim the CMETC in respect of the same expense.

**Example:**

XYZ Corporation is engaging in exploration activities that purport to be primarily targeting copper and makes mineral claims in three separate areas on the Canadian Shield geological formation: Area 1, Area 2, and Area 3. Copper is defined as a "critical mineral" for the purposes of subsection 127(9) of the Act. XYZ Corporation issues shares pursuant to flow-through share agreements under which its investors claim the CMETC on XYZ Corporation's CEE incurred to explore for copper.

By the end of Year 1, XYZ Corporation reports exploration data that indicates the presence of copper along with other metals (e.g., platinum group metals, gold and silver). While copper is present, the data indicates that gold is likely the prominent commodity by value (i.e., over half of the expected value of discovered commodities), at the time. Given this new understanding of the geological landscape of Area 1, XYZ Corporation would no longer be primarily targeting copper, if it issues flow-through shares to continue its exploration near Area 1. In Year 2, XYZ Corporation continues to explore the surrounding areas near Area 1 for gold, and issues flow-through shares that qualify for the METC.

By the end of Year 1, in respect of Area 2, XYZ Corporation reports exploration data that indicates the presence of copper along with other metals (e.g., nickel, cobalt, platinum group metals, gold and silver). While other metals are present, the data indicates that copper (or a combination of defined critical minerals) is likely the prominent commodity by value (i.e., over half of the expected value of discovered commodities), at the time. Given this new understanding of the geological landscape of Area 2, XYZ Corporation continues to explore the zone for its copper potential – i.e., a "critical mineral" as defined by subsection 127(9) of the Act. In Year 2, XYZ Corporation issues flow-through shares in exchange for subscription proceeds for which a qualified engineer or geoscientist has certified that the primary exploration target remains copper, which would qualify for the CMETC.

By the end of Year 1, in respect of Area 3, XYZ Corporation reports unsuccessful exploration results. However, based on available information and reasonable professional judgment, XYZ Corporation's exploration team remains optimistic regarding the critical mineral potential of Area 3, and continues to explore the area for copper – a "critical mineral" as defined by subsection 127(9) of the Act. In Year 2, XYZ Corporation issues flow-through shares in exchange for subscription proceeds for which a qualified engineer or geoscientist has certified that the primary exploration target remains copper, which would qualify for the CMETC.

See the commentary on the definition "flow-through mining expenditure" for further details.

This amendment is deemed to have come into force on April 7, 2022.

**"flow-through mining expenditure"**

The definition "flow-through mining expenditure" in subsection 127(9) defines the expenses that qualify for the 15% investment tax credit in respect of specified surface "grass-roots" mineral exploration (often referred to as the "mineral exploration tax credit" or "METC").

The definition “flow-through mining expenditure” is amended to add new paragraph (e).

This amendment is made in conjunction with the introduction of the new definition “flow-through critical mineral mining expenditure” to subsection 127(9). Flow-through critical mineral mining expenditures qualify for the 30% investment tax credit in respect of specified surface “grass-roots” critical mineral exploration (referred to as the “critical mineral exploration tax credit” or “CMETC”).

New paragraph (e) of the definition “flow-through mining expenditure” provides that a flow-through mining expenditure is not an expense that the taxpayer has included in its computation of the CMETC and sought to deduct from its tax otherwise payable for the taxation year under subsection 127(5).

Paragraph (e) prevents a taxpayer from deducting the METC and the CMETC in respect of the same expense.

Paragraph (e) also prevents a taxpayer from claiming a deduction (whether the deduction is allowed or not) for the CMETC in respect of expenses eligible for that credit and then later claiming the METC on the basis that the expenses meet the conditions of the “flow-through mining expenditure” definition. For example, if a taxpayer deducted the CMETC in respect of an expense at the time it filed its return for the taxation year, but was subsequently reassessed and denied the CMETC, the taxpayer would not be able to claim the METC on this expense. This rule is intended to prevent taxpayers from claiming both the METC and CMETC with respect to the same expenditure, and from filing aggressive claims for the CMETC with the expectation that, even if such claims are denied, the METC can be claimed as a fallback.

See the commentary on the definition “flow-through critical mineral mining expenditure” for further details.

This amendment is deemed to have come into force on April 7, 2022.

**“investment tax credit”**

The definition of “investment tax credit” is amended to add new paragraph (a.21). Where the taxpayer is an individual (other than a trust), new paragraph (a.21) provides that 30% of the taxpayer's “flow-through critical mineral mining expenditures” at the end of a taxation year is added to the taxpayer's investment tax credit for the year. (The new expression “flow-through critical mineral mining expenditure” is added to the definitions in subsection (9). See the commentary thereto for further details.)

The amendment is deemed to come into force on April 7, 2022.

**“qualified engineer or geoscientist”**

The new definition “qualified engineer or geoscientist” is added to subsection 127(9). The definition is relevant for the purposes of the definition “flow-through critical mineral mining expenditure” (as newly defined in subsection 127(9)) and the new critical mineral exploration tax credit (provided in the newly added paragraph (c.21) of the definition of “investment tax credit” in subsection 127(9)). More specifically, in order for an individual investor to claim the new critical mineral exploration tax credit, a qualified engineer or geoscientist must certify, in prescribed manner and form (and subject to other conditions), that the Canadian exploration expense to be renounced to the individual pursuant to a flow-through share agreement will be incurred pursuant to an exploration plan that primarily targets critical minerals. The “qualified engineer or geoscientist” definition is intended to protect individual taxpayers and the integrity of the Canadian tax system. The definition is largely based on the “qualified person” definition provided in National Instrument 43-101 “Standards of Disclosure for Mineral Projects” published by the Canadian Securities Administrators as of April 7, 2022. However, the “qualified engineer or geoscientist” definition does not extend to engineers or geoscientists who are regulated by, or members of, a professional association outside of Canada. The “qualified engineer or geoscientist” definition does not require the professional engineer or geoscientist to be independent from the principal-business corporation that enters into the flow-through share agreement. Consequently, subject to meeting the specified conditions provided in paragraphs (a) through (d) of the definition, a qualified engineer or geoscientist may be an employee of the issuer corporation.

Paragraph (a) of the definition “qualified engineer or geoscientist” provides a minimum education or accreditation requirement. Specifically, paragraph (a) requires that the engineer or geoscientist must have a university degree, or equivalent accreditation, in an area of geoscience, or engineering, relating to mineral exploration or mining.

Paragraph (b) of the definition “qualified engineer or geoscientist” provides a minimum experience threshold requirement. Specifically, paragraph (b) requires the engineer or geoscientist to have at least five years of experience in mineral exploration, mine development or operation, or mineral project assessment, or any combination of these, that is relevant to their professional degree or area of practice.

Paragraph (c) of the definition “qualified engineer or geoscientist” provides a minimum relevant exploration experience requirement in respect of the particular exploration project. Specifically, the engineer or geoscientist must have experience relevant to the subject matter of the exploration project and the certification described in paragraph (e) of the definition “flow-through critical mineral mining expenditure”.

Paragraph (d) of the definition “qualified engineer or geoscientist” provides a minimum professional good standing requirement. Specifically, the engineer or geoscientist must be in good standing with a professional association regulating the profession of engineering or geoscience in Canada.

This amendment is deemed to have come into force on April 7, 2022.

**Investment tax credit**

ITA
127(11.1)(c.21)

Subsection 127(11.1) sets out various rules for determining amounts to be included for the purpose of the definition “investment tax credit” in subsection 127(9). These rules provide for the reduction of capital cost and qualified expenditures by certain amounts that qualify as any government assistance, non-government assistance or contract payments.

New paragraph 127(11.1)(c.21) reduces a taxpayer’s “flow-through critical mineral mining expenditure” (as newly defined in subsection 127(9)) by the amount of assistance that the taxpayer has received, is entitled to receive or can reasonably be expected to receive relating to expenses included in determining the taxpayer's flow-through critical mineral mining expenditure.

This amendment is deemed to have come into force on April 7, 2022.

**Clause 3**

**Assessment**

ITA
152(4)(b)(v.1)

Subparagraph 152(4)(b)(v.1) is introduced to allow the Minister of National Revenue to reassess a taxpayer within 3 years after the end of the normal reassessment period where the reassessment is made as a consequence of a reduction of an amount deducted or sought to be deducted under subsection 127(5) in respect of a flow-through critical mineral mining expenditure as defined in subsection 127(9).

This amendment is deemed to have come into force on April 7, 2022.

## Flow-Through Shares for Oil, Gas, and Coal Activities

**Clause 1**

**Resource expenses**

ITA
66

Section 66 provides rules in respect of resource expenses.

**Canadian exploration expenses to flow-through shareholder**

ITA

66(12.6)

Subsection 66(12.6) permits a principal-business corporation to renounce Canadian exploration expenses ("CEE") to its flow-through shareholders. To be eligible for flow-through treatment, CEE must generally be incurred in the 24-month period that begins on the day on which the relevant flow-through share agreement is entered into, and must be incurred on or before the effective date of the renunciation. The renounced expenditures are then treated as having been incurred directly by the shareholder on the effective date of the renunciation.

Subsection (12.6) is amended in two respects. First a reference to new paragraph (b.2) is added in paragraph (a). Second, new paragraph (b.2) is introduced to eliminate the flow-through share regime for oil, gas, and coal activities by no longer allowing oil, gas and coal exploration expenditures that are CEE to be renounced to flow-through shareholders in respect of flow-through share agreements made after March 2023.

ITA
66(12.6)(a)

Eligible CEE that a corporation may renounce must be net of any assistance (as defined in subsection 66(15)) the corporation receives or may receive in respect of the CEE. However, paragraph (a) of subsection (12.6) ensures that any assistance received in respect of expenses referred to in paragraphs (b) or (b.1) does not reduce the eligible CEE that may be renounced (since such expenses cannot be renounced).

Paragraph 66(12.6)(a) is amended, consequential on the introduction of new paragraph (b.2), to add a reference to the new paragraph. This ensures that any eligible CEE that could be renounced is not reduced by assistance received in respect of expenses described in new paragraph (b.2) (since such expenses also cannot be renounced).

This amendment applies in respect of in respect of flow-through share agreements made after March 2023.

ITA
66(12.6)(b.2)

New paragraph 66(12.6)(b.2) is added to eliminate the flow-through share regime for oil, gas, and coal activities by no longer allowing oil, gas and coal exploration expenditures to be renounced as CEE under flow-through share agreements made after March 2023. More specifically, for flow-through share agreements made after March 2023, new paragraph (b.2) removes from the eligible CEE that may be renounced to a flow-through shareholder any expense that is not

- a Canadian renewable and conservation expense (defined in section 1219 of the Regulations), or
- related to a "mineral resource" (defined in subsection 248(1)) that is a base or precious metal deposit, or a mineral deposit in respect of which

- the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,
- the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or
- the principal mineral extracted is silica that is extracted from sandstone or quartzite.

This amendment applies on Royal Assent.

**Canadian development expenses to flow-through shareholder**

ITA
66(12.62)

Subsection 66 (12.62) permits a principal-business corporation to renounce Canadian development expenses ("CDE") to its flow-through shareholders. To be eligible for flow-through treatment, CDE must generally be incurred in the 24-month period that begins on the day on which the relevant flow-through share agreement is entered into, and must be incurred on or before the effective date of the renunciation. The renounced expenditures are then treated as having been incurred directly by the shareholder on the effective date of the renunciation.

Subsection (12.62) is amended in two respects. First a reference to new paragraph (b.2) is added in paragraph (a). Second, new paragraph (b.2) is introduced to eliminate the flow-through share regime for oil, gas, and coal activities by no longer allowing oil, gas and coal exploration expenditures that are CDE to be renounced to flow-through shareholders in respect of flow-through share agreements made after March 2023.

ITA
66(12.62)(a)

Eligible CDE that a corporation may renounce must be net of any assistance (as defined in subsection 66(15)) the corporation receives or may receive in respect of the CDE. However, paragraph (a) of subsection (12.62) ensures that any assistance received in respect of expenses referred to in paragraphs (b) or (b.1) does not reduce the eligible CDE that may be renounced (since such expenses cannot be renounced).

Paragraph 66(12.62)(a) is amended, consequential on the introduction of new paragraph (b.2), to add a reference to the new paragraph. This ensure that any eligible CDE that could be renounced is not reduced by assistance received in respect of expenses described in new paragraph (b.2) (since such expenses also cannot be renounced).

This amendment applies in respect of in respect of flow-through share agreements made after March 2023.

ITA
66(12.62)(b.2)

New paragraph 66(12.62)(b.2) is added to eliminate the flow-through share regime for oil, gas, and coal activities by no longer allowing oil, gas and coal development expenditures to be renounced as CDE under flow-through share agreements made after March 2023. More specifically, for flow-through share agreements made after March 2023, new paragraph (b.2) removes from the eligible CDE that may be renounced to a flow-through shareholder any expense that is not related to a "mineral resource" (defined in subsection 248(1)) that is

- a base or precious metal deposit, or
- a mineral deposit in respect of which
  - the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,
  - the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or
  - the principal mineral extracted is silica that is extracted from sandstone or quartzite.

This amendment applies on Royal Assent.

## Small Business Deduction

### Clause 1

### Business limit reduction

ITA
125(5.1)(a)

The small business deduction allows certain Canadian-controlled private corporations (CCPCs) to benefit from a corporate income tax rate that is lower than the general corporate income tax rate on up to $500,000 of active business income for a particular taxation year (the corporation's "business limit").

The business limit is generally determined under subsections 125(2) to (5). Under subsection 125(5.1), the business limit of a corporation, and, if applicable, of other corporations with which the corporation is associated (referred to as "associated corporations"), for a particular taxation year is reduced by the greater of the reductions provided under paragraphs 125(5.1)(a) and (b).

Under paragraph 125(5.1)(a), the business limit of a corporation for a particular taxation year is reduced on a straight-line basis if the total taxable capital employed in Canada of the corporation and, if applicable, of its associated corporations, exceeds $10 million. The business limit is fully eliminated when taxable capital reaches $15 million.

The first formula in paragraph 125(5.1)(a) is amended to fully reduce the business limit when a CCPC and its associated corporations reach an upper threshold of $50 million in taxable capital, instead of the previous $15 million limit.

The new range over which the business limit is reduced, from $10 million to $50 million, is intended to enable more medium-sized CCPCs to benefit from the small business deduction and to increase the amount of active business income that may be eligible for the small business deduction.

This amendment applies to taxation years that begin on or after April 7, 2022.

## International Financial Reporting Standards for Insurance Contracts (IFRS 17)

**Clause 1**

**Application of subsec. (9) to insurers**

ITA
18(9.02)

Subsection 18(9.02) deems an outlay or expense made or incurred by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness policy or a life policy that is not a group term life policy that provides coverage for a period not exceeding 12 months) to be an expense incurred for services rendered consistently throughout the period of coverage of the policy. Where such acquisition costs relate to an insurance policy that covers a period extending beyond the end of the insurer's taxation year, subsection 18(9) will apply to prorate the deductibility of the costs over the period of coverage of the policy.

Under the newly adopted International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023, outlays and expenses made or incurred by an insurer on account of an acquisition of an insurance policy are amortized over time or expensed once when the policy is recognized. Subsection 18(9.02) is amended to apply only to acquisition expenses on account of the acquisition of a policy prior to the issuance of that policy. Where an insurer incurs an acquisition expense prior to the issuance of an insurance policy, the expense will be deemed to be incurred as consideration for services rendered in the year the policy is issued, as opposed to the year the expenses were incurred (assuming they are different).

This amendment applies to taxation years that begin after 2022.

**Clause 2**

**Insurance Corporations**

ITA
138

Section 138 of the Act sets out detailed rules relating to insurance corporations.

Section 138 is amended to incorporate the main concepts arising from the adoption of new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (know as “IFRS 17”). These new concepts are incorporated into the reserve computation (subsections 138(3) and (4)), investment income of non-resident insurers and resident life insurers that carry on a business both inside and outside Canada (subsection 138(9)) and Parts I.3 and VI of the Act. Section 138 is also amended to introduce a transition on the change to the new accounting standard.

**Deductions allowed in computing income**

ITA
138(3)(a)(i) and (ii)

Subsection 138(3) sets out certain deductions for life insurers in computing their income from carrying on a life insurance business in Canada.

Subparagraph 138(3)(a)(i) permits a life insurer to deduct in computing its income for a taxation year such amount as is allowed by regulation as a policy reserve in respect of its life insurance policies. Subparagraph 138(3)(a)(i) is amended consequential on the introduction of IFRS 17 to clarify that the policy reserve is in respect of the groups of contracts of the life insurer at the end of the year as determined under the new standard.

Subparagraph 138(3)(a)(ii) permits a life insurer to deduct in computing its income for a taxation year a prescribed amount as a reserve in respect of claims under life insurance policies that were received by it before the end of the year and that are unpaid at the end of the year. Subparagraph 138(3)(a)(ii) is repealed consequential on the introduction of IFRS 17 under which the amount of a reserve in respect of incurred and unpaid claims is included in the liability for incurred claims of a group, which is already included under subparagraph 138(3)(a)(i) as determined under the new standard.

**Amounts included in computing income**

ITA
138(4)(b)

Subsection 138(4) requires a life insurer to include certain amounts in computing its income from carrying on a life insurance business in Canada under Part I for a taxation year. Paragraph 138(4)(b) require a life insurer to include in income the amount prescribed by subsection 1404(2) of the Regulations to be the “negative policy reserves” in respect of the insurer's life insurance policies. Paragraph 138(4)(b) is amended consequential on the introduction of IFRS 17 to clarify that the amount prescribed is in respect of the groups of contracts of the life insurer at the end of the year as determined under the new standard.

**Computation of income where insurance business is transferred**

ITA
138(11.92)

Subsection 138(11.92) provides rules which apply where an insurer has disposed of all or substantially all of either an insurance business, or a line of an insurance business, carried on in Canada and the purchaser has assumed the obligations of the business. Subsection 138(11.92) is amended to remove the reference to subparagraph 138(3)(a)(ii) consequential to the repeal of that subparagraph on the adoption of IFRS 17.

**Definitions**

ITA
138(12)

Subsection 138(12) provides definitions for purposes of section 138. Following the adoption of International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17"), new concepts central to the new insurance accounting regime are introduced. Specifically, subsection (12) is amended to introduce the definitions "contractual service margin", "liability for remaining coverage", "liability for incurred claims", "reinsurance contract held amount", "policyholders' liabilities", and "group of insurance policies" and "group of reinsurance contracts". In addition, subsection 138(12) is amended to replace the definitions "base year", "deposit accounting policy", "excluded policy", "reserve transition amount" and "transition year" to provide for a transition on the adoption of the new accounting standard for insurance contracts.

**"contractual service margin"**

The definition "contractual service margin" incorporates into subsection 138(12) the IFRS 17 concept that, in general, refers to the profit in respect of a group of insurance policies of, or reinsurance contracts held by, an insurer.

For purposes of this definition, the "contractual service margin" is an amount determined for a group of insurance policies of an insurer, or a group of reinsurance contracts held by an insurer, at the end of the insurer's taxation year. The contractual service margin for any given group of contracts (whether a group of insurance policies or reinsurance contracts) is defined as the greater of two amounts. The first is the amount of the contractual service margin that is reported at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority" in this section and new subsection 138(12.2)). The second amount is the contractual service margin for the group as determined at the end of that particular taxation year according to IFRS 17 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to projected income, sales and capital taxes (other than the tax payable under Part XII.3 of the Act). Sales taxes includes HST/GST as well as provincial sales taxes. The amounts are also determined without reference to amounts payable that are deductible for the taxation year, or

a preceding year (such as commissions payable). Finally, these amounts are determined without reference to amounts receivable (such as premiums receivable) to the extent such amounts have been included in income for the taxation year, or a previous taxation year, under Part I.

The contractual service margin for a group of insurance policies of an insurer, or reinsurance contracts held by an insurer, at the end of a taxation year may only be one amount, which is the greater of the amount reported, or amount determined consistent with the IFRS 17 standard, at the end of that taxation year.

**“group of insurance policies” and “group of reinsurance contracts”**

The definitions “group of insurance policies” and “group of reinsurance contracts” introduce a key concept for purposes of the Income Tax Act and Regulations amendments incorporating the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as “IFRS 17”). The contractual service margin, liability for remaining coverage, liabilities for incurred claims and reinsurance contract held amount, relevant for the computation of an insurer’s reserves among other things, are computed in reference to a group of insurance policies of an insurer, or a group of reinsurance contracts held by an insurer.

The definition “group of insurance policies” and “group of reinsurance contracts” is introduced in order to ensure that references to group of contracts are tied to the new standard. Specifically, under this definition, a reference to a group of insurance policies, or a group of reinsurance contracts, as the case may be, refers to a group of one or more contracts that have been grouped in a manner consistent with IFRS 17 and that has been (or would be) reported as such to the insurer’s relevant authority (as defined in subsection 138(12)).

**“liability for incurred claims”**

The definition “liability for incurred claims” incorporates into subsection 138(12) the IFRS 17 concept that, in general, refers to cash flows for claims and expenses already incurred but not yet paid for a group of insurance policies of an insurer.

For purposes of this definition, the “liability for incurred claims” is an amount determined for a group of insurance policies of an insurer at the end of the insurer’s taxation year. The liability for incurred claims for a group of insurance policies is defined as the positive or negative number of the lesser of two amounts. The first is the liability for incurred claims that is reported at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer’s relevant authority (for more information, see the commentary on the definition “relevant authority in this section and new subsection 138(12.2)). The second amount is the liability for incurred claims for the group as determined at the end of that particular taxation year according to IFRS 17 effective for years that begin on or after January 1, 2023 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to projected income, sales and capital taxes (other than the tax payable under Part XII.3

of the Act). Sales taxes includes HST/GST as well as provincial sales taxes. The amounts are also determined without reference to amounts payable that are deductible for the taxation year, or a preceding year. Finally, these amounts are determined without reference to amounts receivable to the extent such amount have been included in income for the taxation year, or a previous taxation year, under Part I.

The liability for incurred claims for a group of insurance policies of an insurer at the end of a taxation year may only be one amount, which is the lesser of the amount reported, or amount determined consistent with IFRS 17 standard, at the end of that taxation year.

**“liability for remaining coverage”**

The definition “liability for remaining coverage” incorporates into subsection 138(12) the IFRS 17 concept that, in general, refers to the risk-adjusted present value of future cash flows (called the fulfilment cash flows) for a group of insurance policies of an insurer and the contractual service margin for that group. The fulfilment cash flows may be positive or negative.

For purposes of this definition, the “liability for remaining coverage” is an amount determined for a group of insurance policies of an insurer at the end of the insurer’s taxation year. The liability for remaining coverage for a group of insurance policies is defined as the positive or negative number of the lesser of two amounts. The first is the liability for remaining coverage that is reported at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer’s relevant authority (for more information, see the commentary on the definition “relevant authority in this section and new subsection 138(12.2)). The second amount is the liability for remaining coverage for the group as determined at the end of that particular taxation year according to the IFRS 17 standard effective for years that begin on or after January 1, 2023 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to projected income, sales and capital taxes (other than the tax payable under Part XII.3 of the Act). Sales taxes includes HST/GST as well as provincial sales taxes. The amounts are also determined without reference to amounts payable that are deductible for the taxation year, or a preceding year (such as commissions payable). Finally, these amounts are determined without reference to amounts receivable (such as premiums receivable) to the extent such amount have been included in income for the taxation year, or a previous taxation year, under Part I.

The liability for remaining coverage for a group of insurance policies of an insurer at the end of a taxation year may only be one amount, which is the lesser of the amount reported, or amount determined consistent with IFRS 17 standard, at the end of that taxation year.

**“policyholders’ liabilities”**

The new definition policyholders’ liabilities of an insurer at the end of the taxation year means the amount or item reported as policyholders’ liabilities as at the end of the year. The policyholders’ liabilities represents the insurer’s surplus account for participating policyholders.

The policyholders' liabilities reported is, in general, the amount or item reported in the insurer's non-consolidated balance sheet as at the end of the year to the insurer's relevant authority (defined in this subsection) (see commentary in subsection 138(12.2) for further details).

**"reinsurance contract held amount"**

The definition "reinsurance contract held amount" incorporates into subsection 138(12) the IFRS 17 concept that provides that reinsurance contracts have to be accounted for separately from the underlying insurance policies. Reinsurance contracts held, in general, refers to the present value of future cash flows of the group of reinsurance contracts held by the insurer.

For purposes of this definition, the "reinsurance contract held amount" is an amount determined for a group of reinsurance contracts held by an insurer at the end of the insurer's taxation year. The reinsurance contract held amount for any given group of reinsurance contracts is defined as the positive or negative number of the lesser of two amounts. The first is the reinsurance contract held amount that is reported at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority in this section and on new subsection 138(12.2)). The second amount is the reinsurance contract held amount for the group as determined at the end of that particular taxation year in accordance with IFRS 17 applicable for years beginning on or after January 1, 2023 and using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to projected income, sales and capital taxes (other than the tax payable under Part XII.3 of the Act). Sales taxes includes HST/GST as well as provincial sales taxes. The amounts are also determined without reference to amounts payable that are deductible for the taxation year, or a preceding year. Finally, these amounts are determined without reference to amounts receivable to the extent such amount have been included in income for the taxation year, or a previous taxation year, under Part I.

The reinsurance contract held amount for a group of reinsurance contracts held by an insurer at the end of a taxation year may only be one amount, which is the lesser of the amount reported, or amount determined consistent with IFRS 17 standard, at the end of that taxation year.

**"relevant authority"**

The definition "relevant authority" in subsection 1408(1) of the Regulations is added to subsection 138(12) to apply for purposes of section 138 consequential on the introduction of new subsection 138(12.2). Under subsection 138(12.2), the interpretation of what is reported, or what would be reported for purposes of this and other sections, requires a reference to an insurer's relevant authority.

A "relevant authority" of an insurer means the Office of the Superintendent of Financial Institutions for insurer's required by law to report to the Office of the Superintendent of Financial Institutions or, in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

**“base year”, “reserve transition amount” and “transition year”**

These three definitions are amended to apply transition rules on the adoption of the new International Financial Reporting Standard effective for years that begin on or after January 1, 2023. For more information, see the commentary for subsections 138(16)-(26).

**IFRS reference**

ITA
138(12.1)

New subsection 138(12.1) provides that any reference in section 138 to International Financial Reporting Standards refer to the International Financial Reporting Standards adopted by the Accounting Standards Board in Canada effective for years that begin on or after January 1, 2023 (known as “IFRS”). The application of this subsection includes definitions introduced in subsection 138(12) such as “contractual service margin”, “liability for remaining coverage”, “liability for incurred claims” and “reinsurance contract held amount”.

**Amount or item reported**

ITA
138(12.2)

New subsection 138(12.2) provides rules for how an amount or item that is, or would be, reported is meant to be interpreted for purposes of subsections (12) and 138.1(1) of the Act and Parts XIV, XXIV and LXXXVI of the Regulations.

Paragraph (a) provides that if the insurer is the Canada Mortgage and Housing Corporation or a foreign affiliate of a Canadian resident taxpayer, a reference to an amount reported (or that would be reported) means the amount reported (or that would be reported) in the Corporation’s or affiliate’s financial statements for the year if those statements were consistent with International Financial Reporting Standards for insurance contracts applicable for years that begin on or after January 1, 2023.

Paragraph (b) provides that if the insurer is not described in paragraph (a) and if reporting by the insurer’s relevant authority is required at the end of the taxation year, the amount reported (or that would be reported) is the amount reported (or that would be reported) as at the end of the year, in the insurer’s non-consolidated balance sheet accepted by the insurer’s relevant authority (as defined in subsection 138(12)).

Paragraph (c) provides that if paragraphs (a) and (b) do not apply, and the insurer is subject to the supervision of a relevant authority (even if the insurer is not required to report at the end of the taxation year), the amount that is reported or that would be reported in the insurer’s non-consolidated balance sheet accepted by the insurer’s relevant authority (as defined in subsection 138(12)).

Paragraph (d) provides that if paragraphs (a) through (c) do not apply, the amount reported is deemed to be nil.

**“base year”, “reserve transition amount” and “transition year”**

ITA
138(12) et 138(16) to (26)

The definitions “base year”, “reserve transition amount” and “transition year” in subsection 138(12) and subsections 138(16)-(26) provided transitional rules for life insurers in respect of their life insurance businesses, generally, as a result of changes to accounting rules that occurred in 2006 and 2011. These transitional rules provided that any increase or decrease in the reserves of an insurer resulting from these accounting changes would be reversed in the year the changes occurred and thereafter taken into account in computing income for tax purposes over a five-year period.

Section 138 is amended in order that these transition rules apply in a similar manner to the adoption of the new International Financial Reporting Standard for insurance contracts effective for years beginning on or after January 1, 2023 (known as “IFRS 17”). As the rules are amended to apply to the new accounting standard in substantially the same manner as those rules applies to 2006 and 2011 accounting changes, to avoid repetition the description below highlights the differences in those rules.

The first main change is amending the transitional rules to apply to taxation years beginning after 2022. This requires an amendment to the definition “transition year” to mean the insurer’s first taxation year that begins after 2022.

The second change is that these rules apply both to an insurer’s life insurance business and non-life insurance business. This requires replacing reference to a life insurer, or a life insurance business, with references to an insurer, or insurance business, in the relevant definitions in subsection 138(12) and throughout subsections 138(16) to (25). Furthermore, as part of this change, the definition “reserve transition amount” in subsection 138(12) is amended to add new variables B and D which provide the portion of the reserve transition amount that is in respect of a reserve from an insurance business other than a life insurance business. Variables A and C replace variables A and B respectively to provide the portion of the reserve transition amount that is in respect of a reserve from a life insurance business (the definition is also amended to update certain references).

Finally, subsection 138(26), which was consequential on amendments in 2013 to section 1406 of the Regulations, is no longer relevant and is repealed.

**IFRS transition – reversals**

ITA
138(17.1)

Subsection 138(17.1) provides rules of application for the purposes of computing the income tax effects, under subsections 138(18) and (19), in respect of an insurer's policy reserves as a result of the IFRS accounting changes in 2011.

Paragraph 138(17.1)(a) required that, in computing a life insurer's reserve transition amount for purposes of the five-year transition period in respect of the IFRS accounting changes in 2011, set out in subsections (18) and (19), the insurer's excluded policies for its base year were to be ignored in computing the amounts for element B of the formula contained in the definition “reserve transition amount” in subsection 138(12).

Consequential on the amendments to these transitional rules in order that they apply to insurers on the adoption of the IFRS 17, existing paragraph (a) is amended to refer to element C which is equivalent to element B of the prior transition rule, and to repeal existing paragraphs (b) and (c) which are no longer relevant.

In addition, new paragraph (b) is introduced to require that, in computing an insurer’s reserve transition amount for a non-life insurance business for purposes of the five-year transition period in respect of IFRS 17 set out in subsections (18) and (19), the following adjustments are made in computing the amounts for element D of the formula contained in the definition “reserve transition amount” in subsection 138(12):

- excluded policies are ignored in calculating variable D of an insurer for its base year, and
- the amount of the insurer’s policy acquisition costs that is not deductible but would have been deductible in the absence of subsection 18(9.02) (as it read in the base year), in the base year or a preceding taxation year, is deducted in calculating variable D.

These amendments apply to taxation years that begin after 2022.

**Clause 3**

ITA
138.1

Section 138.1 provides rules governing the taxation of segregated fund policies.

**Rules relating to segregated funds**

ITA
138.1(1)

The preamble to subsection 138.1(1) defines a “segregated fund” as a specified group of properties in respect of which an insurer’s life insurance policies reserves vary depending on that specified group’s fair market value. The reference to a segregated fund is also relevant in

determining whether a policy is a “segregated fund policy”, which is defined for purposes of computing an insurer’s reserves (under Part XIV) or investment income (under Part XXIV). The preamble to this subsection is amended to add the condition that in order to be a segregated fund, the specified group of properties must also be specifically reported (as interpreted in subsection 138(12.2)) to the relevant authority as a segregated fund (see the commentary to subsection 138(12.2) for a further discussion of the interpretation of reported).

This amendment applies to taxation years that begin after 2022.

**Clause 4**

ITA
142.51(1) to (12)

Section 142.51 provides transitional rules for financial institutions as a result of changes to accounting rules that applied to taxation years that began on or after October 1, 2006 for certain kinds of mark-to-market properties. These rules are amended in order to provide a transition to insurers in respect of the same property for taxation years that begin on or after January 1, 2023. These amendments involve replacing the effective date in the definition “transition year” from the first taxation year that begins after September 2006 to the first taxation year that begins after 2022. Section 142.51 is also amended to replace the reference to financial institutions with a reference to insurers. Finally, subsection 142.51(10) dealing with a continuation of a partnership, and any other reference to partnerships in section 142.51, is repealed as these rules are not relevant to insurers.

**Ceasing to be mark-to-market property**

ITA
142.51(13) and (13.1)

In addition to the amendments updating the transition rules in section 142.51 to apply to insurers for taxation years that begin after 2022, section 142.51 is amended to add a new transition rule in subsections 142.51(13) and (13.1).

Under new subsection 142.51(13), subsection (13.1) applies to a taxpayer for a particular taxation year if, in general, the taxpayer holds property in that year that was subject to the transition rules and that is no longer a mark-to-market property (as defined in subsection 142.2(1)). Where subsection (13.1) applies, the remaining transition amount is included in income, or deducted, in the particular year. This is accomplished through deeming the taxpayer to not be an insurer at the beginning of the taxation year in respect of which the property of the insurer was no longer mark-to-market property, such that subsection 142.51(11) applies to the insurer. This deeming rule applies only for the purposes of section 142.51 and has no application beyond that section.

These amendments apply to taxation years that begin after 2022.

**Clause 5**

**Part I.3 – Tax on Large Corporations**

**Definitions**

ITA
181(1)

Subsection 181(1) defines a number of terms for the purposes of the Part I.3 tax on large corporations which applied before 2006. However, certain definitions and computations in Part I.3 have other applications. For instance, the definition taxable capital in section 181.3 is relevant in determining the reduction of the small business limit under paragraph 125(5.1) for purposes of the small business deduction and for computing a corporation's expenditure limit to determine eligibility for an additional investment tax credit under subsection 127(10.1).

Subsection 181(1) is amended by adding the definitions "contractual service margin", "group of insurance policies" and "group of reinsurance contracts", "policyholder's liabilities" and "reinsurance contract held amount" to incorporate new concepts introduced by the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17"). These definitions have the same meaning as in subsection 138(12) (for more information, see the commentary on those definitions in subsection 138(12)).

**Article 6**

**Capital of a financial institution**

ITA
181.3

Section 181.3 provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of a financial institution for a taxation year (as defined in subsection 181(1)) for the purposes of the former large corporation tax. This section has wider application, applying to the small business deduction and the amount of investment tax credit. Certain paragraphs in this section are amended to incorporate International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17") in computing the capital of financial institutions that are insurers. The section is also amended to repeal the deferred tax debit balance at the end of the taxation year deducted from an insurer's capital for the taxation year.

ITA
181.3(3)

Subsection 181.3(3) sets out the rules for calculating the capital of a financial institution for a taxation year for the purposes of Part I.3, including the capital of an insurer. Paragraphs 181.3(3)(b) and (c), which computes the amount of a capital of Canadian resident insurers that carry on a life insurance business and Canadian resident insurers that do not carry out of a life insurance business, respectively, are amended in order that amounts under the IFRS 17 are incorporated in the computation of the insurer's capital for the year. The subsection is also amended to repeal the deferred tax debit balance at the end of the taxation year deducted from an insurer's capital for the taxation year.

ITA
181.3(3)(b)

Paragraph 181.3(3)(b) contains the rules for determining the capital of an insurance corporation resident in Canada at any time in the year and that carried on a life insurance business at any time in the year. The paragraph is amended such that the capital of the insurer for a taxation year is computed by the formula

$$\mathbf{A + B + (0.9 \times C) - (0.9 \times D) - E}$$

Variables A and E of the formula are the same as subparagraphs (i) and (iv) of existing paragraph 181.3(3)(b), respectively.

Variable B replaces existing subparagraph 181.3(3)(b)(ii) which includes certain amounts of the insurer at the end of the year in the capital of a resident insurer for a taxation year. Variable B includes two additional amounts: policyholders' liabilities (as defined in subsection 138(12)), and accumulated other comprehensive income, of the insurer at the end of the taxation year.

Variable C is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the insurer at the end that taxation year, excluding a group of segregated fund policies.

Variable D is the total of all amounts each of which is the amount of the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the year, excluding, for any group that reinsures a risk under a segregated fund policy, the portion of the contractual service margin that relates to that risk.

Finally, the reduction to the insurer's capital for the year of the insurer's deferred tax debit balance at the end of the taxation year is repealed.

ITA
181.3(3)(c)

Paragraph 181.3(3)(c) contains the rules for determining the capital for the taxation year of an insurance corporation resident in Canada in the year that throughout the year did not carry on a life insurance business. The paragraph is amended such that the capital of the insurer is computed by the formula

$$\mathbf{A + B + (0.9 \times C) - (0.9 \times D) + E - F - G}$$

Variables A and G of the formula are the same as subparagraphs (i) and (v) of existing paragraph 181.3(3)(c), respectively.

Variable B is the equivalent of existing subparagraph 181.3(3)(c)(ii) that adds certain amounts to the capital of a resident insurer for a taxation year. Variable B includes two additional amounts: policyholders' liabilities (as defined in subsection 138(12)), and accumulated other comprehensive income, of the insurer at the end of the taxation year.

Variable C is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the insurer at the end that taxation year. The only relevant groups for this computation are those groups that are in respect of non-cancellable or guaranteed renewable accident and sickness insurance, mortgage insurance or title insurance (as those types of insurance are defined in subsection 1408(1) of the Income Tax Regulations).

Variable D is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year, that is in respect of policies that relate to the three types of insurance described in variable C (i.e., non-cancellable or guaranteed renewable accident and sickness insurance, mortgage insurance and title insurance).

- Subparagraph (i) of variable D provides that if the contractual service margin for a group of reinsurance contracts is exclusively in respect of non-cancellable or guaranteed renewable accident and sickness insurance, mortgage or title insurance risks described in variable C, the amount computed is the contractual service margin for that group.

- Subparagraph (ii) of variable D provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than one of those risks described in variable C, only that portion of the contractual service margin that is for the insurance policies in the group described in variable C are to be included.

Variable E incorporates into the formula the equivalent of subparagraph (c)(iii) adding to the capital of the insurer reserves for the taxation year except to the extent the reserves were deducted under Part I for the year. This variable captures amounts such as the 5% of reserves in respect of liability for incurred claims of the corporation that are not deductible under subsection 1400(3) of the Regulations. Variable E also incorporates a new carve-out for reserves in respect of the contractual service margin for a group of insurance policies as those should already be included under variable C.

Variable F incorporates into the formula the equivalent of subparagraph (c)(vii), that the reinsurance of amounts included in variable E are subtracted from an insurer's capital base. This variable is amended to align with IFRS 17, that uses the reinsurance contract held amount for a group of reinsurance contracts, replacing the concept of "reinsurance recoverable" used for the prior Standard.

Finally, the reduction to the insurer's capital for the year of the insurer's deferred tax debit balance at the end of the taxation year is repealed.

ITA
181.3(3)(d)

Paragraph 181.3(3)(d) contains the rules for determining the capital for the taxation year of a non-resident insurer. Subparagraph 181.3(3)(d)(iv) includes in capital the amount by which the Canadian insurance reserves exceeds reserves in respect of life insurance policies deductible and other reserves deducted under Part I of the Act. The amount under subparagraph 181.3(3)(d)(iv) is also reduced by, in general

- the total of all amounts outstanding as at the end of the year in respect of a policy loan made by the corporation, to the extent the amounts were deducted as part of the computation of a deductible reserve (clause (D)), and
- the total of all deferred acquisition expenses that can be considered to form part of that reserve (clause (E)).

Following the introduction of IFRS 17, the reductions under clauses (D) and (E) are no longer relevant and are therefore repealed.

Clause (F) provides that the reinsurance of amounts included as non-deductible reserves under Clause (A) reduce an insurer's capital base. Clause (F) is amended to align with IFRS 17, that uses the reinsurance contract held amount for a group of reinsurance contracts instead of "reinsurance recoverable" used for the prior Standard.

These amendments apply to taxation years that begin after 2022.

**Clause 7**

**Part VI – Tax on Capital of Financial Institutions**

ITA
190

Part VI of the Act contains the rules concerning the minimum tax on financial institutions, which is a tax on the amount by which a financial institution's taxable capital employed in Canada exceeds a certain threshold (called the capital deduction). Certain paragraphs in this section are amended to incorporate International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (know as "IFRS 17") in computing the capital of financial institutions that are insurers. Namely, Part VI is amended to include in capital of an insurer for a taxation year the contractual service margin of each group of contracts (other than segregated fund policies) of that insurer at the end of the taxation year, representing profits of the insurer.

**Definitions**

ITA
190(1)

Subsection 190(1) sets out the definitions of certain terms used in Part VI. Subsection 190(1) is amended by adding the definitions “contractual service margin”, “policyholder’s liabilities”, and “group of insurance policies” and “group of reinsurance contracts” to incorporate new concepts introduced by IFRS 17. These definitions have the same meaning as in subsection 138(12) (for more information, see the commentary on those definitions in subsection 138(12)).

**Clause 8**

**Capital**

ITA
190.13

Section 190.13 contains the rules for determining the capital of a financial institution for the purpose of Part VI of the Act.

ITA
190.13(b)

Paragraph 190.13(b) contains the rules for determining the capital of a financial institution for a taxation year that is a life insurance corporation that was resident in Canada at any time in the year. Paragraph 190.13(b) is amended to incorporate new concepts introduced by IFRS 17 and to remove the deduction for the deferred debit tax balance of the corporation. Paragraph 190.13(b) is amended such that capital of a resident life insurance corporation for a taxation year is the amount determined by the formula:

$$\mathbf{A + B + (0.9 \times C) - (0.9 \times D) - E}$$

Variable A and E of the formula are the same as existing subparagraphs 190.13(b)(i) and (iv) respectively.

Variable B is the equivalent of old subparagraph 190.13(b)(ii) that adds certain amounts to the capital of a resident life insurer for a taxation year. Variable B is amended to include two new amounts that are not in existing subparagraph 190.13(b)(ii): policyholders’ liabilities (as defined in subsection 138(12)) and accumulated other comprehensive income, of the insurer at the end of the taxation year.

Variable C is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the insurer at the end that taxation year. The basis for the inclusion is that the contractual service margin for a group of insurer of the insurer represents profits that is capital of the insurer like any other form of equity. The contractual service margin for a group of segregated fund policies is not included in an insurer’s capital base.

Variable D is the total of all amounts each of which is the amount of the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the year, excluding, for any group that reinsures a risk under a segregated fund policy, the portion of the contractual service margin that relates to that risk.

These amendments apply to taxation years that begin after 2022.

**Clause 9**

ITR
309.1

Section 309.1 provides rules for determining an insurer's income for a year from its participating life insurance business carried on in Canada. Consequential to the repeal of subparagraph 138(3)(a)(ii) of the Act, paragraphs 309.1(b), (c), (e), and (g) are amended to remove from the determination of an insurer’s income from a participating life insurance business amounts computed based on an amount deductible under that subparagraph.

The amendments to paragraphs 309.1(b) and (c) apply to taxation years beginning after 2023 as those provisions are in respect of a preceding taxation year. The amendments to paragraphs (e) and (g) apply to taxation years beginning after 2022.

These amendments apply to taxation years that begin after 2022.

**Clause 10**

**Part XIV – Insurance Business Policy Reserves**

ITR
1400 - 1408

Part XIV of the Regulations provides rules for determining the amount that may be deducted, or must be included, by an insurer in computing its income for a taxation year under Part I of the Act as a reserve in respect of liabilities under insurance policies. Part XIV is amended to incorporate new concepts introduced by International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as “IFRS 17”). More specifically, the formulas in Part XIV which provide for the amount deductible, or included in an insurer’s income, in respect of a reserve for non-life insurance policies (subsection 1400(3)) and life insurance policies (1404(3)), are amended to incorporate the concept of the contractual service margin (see definition in subsection 138(12)) for certain kinds of multi-year policies, namely, life insurance policies (other than segregated fund policies), non-cancellable or guaranteed renewable accident and sickness policies, and policies in respect of mortgage or title insurance. In addition, these formulas are amended to incorporate the deduction in the reserve for the reinsurance contract held amount for groups of reinsurance contracts.

Furthermore, the formulas in subsections 1400(3) and 1404(3) of Part XIV are amended to include amounts for liability for remaining coverage and liability for incurred claims for a group of insurance policies of an insurer at the end of the taxation year, essentially replacing existing concepts related to reserves in respect of insurance policies (either reported to the relevant authority or determined according to accepted actuarial practices). Furthermore, liability for remaining coverage, and liability for incurred claims, already incorporate certain balance sheet items and reserves (such as unearned premiums, policy loans), such amounts therefore being no longer necessary for inclusion in this Part.

**Division 1 – Policy Reserves**

**Non-life insurance business**

ITR
1400

Division 1 provides for the determination of policy reserves for insurance policies other than life insurance policies. Specifically, Section 1400 sets out the rules for determining the amount an insurer may deduct under paragraph 20(7)(c) of the Act, or must include under paragraph 12(1)(e.1) of the Act, in respect of insurance policies other than life policies. The formula in subsection 1400(3) incorporates new concepts under the International Financial Reporting Standard for insurance contracts effective for years beginning on or after January 1, 2023 (known as “IFRS 17”).

ITR
1400(3)

Subsection 1400(3) sets out a formula for determining the amount prescribed for the purposes of subsections 1400(1) and (2) of the Regulations, that provide for a deduction, or income inclusion, respectively, for policy reserves for non-life insurance policies.

The formula in subsection 1400(3) is amended in order to incorporate IFRS 17, in order that the formula compute the amount deductible, or amount included in income, in a manner aligned with tax policy. This also involves the repeal of other amounts that are no longer necessary under the IFRS 17 for the computation of policy reserves for non-life insurance policies.

The amount determined for purposes of subsection 1400(1) and (2) is determined by the formula that is amended as follows:

$$\mathbf{A + B + (0.95 \times C) - (0.9 \times D) + E + F + G - (H - (0.9 \times I))}$$

Variable A is the total of all amounts each of which is the liability for remaining coverage for a group of non-life insurance policies of the insurer at the end of the taxation year. (For more information, see the commentary on the new definition liability for remaining coverage in subsection 138(12)). Variable A replaces existing variable A (referring to unearned premiums)

and existing variables B (in general, including reserves in respect of insurance policies as reported to the relevant authority), H, I, J and K.

Variable B is the total of all amounts each of which is the liability for incurred claims for a group of non-life insurance policies that is in respect of a structured settlements on personal injury or death.

Specifically, variable B is the total of all amounts each of which is an amount in respect of a group of insurance policies of an insurer other than life insurances policies that is

- if no portion of the liability for incurred claims of the group are in respect of insurance policies other than insurance policies in respect of structured settlements on personal injury or death, the liability for incurred claims for the group (paragraph (a)), and
- in any other case, the liability for incurred claims for the group excluding any portion that is not in respect of insurance policies in respect of which there is a structured settlement on personal injury or death (paragraph (b)).

Variable B replaces existing variable E (which provided a reserve for reported but unpaid claims from structured settlements on personal injury or death).

Variable C is the total of all amounts each of which is the liability for incurred claims for a group of non-life insurance policies other than those policies that are in respect of a structured settlements on personal injury or death. Variable C is essentially the reverse of variable B, excluding from the computation of the liability for incurred claims any portion in respect of which there is a structured settlement for personal injury or death under a policy (but including any other portion). Only 95% of the amount in variable C is included in the formula. Variable C effectively replaces existing variable D (which includes in the formula an unpaid claims other than claims from a structured settlement on personal injury or death).

Variable D is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the insurer at the end of the taxation year that is in respect of non-cancellable or guaranteed renewable accident and sickness policies, mortgage insurance or title insurance. The definitions mortgage insurance and title insurance are introduced in subsection 1408(1) and refer to the definition of those types of insurance in the Insurance Companies Act. For non-cancellable or guaranteed renewable accident and sickness policies, the policies must be in respect of accident and sickness insurance which is also defined in subsection 1408(1) to refer to accident and sickness insurance as defined in the *Insurance Companies Act*.

Variables E, F and G are equal to the same amount as would be computed under existing variables F, G and L, respectively.

Variable H is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under an insurance policy excluding, if the group reinsures a risk under a life insurance policy, the portion that relates to the reinsurance of the risk under the life insurance policy. For more information, see the commentary on new definition “reinsurance contract held amount”.

Variable I is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under an insurance policy described in variable D.

- Paragraph (a) of variable I provides that if the contractual service margin for a group of reinsurance contracts is exclusively in respect of the reinsurance of a risk under a policy described in variable D, the amount computed for that group is the contractual service margin for that group.
- Paragraph (b) of variable I provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than those described in variable D, the amount computed for that group is the contractual service margin for the group excluding that portion in respect of policies not described in variable D.

Existing variables H, I, J and K under subsection 1400(3) are no longer necessary under IFRS 17 and have been repealed.

These amendments apply to taxation years that begin after 2022.

**Clause 11**

**Division 3 – Special Rules**

**Non-life and life insurance businesses**

ITR
1402

Section 1402 provides that any amount determined under section 1400 or 1401 of the Regulations shall be determined net of reinsurance recoverable amounts and without reference to any amount in respect of a deposit accounting insurance policy.

Consequential on the introduction of International Financial Reporting Standard for insurance contract effective for years that begin on or after January 1, 2023, which introduces the reinsurance contract held amount concept to replace reinsurance recoverable amounts and new variable H under subsection 1400(3), section 1402 is amended in order that only section 1401 be determined net of reinsurance recoverable amounts.

This amendment applies to taxation years that begin after 2022.

**Clause 12**

**Division 4 – Life Insurance Policy Reserves**

ITR
1404

Section 1404 establishes the basis for determining the amount an insurer may deduct under subparagraph 138(3)(a)(i) of the Act as a policy reserve in respect of its life insurance policies in Canada.

ITR
1404(1)

Subsection 1404(1) provides that, for the purpose of subparagraph 138(3)(a)(i) of the Act, the amount that may be deducted by an insurer as a policy reserve in respect of its life insurance policies in Canada is the amount determined under the formula in subsection 1404(3) of the Regulations. Subsection 1404(1) is amended consequential on the introduction of new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 to clarify that the amount prescribed is in respect of the groups of contracts of the life insurer at the end of the year.

ITR
1404(2)

Subsection 1404(2) provides that, for the purpose of subparagraph 138(4)(b) of the Act, the amount to be included as a policy reserve in respect of an insurer's life insurance policies in Canada is the absolute value of the amount determined under the formula in subsection 1404(3) of the Regulations. Subsection 1404(2) is amended consequential on the introduction of new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 to clarify that the amount prescribed is in respect of the groups of contracts of the life insurer at the end of the year.

ITR
1404(3)

Subsection 1404(3) sets out a formula for determining the amount prescribed for the purposes of subsections 1404(1) and (2) of the Regulations. The total amount determined under this formula in subsection 1404(3), as well as the individual amounts determined under each of the components of the formula, may be equal to, greater or less than, nil.

The formula in subsection 1404(3) is amended in order to incorporate new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17"), in order that the amount deductible, or amount included in income under this section, be aligned with tax policy. This also involves the repeal of other amounts that are no longer necessary under IFRS 17 for the computation of policy reserves for life insurance policies in Canada.

The new formula is the following:

$$\mathbf{A + B - (0.9 \times C) - (D - (0.9 \times E))}$$

Variable A is the total of all amounts each of which is the liability for remaining coverage for a group of life insurance policies in Canada of the insurer at the end of the taxation year. For more information, see the commentary on the new definition liability for remaining coverage in subsection 138(12). This replaces existing variable A which computes an amount based on the reserve in respect of life insurance policies in Canada.

Variable B is the total of all amounts each of which is the liability for incurred claims for a group of life insurance policies in Canada of the insurer at the end of the taxation year. This replaces existing variable B which provided a 95% inclusion for claims incurred but not reported before the end of the year, and section 1405 of the Regulations which included claims reported but unpaid before the end of the year.

Variable C is the total of all amounts each of which is the contractual service margin for a group of life insurance policies in Canada (other than segregated fund policies) of the insurer at the end of the taxation year. For more information, see the commentary on the new definitions "contractual service margin" in subsection 138(12).

Variable D is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year excluding, if the group reinsures a risk other than a risk under a life insurance policy in Canada, the portion of the reinsurance contract held amount that relates to the reinsurance of that risk. For more information, see the commentary on new definition "reinsurance contract held amount".

Variable E is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year excluding, if the group reinsures a risk other than a risk under a life insurance policy in Canada, the portion of the contractual service margin that relates to the reinsurance of that risk.

These amendments apply to taxation years that begin after 2022.

**Clause 13**

ITR
1405

Section 1405 sets out the basis for determining the amount an insurer is permitted to deduct pursuant to subparagraph 138(3)(a)(ii) of the Act as a reserve in respect of its reported but unpaid claims at the end of a taxation year under its life insurance policies in Canada. Consequential on the introduction of International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023, and on the enactment of new variable B under Regulation 1404(3), this section is repealed.

This amendment applies to taxation years that begin after 2022.

**Clause 14**

ITR
1406

Section 1406 provides rules for the purpose of computing the policy reserves under sections 1404 and 1405 in respect of life insurance policies in Canada.

Section 1406 is amended to remove the reference to section 1405 consequential to the repeal of that section and to remove paragraph (a) consequential to the introduction of variable D under Regulation 1404(3).

This amendment applies to taxation years that begin after 2022.

**Clause 15**

ITR
1407

Section 1407 clarifies that any amounts referred to or determined under sections 1404 and 1405 of the Regulations, in connection with an insurer's reserves in respect of its life insurance policies in Canada, may be negative amounts. Section 1407 is amended to remove the reference to section 1405 consequential to the repeal of that section.

This amendment applies to taxation years that begin after 2022.

**Clause 16**

**Division 5 – Interpretation**

ITR
1408

Division 5 of Part XIV of the Regulations contains rules of interpretation that apply for that Part. Division 5 consists of section 1408 of the Regulations.

**Insurance businesses**

ITR
1408(1)

Subsection 1408(1) provides a number of definitions and interpretive rules that apply for purposes of the rules in Part XIV of the Regulations dealing with the determination of an insurer's policy reserves. Subsection 1408(1) is amended to introduce and amend definitions relevant to the International Financial Reporting Standard for insurance contracts applicable for years that begin on or after January 1, 2023 (known as “IFRS 17”) and to repeal other definitions that are no longer necessary for the determination of an insurer’s policy reserves.

Subsection 1408(1) is amended by repealing the definitions “claim liability”, “extended motor vehicle warranty”, “general amending provision”, “policy liability”, “post-1995 life insurance policy”, “post-1995 non-cancellable or guaranteed renewable accident and sickness policy”, “pre-1996 life insurance policy”, “pre-1996 non-cancellable or guaranteed renewable accident and sickness policy” and “reinsurance commission” which are no longer necessary to determine policy reserves under the new accounting standard.

Subsection 1408(1) is amended by adding the definitions “contractual service margin”, “policyholder’s liabilities”, “reinsurance contract held amount” and “group of insurance policies” and “group of reinsurance contracts” to incorporate new concepts introduced under IFRS 17. These definitions have the same meaning as in subsection 138(12) (for more information, see the commentary on those definitions in subsection 138(12)).

Subsection 1408(1) is also amended by adding the definitions “accident and sickness insurance”, “mortgage insurance” and “title insurance” which are all defined as having the same meaning as in the Schedule to the *Insurance Companies Act*. These definitions are relevant in determining the computation of reserves in respect of non-life insurance policies in section 1400 and are relevant for the computation of amounts relevant for computing the “Canadian investment fund” of an insurer under Part XXIV.

The definitions “relevant authority” and “reported reserve” in subsection 1408(1) are amended. As the definition “relevant authority” has been added directly into subsection 138(12), that definition is amended to have the same meaning as in subsection 138(12).

The definition “reported reserves” is amended consequential on the removal of that term from certain places in the formula in subsections 1400(3), and from the entirety of the formula 1404(3), which now instead rely on liability for remaining coverage and liability for incurred claims for a group of insurance policies for the reserve computation. This definition is still relevant for variable E of the formula in subsection 1400(3) (in respect of a fidelity risk, nuclear risk or a risk related to a financial loss of a lender on a loan made on a security of real property) and variable G (in respect of a policy that insures earthquake risk). The definition is also amended to remove details on which reported amount is applied as that is now included in subsection 138(12.2) of the Act (for more information, see the commentary on that section).

ITR
1408(2), (4), (7) and (8)

Subsection 1408(2), (4), (7) and (8) provide rules of interpretation that apply to Part XIV of the Regulations. Following the introduction of the new International Financial Reporting Standard for insurance contracts applicable for years that begin on or after January 1, 2023, these interpretative rules are no longer necessary and are repealed.

These amendments apply to taxation years that begin after 2022.

**Clause 17**

**Part XXIV – Insurers**

ITR
2400 – 2412

Part XXIV of the Regulations sets out special rules for the computation of an insurer's investment income. Specifically, Part XXIV provides rules for determining the property of an insurer that is used or held by it in the course of carrying on an insurance business in Canada. These rules involve the computation of the amount of a Canadian investment fund for the year which represents the total value for the year of investment property that must be designated by the insurer. The gross investment revenue and gains and losses from such property is reported by the insurer as Canadian income. The Canadian investment fund is determined differently for resident multinational life insurers and non-resident insurers but is intended in each case to provide a reasonable allocation of investment property supporting their Canadian insurance business.

Amendments are made to provisions and definitions in sections 2400 and 2401 to incorporate the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as “IFRS 17”).

ITR
2400

Section 2400 provides definitions and rules for Part XXIV of the Regulations.

Section 2400 is amended mainly to incorporate the concept of the contractual service margin which, in general, represents profit under IFRS 17(for more information, see the commentary on the definition “contractual service margin” in subsection 138(12)). More specifically, section 2400 is amended to incorporate the contractual service margin for certain kinds of multi-year policies, namely, life insurance policies (other than segregated fund policies), non-cancellable or guaranteed renewable accident and sickness policies, and policies in respect of mortgage and title insurance. The contractual service margin is relevant for purposes of computing the insurers’ (resident multinational life insurers or non-resident insurers) Canadian investment fund, Canadian reserve liabilities, weighted Canadian liabilities and weighted total liabilities at the end of a taxation year.

In addition, definitions are amended to reflect new terminology for reinsurance asset resulting from reinsurance contracts held by an insurer and replace reinsurance recoverable under existing accounting standard by the concept of reinsurance contract held amount for a group of reinsurance contracts held by an insurer at the end of a taxation (see definition under subsection 138(12)).

Part XXIV is amended to include amounts for liability for remaining coverage and liability for incurred claims for groups of insurance policies of an insurer at the end of the taxation year that

are relevant to computing the property and casualty surplus for non-resident insurers, essentially replacing existing concepts related to unearned premium reserves and the provision for unpaid claims and adjustment expenses.

Finally, Part XXIV is amended to introduce a transition rule to ensure that the mean Canadian investment fund for the first taxation year that begin after 2022 is calculated as if IFRS 17 had been in force in the immediately preceding year.

ITR
2400(1)

Subsection 2400(1) contains definitions for terms and expressions used in Part XXIV of the Regulations. Subsection 2400(1) is amended to incorporate IFRS 17.
The definitions “Canadian outstanding premiums”, “foreign policy loan”, “mean Canadian outstanding premiums”, “mean policy loans”, “outstanding premiums” and “reinsurance recoverable” relate to concepts that are no longer relevant under the new Standard and are, therefore, repealed.

Subsection 2400(1) is also amended by adding the definitions “contractual service margin”, “group of insurance policies” and “group of reinsurance contracts”, “liability for incurred claims”, “liability for remaining coverage”, “policyholder’s liabilities” and “reinsurance contract held amount” to incorporate new IFRS 17 concepts. These definitions have the same meaning as in subsection 138(12) (for more information, see the commentary on those definitions in subsection 138(12)).

**“Canadian investment property”**

The definition “Canadian investment property” enumerates a list of types of properties for purposes of the ordering rule for designating property and the minimum net revenue test for investment property in section 2411.

Paragraph (i) of that definition includes as Canadian investment property an amount due or accrued to an insurer from designated Canadian investment properties listed in paragraph (a) to (h) that was assumed in computing the insurer’s Canadian reserve liabilities. This paragraph is no longer relevant as a result of the adoption of IFRS 17 and is repealed.

**“investment property”**

The definition “investment property” describes the types of property the gross investment revenue in respect of which resident life insurers and non-resident insurers are required to include in their income from carrying on an insurance business in Canada to the extent such investment property is designated by the insurer. An insurer must designate investment property equal to its mean Canadian investment fund for the taxation year.

Paragraph (e) of that definition includes as investment property an amount due or accrued to an insurer on account of income from designated property listed under paragraphs (a) to (d) that was

assumed in computing an insurer`s Canadian reserve liabilities. This paragraph is no longer relevant as a result of the adoption of IFRS 17 and is repealed.

**“Canadian reserve liabilities”**

An insurer's “Canadian reserve liabilities” is determined as the total amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of life insurance policies in Canada, fire insurance policies issued or effected in respect of property situated in Canada and insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. From this total, reinsurance recoverable relating to those liabilities is deducted.

Following the adoption of IFRS 17, the definition is amended principally to introduce the new contractual service margin reserve that represents the profit for a group of insurance policies of an insurer at the end of a taxation year. Specifically, the definition “Canadian reserve liabilities” is replaced by the formula

$$\mathbf{A - (0.9 \times B) - (C - (0.9 \times D))}$$

Variable A is the total amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of life insurance policies in Canada, fire insurance policies issued or effected in respect of property situated in Canada and insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. Variable A is amended in order to include an insurer’s liabilities and reserves in respect of segregated fund policies other than a liability for an obligation to pay a benefit in respect of which subparagraphs 1406(b)(i) and (ii) apply. Furthermore, variable A is amended to exclude policyholders’ liabilities (for more information, see the commentary on that definition in subsection 138(12)).

Variable B is the contractual service margin for groups of insurance policies of the insurer that include policies described in variable A and that are one of the enumerated multi-year contracts for which the contractual service margin is material (for more information, see the commentary to section 2400).

Specifically, paragraph (a) of variable B deducts from an insurer’s Canadian reserve liabilities the total of all amounts each of which is contractual service margin for a group of insurance policies no portion of the contractual service margin in respect of which is from a policy other than a policy that meets each of the three the following conditions:

- it is one of the three insurance policies described in variable A (subparagraph (i)),
- it is a
  - life insurance policy in Canada,
  - policy that insures risk in respect of a financial loss of a lender on a loan made on the security of real property,
  - non-cancellable or guaranteed renewable accident and sickness policy in respect of accident and sickness insurance (as defined in subsection 1408(1)), or

  - a policy in respect of title insurance (as defined in subsection 1408(1)) (subparagraph (ii)), and
- it is a policy that is not a segregated fund policy (subparagraph (iii)).

Under paragraph (b) of variable B, where a group of insurance policies includes insurance policies that do not meet all the conditions in paragraph (a), the contractual service margin for the group of insurance policies is computed excluding any portion of the contractual service margin for those policies.

Variable C is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk under an insurance policy described in variable A other than the reinsurance amount in respect of an obligation to which subparagraphs 1406(b)(i) and (ii) apply. (For more information, see the commentary on new definition "reinsurance contract held amount" in subsection 138(12)).

Specifically, variable C is the total of all amounts each of which is, in respect of a group of reinsurance contracts held by the insurer at the end of the year,

- if the reinsurance contract held amount for a group is exclusively in respect of a risk under an insurance policy described in variable A (other than reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply), the reinsurance contract held amount for that group, and
- in any other case, the amount that would be reinsurance contract held amount for a group if all portions of that amount in respect of the reinsurance of risk under insurance contracts other than insurance policies described in variable A that do not reinsure an obligation to which subparagraphs 1406(b)(i) and (ii) apply, were excluded.

Variable D is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under an insurance policy described in variable B.

- Paragraph (a) of variable D provides that if the contractual service margin for a group of reinsurance contracts is exclusively in respect of the reinsurance of a risk under a policy described in variable B, the amount computed for that group is the contractual service margin for that group.
- Paragraph (b) of variable D provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than a policy described in variable B, the amount computed for that group is the contractual service margin for the group excluding that portion in respect of policies not described in variable B.

**"property and casualty surplus"**

The definition of "property and casualty surplus" is relevant only in respect of a non-resident insurer's property and casualty insurance business and is used in determining the non-resident insurer's Canadian investment fund and equity limit for the year.

The definition is amended to incorporate terminology and concepts under IFRS 17. References to an insurer's unearned premium reserve and provision for unpaid claims and adjustment expenses are replaced by references to liability for remaining coverage and liability for incurred claims for a group of insurance policies of the insurer. Furthermore, the net of reinsurance recoverables concept is replaced with the reinsurance contract held amount for a group of reinsurance contracts concept.

The property and casualty surplus of an insurer for a taxation year is amended to be determined by the formula

$$\mathbf{0.075 \times (A + B + C + D - E - F) + 0.5 \times (G + H)}$$

Variable A is the total of all amounts each of which is the liability for remaining coverage for a group of property and casualty insurance policies of the insurer at the end of the taxation year.

Variable B provides the equivalent computation as variable A for the preceding taxation year.

Variable C is the total of all amounts each of which is the liability for incurred claims for a group of property and casualty insurance policies of the insurer at the end of the taxation year.

Variable D provides the equivalent computation as variable C for the preceding taxation year.

Variable E is the total of all amounts each of which is the reinsurance contract held amount for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk under a group of property and casualty insurance policies. Variable F provides the equivalent computation as variable E for the preceding taxation year.

Consistent with the existing property and casualty surplus computation, the amount determined above is multiplied by 7.5%.

The remaining portion of the formula, specifically elements G and H, provides the insurer's average investment valuation reserve at the end of the year and its preceding year.

**"weighted Canadian liabilities"**

The definition "weighted Canadian liabilities" is relevant for the purposes of the amended definitions "Canadian investment fund" and "equity limit".

An insurer's weighted Canadian liabilities is the total of its weighted Canadian life insurance (excluding annuity contracts and liabilities in respect of a segregated fund) and accident and sickness insurance policy liabilities and its other non-weighted Canadian insurance liabilities (excluding those in respect of a segregated fund or a debt incurred or assumed to acquire a particular property) and net of policy loans and reinsurance recoverables in respect of Canadian liabilities.

Following of IFRS 17, this definition is amended principally to introduce the new contractual service margin reserve that represents the profit for a group of insurance policies of an insurer at the end of a taxation year.

Specifically, the definition “weighted Canadian liabilities” is replaced by the formula

$$\mathbf{(3 \times A) + B}$$

Variable A replaces existing paragraph (a) of the definition by a formula representing the insurer’s weighted Canadian life insurance (other than annuities) and accident and sickness insurance policy liabilities. Weighting life and accident and sickness insurance policy liabilities by a factor of 3 recognizes the fact that an insurer must maintain more capital in respect of such policies than in respect of other types of insurance products.

Variable A which computes the Canadian liabilities that are weighted is determined by the formula

$$\mathbf{C - (0.9 \times D) - (E - (0.9 \times F))}$$

Variable C is the total of all amounts in respect of an insurance business carried out by the insurer in Canada that is reported as a liability at the end of the taxation year in respect of life insurance policies in Canada (other than annuities) or accident and sickness policies. This variable excludes liabilities for an obligation to pay a benefit under a segregated fund policy in respect of which subparagraphs 1406(b)(i) and (ii) apply and policyholders’ liabilities (for more information, see commentary for the policyholders’ liabilities definition in subsection 138(12)).

Variable D is the contractual service margin for certain groups of contracts of the insurer that include policies described in variable C and that are one of the enumerated multi-year contracts for which the contractual service margin is material (for more information, see the commentary to section 2400). Specifically, paragraph (a) of Variable D is the total of all amounts each of which is contractual service margin for a group of insurance policies no portion of the contractual service margin in respect of which is from a policy other than a policy that meets each of the three the following conditions:

- it is one of the two policies described in paragraphs (a) and (b) of variable C (subparagraph (i)),
- it is a life insurance policy or a non-cancellable or guaranteed renewable accident and sickness policy in respect of accident and sickness insurance (as defined in subsection 1408(1)). Policies in respect of mortgage and title insurance are excluded as those policies are not described in variable C (subparagraph (ii)), and
- it is a non-segregated fund policies (subparagraph (iii)).

Under paragraph (b) of variable B, where a group of insurance policies includes insurance policies that do not meet all the conditions in paragraph (a), the contractual service margin for the group of insurance policies is computed excluding any portion of the contractual service from those policies.

Variable E is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk under an insurance policy described in variable C other than the reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply. For more information, see the commentary on new definition "reinsurance contract held amount".

Specifically, variable E is the total of all amounts each of which is, in respect of a group of reinsurance contracts held by the insurer at the end of the year,

- if no portion of reinsurance contract held amount for a group is in respect of the reinsurance of a risk other than a risk under an insurance policy described in variable C or the reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply, the reinsurance contract held amount for that group, and
- in any other case, the amount that would be reinsurance contract held amount for a group if all portions of that amount in respect of the reinsurance of risk under insurance contracts other than insurance policies described in variable C or the reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply) were excluded.

Variable F is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under a policy described in variable D.

- Subparagraph (a) of variable F provides that if no portion of the contractual service margin for a group of reinsurance contracts is in respect of the reinsurance of a risk other than a risk under a policy described in variable D, the amount computed for that group is the contractual service margin for that group.
- Subparagraph (b) of variable F provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than a policy described in variable D, the amount computed for that group is the contractual service margin for the group excluding that portion of the contractual service margin for policies not described in variable D.

Variable B replaces existing paragraph (b) of the definition "weighted Canadian liabilities" by a formula representing the insurer's liabilities excluding liabilities for those policies that form part of the insurer's weighted liabilities.
Variable B is substantially similar to variable A with changes to incorporate the fact it applies to liabilities (other than a debt incurred or assumed to acquire property) not described in variable C and is determined by the formula

$$\mathbf{G - (0.9 \times H) - (I - (0.9 \times J))}$$

Variable G is the total of all amounts in respect of an insurance business carried out by the insurer in Canada that is reported as a liability at the end of the taxation year in respect of policies other than those policies described in variable C (i.e., policies other than life insurance policies in Canada (other than annuities) and accident and sickness insurance policies). Like

variable C, variable G excludes liabilities for an obligation to pay a benefit under a segregated fund policy in respect of which subparagraphs 1406(b)(i) and (ii) apply and policyholders' liabilities (for more information, see commentary for the policyholders' liabilities definition in subsection 138(12)). Furthermore, liabilities in respect of debts incurred or assumed by the insurer to acquire property of the insurer are excluded.

Variable H is the contractual service margin for certain groups of contracts of the insurer that include policies that are not described in variable C and that are one of the enumerated multi-year contracts (for more information, see the commentary to section 2400).

Specifically, paragraph (a) of Variable H is the total of all amounts each of which is contractual service margin for a group of insurance policies no portion in respect of which is from a policy other than a policy that meets each of the three following conditions:

- it is a policy that is not described in either paragraph (a) or (b) of variable C (subparagraph (i))
- it is a policy that is either a life, title or mortgage insurance policy (as defined in subsection 1408(1)) (non-cancellable or guaranteed renewable accident and sickness insurance policies are excluded as such policies are described in variable C) (subparagraph (ii)), and
- it is a non-segregated fund policy (subparagraph (iii)).

Under paragraph (b), where a group of insurance policies includes insurance policies that do not meet the conditions in paragraph (a), the contractual service margin for the group of insurance policies is computed excluding any portion of the contractual service from those policies. Variable I is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk under an insurance policy not described in variable I, other than the reinsurance of an obligations to which subparagraphs 1406(b)(i) and (ii) apply. For more information, see the commentary on new definition "reinsurance contract held amount".

Specifically, variable I is the total of all amounts each of which is, in respect of a group of reinsurance contracts held by the insurer at the end of the year,

- if no portion of reinsurance contract held amount for a group is in respect of the reinsurance of a risk under an insurance policy described in variable C (other than reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply), the reinsurance contract held amount for that group, and
- in any other case, the amount that would be reinsurance contract held amount for a group if all portions of that amount in respect of the reinsurance of risk under insurance policies described in variable C and the reinsurance of an obligation to which subparagraphs 1406(b)(i) and (ii) apply) were excluded.

Variable J is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under an insurance policy described in variable H.

- Paragraph (a) of variable J provides that if no portion of the contractual service margin for a group of reinsurance contracts is in respect of the reinsurance of a risk other than a risk under a policy that meets all the conditions described in variable H, the amount computed for that group is the contractual service margin for that group.
- Paragraph (b) of variable J provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than a policy that meets all the conditions described in variable D, the amount computed for that group is the contractual service margin for the group excluding that portion of the contractual service margin for policies not described in variable H.

**“weighted total liabilities”**

The definition “weighted total liabilities” is amended in basically the identical manner as the definition “weighted Canadian liabilities” except it does not contain

- the condition (in the description of C and G of the formula) that amounts in respect of an insurance business carried on by the insurer be carried on in Canada, nor
- the condition (in the description of C) that amounts in respect of life insurance policies must be in respect of life insurance policies in Canada.

**“Canadian investment fund”**

The definition of Canadian investment fund is the amount used (subject to certain modifications) for the purpose of determining what amount of investment property an insurer must designate in respect of its Canadian insurance businesses.

Paragraph (a) of this definition provides the Canadian investment fund computation for a resident life insurer. In very general terms, a resident life insurer’s Canadian investment fund is composed of liabilities that relate to its Canadian insurance business (subparagraph (a)(i)) and capital and surplus accounts, allocated using the ratio of weighted Canadian liabilities over weighted total liabilities (Clause (a)(ii)(B), subject to a minimum amount computed under subparagraph (a)(ii)(A)).

Subparagraph (a)(i) of the definition is amended by repealing variable B in the formula that incorporates the concepts outstanding premiums and policy loans that are no longer necessary following the adoption of IFRS 17. Subparagraph (a)(i) is, therefore, the resident insurer’s Canadian reserve liabilities as described in existing variable A. Note that amendments are also made to the definition “Canadian reserve liabilities”. For more information, see the commentary for that definition.

Subparagraph (a)(ii) is amended by changing the formula in clause (B) to ensure the contractual service margin for a group of insurance policies of, or a group of reinsurance contracts held by, the insurer at the end of the year is properly included in computing the capital and surplus accounts of a resident insurer for purposes of the “Canadian investment fund” definition. Specifically, the formula in Clause (a)(ii)(B) is amended to be

$$(I - (0.9 \times I.1) - (J - (0.9 \times J.1)) + K + L) \times (M/N)$$

- Variables I, K, L, M and N are the same as in existing clause (a)(ii)(B) under this definition.
- New variable I.1 is the contractual service margin for all groups of reinsurance contracts held by the insurer at the end of the year excluding, for any group that reinsures a risk under a segregated fund policy, that portion of the contractual service margin that relates to the risk under the segregated fund policy.
- Variable J is the total of all amounts each of which is an item reported as a liability of the insurer (excluding liabilities that were connected with assets not used or held in the course of carrying on an insurance business). Variable J is amended to also exclude policyholders' liabilities (for more information, see the commentary for that definition in subsection 138(12)).
- New variable J.1 is the contractual service margin for all groups of insurance policies of the insurer at the end of the year, except for groups of segregated fund policies.

Paragraph (b) of this definition provides the Canadian investment fund computation for a non-resident insurer. Subparagraph (b)(i) includes as part of non-resident insurer's Canadian investment fund its Canadian reserve liabilities at the end of the year subject to certain adjustments.

Subparagraph (b)(i) of the definition is amended by repealing adjustments for outstanding premiums, policy loans and deferred acquisition expenses that are no longer necessary following the adoption IFRS 17. Subparagraph (b)(i) is, therefore, the non-resident insurer's Canadian reserve liabilities as at the end of the year.

**"equity limit"**

The equity limit of an insurer for a taxation year is relevant in determining the extent to which an insurer may designate Canadian equity property for a taxation year. Under subsection 2401(4), an insurer cannot designate Canadian equity property for the year in excess of that insurer's equity limit for the year to ensure that an insurer cannot fill its Canadian investment fund with property on which it receives tax-free dividend income. Paragraphs (b) and (c) of the definition are amended to remove amounts from the equity limit computation that are no longer relevant on the introduction of IFRS 17.
Paragraph (b) of the definition provides the equity limit for non-resident insurers that are not life insurers. Subparagraph (b)(i) is amended to refer only to the insurer's mean Canadian reserve liabilities at the end of the year removing references to premiums receivable and deferred acquisition costs.

Paragraph (c) of the definition applies to non-resident life insurers. Subparagraph (c)(ii) of the definition is amended to refer only to the insurer's mean Canadian reserve liabilities, removing references to premiums receivable and deferred acquisition costs.

**"value"**

The value for a taxation year of a property is used for determining the value for different types of properties for purposes of designating property of the insurer for a taxation year. This definition is amended to repeal paragraph (a), which provides the value amount for certain property like mortgages and paragraph (b), which provides the value amount for an amount due or accrued. These paragraphs are no longer necessary on the introduction of IFRS 17. Paragraph (c) is also amended consequential on the repeal to remove references to the repealed paragraphs.

The value amount for property currently included in paragraphs (a) and (b) will be determined under paragraph (c) or (d) of this definition.

ITR
2400(3)

Subsection 2400(3) provides that any reference in Part XXIV of the Regulations to an amount reported as an asset or liability of an insurer is to be construed as a reference to the amount that is reported as a liability in the taxpayer's year-end balance sheet accepted by the Office of the Superintendent of Financial Institutions or, where the taxpayer is incorporated under a province's law, the amount reported as an asset or liability on the year-end balance sheet accepted by that province's superintendent of insurance or similar officer.

Subsection 2400(3) is repealed consequential to the introduction of subsection 138(12.2) of the Act which provides the equivalent interpretative rules and applies for purposes of this Part. For more information, see the commentary on subsection 138(12.2) of the Act.

ITR
2400(10)

International Financial Reporting Standard for insurance contracts that insurance corporations must follow are being changed effective for years that begin on or after January 1, 2023. These changes impact the tax rules that apply to insurance corporations for taxation years that begin after 2022.

In order to ensure that no inconsistencies arise under Part XXIV of the Regulations in respect of the tax treatment of insurance corporations as a result of these changes, new subsection 2400(10) provides a special rule for computations that are required to be made under Part XXIV in respect of an insurer's taxation year immediately precedes the first taxation year that began after 2022 and that is relevant to a computation (the “transition year computation”) that is required to be made under Part XXIV in respect of the insurer's first taxation year that begins after 2022. The rule specifies that such computations are, for the purposes only of the transition year computation, to be made using the same definitions, rules and methodologies that are used in the transition year computation. These would include accounting rules required to be complied with by the insurer in its transition year.

These amendments apply to taxation years that begin after 2022.

**Clause 18**

**Designation rules**

ITR
2401(2)

Subsection 2401(2) sets out rules that an insurer is required to follow in designating investment property for a taxation year in respect of its insurance businesses carried on in Canada in the year.

Paragraph 2401(2)(a) provides that an insurer shall designate in respect of its Canadian life insurance business, investment property with a total value (as defined in amended subsection 2400(1)) equal to the amount by which the insurer's mean Canadian reserve liabilities (as defined in amended subsection 2400(1)) exceeds its mean policy loans and mean Canadian outstanding premiums (as defined in amended subsection 2400(1)) in respect of that business. Paragraph 2401(2)(b) provides a similar rule for an insurer's accident and sickness insurance business carried on in Canada.

Consequential to the repeal of the definitions “mean Canadian outstanding premiums” and “mean policy loans” in subsection 2400(1) on the adoption of IFRS 17, paragraphs (a) and (b) are amended to remove those references from the computation of an amount under either of those paragraphs. As amended, paragraph (a) and (b) provide that an insurer shall designate an amount equal to the insurer’s mean Canadian reserve liabilities in respect of the insurer’s life insurance business, and the insurer’s accident and sickness insurance business, respectively. Paragraph 2401(2)(c) provides that an insurer shall designate in respect of its non-life and non-accident and sickness insurance business, investment property with a total value equal to the amount by which the insurer's mean Canadian reserve liabilities in respect of that business exceeds the insurer's average deferred acquisition expenses or premiums receivable in respect of that business.

The adoption of IFRS 17 makes concepts such as premium receivables and deferred acquisition expenses in respect of a business no longer relevant and those have been removed from the computation under paragraph (c). Similar to the amendments to paragraph (a) and (b) above, paragraph (c) is amended to provide that an insurer shall designate in respect of its non-life and non-accident and sickness insurance business, investment property with a total value equal to the amount of the insurer's mean Canadian reserve liabilities in respect of that business.
These amendments apply to taxation years that begin after 2022.

**Clause 19**

**Part LXXXVI – Taxable Capital Employed in Canada**

ITR
8600 to 8605

Part LXXXVI of the Regulations provides rules for determining “taxable capital employed in Canada”. Although Part I.3 tax has been eliminated, a corporation's “taxable capital employed in Canada” remains relevant for several purposes, including Part VI of the Act, which levies a minimum tax on the capital of financial institutions. Part LXXXVI is amended to replace the definition “total reserve liabilities” and amend section 8605 on the introduction of the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (IFRS 17).

ITR
8600

Section 8600 defines a number of terms for the purposes of Part LXXXVI of the Regulations and Part I.3 of the Act. Some of these terms are also defined for purposes of Part VI of the Act.

**“total reserve liabilities”**

The definition “total reserve liabilities” is relevant for the computation of taxable capital employed in Canada under subsection 181.3(1) of the Act for purposes of Part I.3 and for section 190.11 of the Act for purposes of Part VI tax. The definition is amended primarily to incorporate the concept of the contractual service margin introduced under new IFRS 17. Furthermore, the definition is amended to replace the concept of reinsurance recoverable reported by the insurer with the reinsurance contract held amount concept (for more information, see the commentary for the definition “reinsurance contract held amount” under subsection 138(12)).

Specifically, the definition “total reserve liabilities” is replaced by the formula:

$$\mathbf{A - (0.9 \times B) - (C - (0.9 \times D))}$$

Variable A is the total amount of the insurer's liabilities and reserves in respect of insurance policies (subject to certain exceptions), as those liabilities and reserves are determined for the Office of the Superintendent of Financial Institutions, if the insurer is required by law to report to that regulator or, in any other case, the superintendent of insurance of other similar officer of authority under a province under which the insurer is incorporated. Variable A is amended in order to include an insurer’s liabilities and reserves in respect of segregated fund policies other than a liability for an obligation to pay a benefit in respect of which subparagraphs 1406(b)(i) and (ii) apply. Furthermore, variable A is amended to exclude policyholders’ liabilities (for more information, see the commentary on that definition in subsection 138(12)).

Variable B is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the insurer at the end of the taxation year other than a group of segregated fund policies.

Variable C is the total of all amounts each of which is the reinsurance contract held amount for a group of contracts held by the insurer at the end of the taxation year excluding, for any group that reinsures an obligation to pay a benefit under which subparagraphs 1406(b)(i) and (ii) apply, that portion of the reinsurance contract held amount that relates to that obligation.

Variable D is the total of all amounts each of which is the amount of the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the year, excluding, for any group that reinsures a risk under a segregated fund policy, the portion of the contractual service margin that relates to that risk.

These amendments apply to taxation years that begin after 2022.

**Clause 20**

ITR
8605

Section 8605 computes, for the purposes of Parts I.3 and Part VI of the Act, amounts in respect of foreign insurance subsidiaries, and aggregates them with those of their Canadian insurer "parent", to achieve an approximation of the result that would arise if the foreign subsidiary's business were part of the Canadian corporation's operations rather than that of a separate entity.

ITR
8605(1)

Subsection 8605(1) of the Regulations sets out rules for computing the amount prescribed for the purposes of subclause 181.3(1)(c)(ii)(A)(II) and clause 190.11(b)(i)(B) of the Act. This amount is determined by calculating the "capital" of each foreign insurance subsidiary of a resident life insurance corporation, and deducting any part that represents the carrying value of shares or debt of the subsidiary that is held by (as well as any surplus contributed by) the Canadian insurer or certain of its affiliates. A subsidiary's capital is determined for this purpose using the rules applying to Canadian life insurance corporations under Part I.3 or VI (as the case may be), computed in respect of the subsidiary's last taxation year ending at or before the end of the Canadian insurer's taxation year in question (referred to as the subsidiary's last taxation year).

Subsection 8605(1) is amended to incorporate new concepts introduced by the new International Financial Reporting Standard for insurance contracts (known as "IFRS 17") effective for years that begin on or after January 1, 2023 and to remove the deduction for the deferred debit tax balance of the corporation. The amount prescribed under subsection 8605(1) in respect of a particular corporation for a taxation year is the total of all amounts determined in respect of a foreign subsidiary at a particular time, the amount determined by the formula A – B.

Variable A replaces existing paragraph 8605(1)(a) with the formula:

$$\mathbf{C + D + (0.9 \times E) - (0.9 \times F) - G}$$

- Variables C and G are the equivalent to subparagraphs 8605(1)(a)(i) and (iv) respectively.

- Variable D is the equivalent of existing subparagraph 8605(1)(a)(ii) that adds certain amounts to the amount prescribed in respect of a foreign subsidiary for the subsidiary's last

taxation year. Variable D now also includes two new amounts that are not in subparagraph 8605(1)(a)(ii), policyholders' liabilities (as defined in subsection 138(12)), and accumulated other comprehensive income, of the foreign subsidiary at the end of its last taxation year.

- Variable E is the total of all amounts each of which is the contractual service margin for a group of insurance policies of the foreign subsidiary at the end that subsidiary's last taxation year. The basis for the inclusion is that the contractual service margin for a group of contracts of the foreign subsidiary represents profits that is capital of the insurer. The contractual service margin for a group of segregated fund policies is not included in the parent's capital base.

- Variable F is the contractual service margin for a group of reinsurance contracts held by the foreign subsidiary at the end of the subsidiary's last taxation year excluding, where a portion of the contractual service margin for the group reinsures a risk under segregated fund policies, the contractual service margin in respect of those risks.

Variable B of the formula essentially rewrites existing paragraphs 8605(1)(b) and (c) as a formula and updates references to Variable A (which replaces paragraph 8605(1)(a)) as appropriate.

ITR
8605(2)

Subsection 8605(2) of the Regulations sets out rules for computing the amount prescribed for the purposes of subclause 181.3(c)(ii)(A)(III) and clause 190.11(b)(i)(C) of the Act. This subsection computes an amount referencing amounts in subsection 8605(1). This subsection is amended to be a formula and to properly reference amended subsection 8605(1).

These amendments apply to taxation years that begin after 2022.

## Hedging and Short Selling by Canadian Financial Institutions

### Clause 1

### Definitions

ITA
248(1)

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

**"dividend rental arrangement"**

The definition "dividend rental arrangement" in subsection 248(1) is amended to add new paragraph (b.1), which provides that a dividend rental arrangement of a person includes any

"specified hedging transaction" in respect of a DRA share of the person. A "DRA share" is defined in subsection 248(1) and includes any share owned by the person.

Paragraph (c) of the definition of "dividend rental arrangement" is amended to refer to a "synthetic equity arrangement" other than a "specified hedging transaction". Where a transaction or series of transactions satisfies the conditions in the definition of a "specified hedging transaction", the transaction or series will be a "dividend rental arrangement" as a result of paragraph (b.1) (and not paragraph (c)).

These amendments are relevant for the purposes of subsection 112(2.3). Under subsection 112(2.3), amounts received as a dividend on a share are not deductible by the recipient corporation under subsection 112(1) where there is a dividend rental arrangement in respect of the share, unless the exception in subsection 112(2.31) applies.

**"specified hedging transaction"**

Subsection 248(1) is also amended to add the definition "specified hedging transaction". A "specified hedging transaction" in respect of a DRA share of a person or partnership (referred to in the definition as the "particular person") means a transaction or series of transactions that satisfies the conditions in paragraphs (a) to (d) of the definition.

Paragraph (a) of the definition provides that a "specified hedging transaction" is a transaction or series entered into by either (i) a registered securities dealer (or, a partnership, each member of which is a registered securities dealer) or (ii) a registered securities dealer or such partnership (referred to as the "connected dealer") that does not deal at arm's length with, or is affiliated with, the particular person.

Paragraph (b) of the definition requires that a specified hedging transaction has the effect, or would have the effect if each transaction entered into by a connected dealer were entered into by the particular person, of eliminating all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share. A corporate group may eliminate its economic exposure to a share owned by one corporation in the group if a registered securities dealer elsewhere in the group borrows identical shares under a securities loan, and sells those shares short (see Example 1). The effect required in paragraph (b) is determined without regard to any other transaction that may have been entered into in respect of the DRA share (see Example 2).

Paragraph (c) of the definition requires that an amount in respect of the transaction or series would, but for these provisions, be deductible by the particular person or the connected dealer under paragraph 260(6)(a). Paragraph 260(6)(a) generally permits a registered securities dealer to deduct up to 2/3 of the amount of certain dividend compensation payments made by the registered securities dealer where the amount is deemed to have been received by another person as a taxable dividend under subsection 260(5.1). This condition requires that a 2/3 deduction is available to the registered securities dealer in respect of any amount paid by it to another person in respect of the transaction or series where that amount is deemed to have been received by the other person as a taxable dividend on the underlying share to which the dividend compensation payment relates.

Paragraph (d) of the definition provides that where a transaction or series is entered into by a connected dealer, it must be reasonable to consider that the particular person or the connected dealer knew or ought to have known that the effect described in paragraph (b) of the definition would result (that is, the elimination of all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share). A transaction or series should generally not be a specified hedging transaction where a connected dealer enters into the transaction or series objectively unaware that the transaction or series eliminates the economic exposure of the DRA share held by the particular person.

These amendments apply in respect of dividends that are paid or become payable on or after April 7, 2022 (unless the relevant specified hedging transaction was entered into before April 7, 2022, in which case the amendment would apply to dividends that are paid after September 2022).

**Example 1**

A Canadian bank owns certain Canadian shares (a long position). A registered securities dealer in the bank's corporate group borrows identical shares from a third party lender under a securities loan and sells the borrowed shares to a third party buyer (a short position). The registered securities dealer keeps the short position open during the period that the Canadian bank maintains the long position in the Canadian shares. The economic exposure of the bank's corporate group to the Canadian shares is eliminated – the Canadian shares are hedged on a group basis.

The transactions entered into by the registered securities dealer are a "specified hedging transaction" in respect of the Canadian shares and a "dividend rental arrangement" in respect of those shares. As a result, the Canadian bank will be denied the dividend received deduction under subsection 112(2.3) in respect of any dividends received on the Canadian shares.

However, the registered securities dealer will be permitted to deduct, under subsection 260(6.2), the entire amount of any dividend compensation payments made by it to the third party lender (and not the 2/3 deduction under paragraph 260(6)(a)). This has the appropriate result for the bank group as a whole - an income inclusion in respect of any dividends received by the Canadian bank on the Canadian shares and an offsetting deduction for the equivalent amount of any dividend compensation payments made by the registered securities dealer to the third party lender in respect of the Canadian shares.

**Example 2**

A registered securities dealer in the same corporate group as a Canadian bank borrows Canadian shares from a third party lender under a securities loan and sells the borrowed shares to the Canadian bank. As a result of these transactions, the Canadian bank has a long position with respect to the Canadian shares, and the registered securities dealer has a short position with

respect to those same shares. The corporate group as a whole has no economic exposure to the Canadian shares – the Canadian shares are hedged on a group basis.

However, on an entity basis, each of the Canadian bank (the long position) and the registered securities dealer (the short position) have economic exposure to the Canadian shares. In addition to the transactions described above, the Canadian bank may also enter into an equity derivative with a third party acquiring a short position in identical Canadian shares, and the registered securities dealer may also enter into an equity derivative with a third party acquiring a long position in identical Canadian shares, with the result that each has no economic exposure to the Canadian shares on an entity basis (in addition to the corporate group having no economic exposure to the Canadian shares). Alternatively, the Canadian bank and the registered securities dealer may enter into the equity derivative with each other.

The transactions are a "specified hedging transaction" in respect of the Canadian shares, and a "dividend rental arrangement" in respect of those shares. As a result, the Canadian bank will be denied the dividend received deduction under subsection 112(2.3) for any dividends received on the Canadian shares.

However, the registered securities dealer will be permitted to deduct, under subsection 260(6.2), the entire amount of any dividend compensation payment made by it to the third party lender (and not the 2/3 deduction under paragraph 260(6)(a)).

Any payment made by the Canadian bank to the third party under its equity derivative in respect of any dividend paid on the Canadian shares should be fully deductible in computing the bank's taxable income. Any payment received by the registered securities dealer from the third party under its equity derivative in respect of any dividend paid on the Canadian shares should be included in computing the taxable income of the registered securities dealer.

This has the appropriate result for the bank group as a whole - an income inclusion in respect of any dividend received by the Canadian bank on the Canadian shares, an offsetting deduction for any dividend equivalent payment made by the Canadian bank under the equity derivative, an income inclusion in respect of any dividend equivalent payment received by the registered securities dealer under the equity derivative, and an offsetting deduction for the equivalent amount of the dividend compensation payment made by the registered securities dealer to the third party lender.

**Clause 2**

**Deductibility**

ITA
260(6)(a)

Subsection 260(6) sets out rules regarding the deductibility of certain dividend compensation payments made under the securities lending arrangement rules.

Paragraph 260(6)(a) provides that a registered securities dealer may deduct up to 2/3 of an amount paid as a dividend compensation payment, unless that amount is deductible under subsection 260(6.1).

Paragraph (a) is amended to confirm that this 2/3 deduction is also subject to the amount not being deductible under new subsection 260(6.2). New subsection 260(6.2) generally provides a deduction for certain dividend compensation payments made by a registered securities dealer in respect of a specified hedging transaction where the related dividend in respect of a DRA share is not deductible because of subsection 112(2.3). This amendment applies in respect of dividend compensation payments made on or after April 7, 2022.

**Deductible amount for registered securities dealer**

ITA
260(6.2)

New subsection 260(6.2) provides a deduction for dividend compensation payments made by a registered securities dealer in connection with certain specified hedging transactions.
The amount deductible is the lesser of the amount the registered securities dealer is obligated to pay as a dividend compensation payment under a specified hedging transaction and the amount of the dividends received by the registered securities dealer or a non-arm's length or affiliated person in respect of that transaction which are not deductible because of subsection 112(2.3). This amendment permits the registered securities dealer to claim a deduction for the full amount of a dividend compensation payment, rather than the 2/3 deduction provided for in subsection 260(6), where the dividend compensation payment is made in respect of a specified hedging transaction and the dividends received on the DRA share are not deductible.

This amendment applies in respect of an amount paid as a dividend compensation payment on or after April 7, 2022.

**Dividend Refund**

ITA
260(7)

Subsection 260(7) provides that, where a corporation makes a payment to another person for which no deduction may be claimed under subsection 260(6.1) and that is deemed by subsection 260(5.1) to have been received by the other person as a taxable dividend, the corporation will also be entitled to treat an amount as the payment of a taxable dividend for the purposes of section 129. This enables a private corporation to obtain a refund of its refundable dividend tax on hand with respect to the payment of certain dividend compensation payments made by the corporation.

Subsection 260(7) is amended to add a reference to new subsection 260(6.2). Accordingly, if a corporation makes a payment to another person for which a deduction is available under

subsection 260(6.2), subsection 260(7) will not apply to deem that payment to be a taxable dividend for the purposes of section 129.

This amendment applies in respect of amounts paid on or after April 7, 2022.

**Corporate members of partnerships**

ITA
260(11)

Subsection 260(11) ensures appropriate treatment for dividend compensation payments where a corporation or an individual is a member of a partnership.

Paragraphs 260(11)(b) and (c) are amended to add references to new subsection 260(6.2).

This amendment applies in respect of amounts paid on or after April 7, 2022.

## Application of the General Anti-Avoidance Rule to Tax Attributes

**Clause 1**

**Determination under subsection 245(2)**

ITA
152(1.11)

Section 152 of the Act deals with assessments and determinations of losses by the Minister of National Revenue.

Subsection 152(1.11) allows determinations to be made by the Minister with respect to amounts, such as an adjustment to the adjusted cost base of a property and the paid-up capital of a share, as a consequence of the application of the general anti-avoidance rule (GAAR) in section 245. Where subsection 245(2) applies with respect to an avoidance transaction, such amounts may be determined as is reasonable in the circumstances in order to deny the tax benefit.

Consequential on amendments to the definition “tax benefit” in subsection 245(1), subsection 152(1.11) is amended to provide that a notice of determination can be issued with respect to a transaction to determine an amount that could, at a subsequent time, be relevant to the computation of tax. Such amounts, commonly referred to as “tax attributes,” include loss carryforwards, the paid-up capital of a share, exempt surplus, undepreciated capital cost and the adjusted cost base of a property. Subsection 152(1.11) is also reorganized to remove the post-amble in the English version, and to add paragraphs (a) to (c) in the French version.

This amendment applies in respect of determinations made after April 6, 2022. Determinations made prior to that time remain binding in accordance with subsection 152(1.3) of the Act (subject to the taxpayer’s rights of objection and appeal and any redetermination).

**Clause 2**

**Definitions**

ITA
245(1)

Section 245 of the Act contains the general anti-avoidance rule. Subsection 245(1) defines certain expressions used in section 245. Subsection 152(1.111) provides that these definitions also apply for the purposes of subsection 152(1.11), which relates to determinations. For more information, see the commentary on subsection 152(1.11).

**“tax benefit”**

In order for the GAAR to apply to a transaction, it must (but for section 245) result directly or indirectly in a tax benefit. A 2018 Federal Court of Appeal decision held that the GAAR did not apply to a transaction that resulted in an increase in a tax attribute that had not yet been utilized to reduce taxes, because that increase did not, on its own, constitute a tax benefit.

The definition “tax benefit” is reorganized and amended to provide that it includes a reduction, increase or preservation of an amount that could at a subsequent time be relevant to the computation of tax (i.e., a tax attribute, such as loss carryforwards, the paid-up capital of a share, exempt surplus, undepreciated capital cost and the adjusted cost base of a property).

Subparagraph (c)(ii) of the definition is, in essence, intended to ensure that the definition includes a reduction, increase or preservation of a tax attribute only if it could be a benefit to the taxpayer. The effects referenced are “a reduction, avoidance or deferral” in the case of tax or other amount payable under the Act and “an increase” in the case of a refund of tax or other amount under the Act. As such, for example, an increase in a tax attribute that would only lead to an increase in an amount payable under the Act would generally not be a tax benefit (assuming the increase in the tax attribute does not also give rise to a deferral).

**“tax consequences”**

Where the GAAR applies to a transaction, the tax consequences to a person are determined as is reasonable in the circumstances in order to deny the tax benefit that would otherwise result from that transaction.

The definition “tax consequences” is reorganized and amended to provide that it includes any amount that could, at a subsequent time, be relevant for the purpose of computing: the amount of income, taxable income or taxable income earned in Canada of a person under the Act; or the tax or other amount payable by, or refundable to, a person under the Act (i.e., tax attributes).

These amendments apply in respect of transactions that occur after April 6, 2022 and determinations made under subsection 152(1.11) after that date.

## Substantive CCPCs

### Clause 1

**Definitions**
ITA
89(1)

**“capital dividend account”**

The “capital dividend account” (CDA) is a mechanism intended to achieve integration by generally allowing amounts that have borne a sufficient level of tax at the corporate level to flow through a private corporation without attracting an extra level of tax. To the extent that a private corporation has a CDA balance, it may generally elect to treat dividends that it pays as capital dividends. Capital dividends may be received tax-free by the corporation’s shareholders.

Consequential to changes to the definition of “relevant tax factor” announced in Budget 2022, new paragraph (h) is added to the definition of CDA to address the integration of certain earnings of foreign affiliates as they are repatriated to and distributed by Canadian-controlled private corporations (CCPCs) and substantive CCPCs to their individual shareholders.

Under the current rules, amounts repatriated from foreign affiliates to CCPCs and distributed to individual shareholders are generally integrated through the system of deductions available for dividends received from foreign affiliates in section 113 and through the “general rate income pool” (defined in subsection 89(1), and from which CCPCs may distribute eligible dividends). However, due to the new relevant tax factor for CCPCs and substantive CCPCs, the current rules would not effectively integrate such amounts.

To address integration, new paragraph (h) provides additions to the CDA of a CCPC or a substantive CCPC. The amount added approximates the portion of certain after-tax earnings repatriated to the corporation from its foreign affiliate to the extent such earnings had been subject to a notional tax rate of 52.63 per cent (represented by the new “relevant tax factor” of 1.9 applicable to such corporations). This addition to the CDA represents after-tax income that was subject to tax at a rate approximating the highest combined personal income tax rate and therefore, to achieve integration, should not be subject to additional Canadian income tax upon its distribution to the corporation’s Canadian resident individual shareholders.

More specifically, new paragraph (h) provides additions to the CDA equal to the total of all amounts each of which is, if the corporation was a CCPC throughout the year or a substantive CCPC at any time in the year,

(i) an amount deductible under paragraph 113(1)(a.1) in computing the taxable income of the corporation for the particular taxation year in respect of a dividend received on a share of the capital stock of a foreign affiliate less the amount determined under sub-

subclause 113(1)(a.1)(ii)(A)(II)1. in respect of the dividend (i.e. the non-taxable half of hybrid surplus plus the after-tax portion of the taxable half of hybrid surplus that was subject to sufficient foreign tax, as determined based on the new relevant tax factor, less any foreign withholding tax paid in respect of the dividend prescribed to have been paid out of hybrid surplus), and

(ii) the total of the amounts deductible under paragraphs 113(1)(b) and (c) in computing the taxable income of the corporation for the particular taxation year in respect of a dividend received on a share of the capital stock of a foreign affiliate less the amount determined under clause 113(1)(c)(i)(A) in respect of the dividend (i.e. the after-tax amount of the taxable surplus that was subject to sufficient foreign tax, as determined based on the new relevant tax factor, plus the after-tax amount of withholding tax sheltered amounts).

These amendments apply to taxation years that begin on or after April 7, 2022.

For more information, see the commentary on the definition of "general rate income pool" in subsection 89(1), the definition "relevant tax factor" in subsection 95(1) and the definition "substantive CCPC" in subsection 248(1).

**"general rate income pool"**

The definition "general rate income pool" (GRIP) in subsection 89(1) of the Act is relevant for determining the extent to which a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation can pay eligible dividends in any given taxation year. Generally, a corporation's GRIP reflects the amount of its after-tax income that was subject to tax at the general corporate tax rate.

Existing paragraph (b) of variable E of the definition adds to GRIP all amounts in respect of dividends received from foreign affiliates of the taxpayer to the extent those amounts are deductible under any provision of section 113. A number of amendments are made in respect to this paragraph.

First, paragraph (b) of variable E is amended as a consequence of the amendment to the "relevant tax factor" and the resulting adjustment to the determination of the deduction for inter-corporate dividends paid to a CCPC or a substantive CCPC from the hybrid surplus or taxable surplus of a foreign affiliate. More specifically, paragraph (b) of variable E is amended to remove from the GRIP of a CCPC an amount equal to the deductions claimed in respect of amounts deductible under paragraphs:

- 113(1)(a.1) (i.e. repatriations of a foreign affiliate's hybrid surplus (representing certain capital gains)),
- 113(1)(b) (i.e. repatriations of a foreign affiliate's taxable surplus (generally representing foreign accrual property income and active business income earned in a country with which Canada does not have a tax treaty or tax information exchange agreement)), and

- 113(1)(c) (in respect of the payment of withholding tax to a foreign government on inter-corporate dividends received from a foreign affiliate prescribed to be paid out of taxable surplus).

The integration of these amounts will now be addressed through the capital dividend account. For more information, see the commentary on the definition "capital dividend account" in subsection 89(1) and on the definition "relevant tax factor" in subsection 95(1).

Second, the amount that can be added to a deposit insurance corporation's GRIP with respect to amounts deductible under section 113 is modified to better represent the amount of the after-tax earnings repatriated to the corporation from a foreign affiliate. This is accomplished by removing the amount of foreign withholding tax paid with respect to the dividend from the amount that is added to GRIP under variable E of the definition. This amendment more accurately reflects the after-tax amount that bore tax at the general corporate rate and that remains on hand for distribution.

These amendments apply to taxation years that begin on or after April 7, 2022.

Lastly, paragraph (b) of variable E is amended to exclude amounts deductible under paragraph 113(1)(d) or subsection 113(2), both of which represent de facto returns of capital rather than true dividends.

This amendment applies to taxation years that begin on or after Announcement Date.

**"low rate income pool"**

The definition "low rate income pool" (LRIP) in subsection 89(1) applies in respect of a corporation (referred to in the definition as a non-CCPC) that is neither a "Canadian-controlled private corporation" (as defined in subsection 125(7)) nor a "deposit insurance corporation" (as defined in subsection 89(15)). The LRIP definition is generally relevant for determining the extent to which the non-CCPC can pay eligible dividends in any given taxation year without making an "excessive eligible dividend designation" (as defined in subsection 89(1)).

The LRIP of a corporation at any time in a particular taxation year is the amount determined by reference to a formula: (A + B + C + D + E + F) – (G + H).

Variable D includes in a non-CCPC's LRIP the after-tax amount of its aggregate investment income for its preceding taxation year (assuming a notional tax rate of 20%). Only a non-CCPC that would, but for an election made under subsection 89(11) in respect of the definition

"Canadian-controlled private corporation", have been a CCPC in its preceding taxation year is required to include an amount in respect of D.

Pursuant to an announcement in Budget 2022 that aims to align the taxation of investment income earned by CCPCs and substantive CCPCs, variable D is amended to also apply to a corporation that was a substantive CCPC at any time in its preceding taxation year.

Variable G reduces a non-CCPC's LRIP. Broadly put, variable G reduces the LRIP by taxable dividends (other than eligible dividends) paid by the non-CCPC in the particular taxation year but before the particular time. As with eligible dividends, taxable dividends paid by the non-CCPC that are capital gains dividends (within the meaning ascribed by subsection 130.1(4) or 131(1)) or that are deductible by the corporation under subsection 130.1(1) in computing its income for the particular taxation year or for its preceding taxation year do not reduce the non-CCPC's LRIP.

Variable G is amended to provide relief in certain circumstances where the interaction of variables D and G could create undue LRIP inclusions in a taxation year. This could occur where a CCPC that made an election under subsection 89(11) or a substantive CCPC earns aggregate investment income in a particular taxation year and distributes such investment income to its shareholders as a non-eligible dividend in the same taxation year. The mechanics of variables D and G could create an LRIP inclusion equal to 80% of the corporation's aggregate investment income in the subsequent taxation year notwithstanding that the after-tax aggregate investment income has already been distributed as a non-eligible dividend in the particular taxation year.

To address this issue, variable G is amended to permit LRIP to be reduced by taxable dividends (other than eligible dividends) paid by a non-CCPC in the particular taxation year but before the particular time as well as by dividends paid in the preceding taxation year where an amount is included in the non-CCPC's low-rate income pool under element D in the particular taxation year. To ensure the relief is targeted, and to prevent double counting of LRIP reductions, the total reduction in respect of dividends paid in the preceding taxation year is limited to the lesser of:

(i) the amount included in the non-CCPC's low-rate income pool under element D in the particular taxation year, and

(ii) the portion of the taxable dividend(s) paid in the previous year that has not reduced the non-CCPC's low rate income pool before the particular time.

In other words, the amendment to variable G aims to ensure that corporations can distribute their aggregate investment income in the taxation year in which it is earned without unduly affecting their LRIP balance.

**Example**

Facts

- Substantive CCPC has a residual LRIP balance of $300;
- Substantive CCPC earns $1,000 of aggregate investment income in Year 1; and
- Substantive CCPC pays an $800 non-eligible dividend to its shareholders in Year 1.

Tracking Substantive CCPC's LRIP under the previous rules

- Year 1
  - $300 LRIP inclusion at the beginning of Year 1 under variable A;
  - ($300) reduction upon payment of the $800 non-eligible dividend in Year 1 (note that, unlike GRIP, a corporation's LRIP cannot be negative per section 257).
- Year 2
  - $800 inclusion at the beginning of Year 2 under variable D (i.e. 80% of the substantive CCPC's aggregate investment income for its preceding taxation year).

Substantive CCPC's LRIP balance at the end of the series is $800 (the dividends paid in Year 1 cannot reduce LRIP in Year 2 under variable G).

Tracking Substantive CCPC's LRIP under the new rules

- Year 1
  - $300 inclusion at the beginning of Year 1 under variable A;
  - ($300) reduction upon payment of the $800 non-eligible dividend in Year 1 (note that, unlike GRIP, a corporation's LRIP cannot be negative per section 257).
- Year 2
  - $800 inclusion at the beginning of Year 2 under variable D (i.e. 80% of the substantive CCPC's aggregate investment income for its preceding taxation year); and
  - Variable G provides a reduction of ($500), i.e. the lesser of the amount included in the non-CCPC's LRIP under variable D in the year ($800) and the portion of the taxable dividend paid in the previous year that has not reduced the non-CCPC's LRIP before the particular time ($500).

Substantive CCPC's LRIP balance at the end of the series is $300.

These amendments apply to taxation years that begin on or after April 7, 2022.

For more information, see the commentary under the new definition of "substantive CCPC" in subsection 248(1).

**Clause 2**

**Definitions for this Subdivision**

ITA
95(1)

The definition "relevant tax factor" (RTF) in subsection 95(1) is used in determining the Canadian tax relief provided in respect of foreign taxes imposed on the earnings of a foreign affiliate of a taxpayer.

Relief for foreign tax paid is provided (based on the taxpayer's RTF) in the year in which

- foreign accrual property income (FAPI) is imputed to a taxpayer resident in Canada pursuant to subsections 91(1) and (4), or
- earnings of a foreign affiliate are repatriated to a corporation resident in Canada pursuant to the inter-corporate dividend deductions in section 113.

The RTF can also indirectly affect the taxation of distributions paid to the ultimate Canadian resident individual shareholder of a corporation since amounts deductible under section 113 are added to certain corporations' "general rate income pool" (which is relevant for determining the extent to which a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation can pay eligible dividends in any given taxation year).

The existing definition provides that the RTF for a corporation (or a partnership all the resident members of which are corporations) is the reciprocal of the basic corporate tax rate less the general rate reduction (i.e., 1/.38-0.13, or 4). The RTF for individuals and for other partnerships is 1.9.

The RTF definition is amended to subject CCPCs, substantive CCPCs and partnerships one or more members of which are CCPCs or substantive CCPCs to the RTF of 1.9. The RTF of 1.9 more accurately reflects the corporate tax rate (approximating the highest personal income tax bracket) that would otherwise apply to investment income earned by a CCPC or a substantive CCPC.

Consequential amendments are also made to the definitions of "capital dividend account" and "general rate income pool" to improve the integration of a foreign affiliate's earnings as they are distributed through a corporate chain to the ultimate Canadian individual shareholder.

The purpose of these amendments is to improve neutrality by further aligning the domestic and international anti-deferral regimes.

For more information, see the commentary on the definitions "capital dividend account" and "general rate income pool" in subsection 89(1), and "substantive CCPC" in subsection 248(1).

These amendments apply to taxation years that begin on or after April 7, 2022.

**Clause 3**

**Refundable tax on investment income**

ITA
123.3

Section 123.3 imposes an additional amount of tax (the "additional tax") under Part I of the Act on investment income of a Canadian-controlled private corporation (CCPC). A corporation that is a CCPC throughout a taxation year must add to its tax otherwise payable under Part I for that year an amount that is equal to 10 2/3% of the lesser of two amounts. The first amount is the corporation's "aggregate investment income" for the year as defined in subsection 129(4) and the

second is the corporation's taxable income for the year less any amount in respect of which the corporation claimed the "small business deduction" under subsection 125(1).

Pursuant to the Budget 2022 announcement to align the taxation of investment income earned by CCPCs and substantive CCPCs, section 123.3 is amended to extend the application of the additional tax to the investment income of a corporation that is a substantive CCPC at any time in a taxation year. Since a substantive CCPC is not eligible for the "small business deduction" under subsection 125(1), the additional tax will apply to the lesser of the substantive CCPC's "aggregate investment income" and its taxable income for the year.

This amendment applies to taxation years that end on or after April 7, 2022.

The objective of the additional tax is to reduce tax deferral opportunities that individuals earning investment income directly might otherwise obtain by earning such income through a CCPC or substantive CCPC.

The additional tax imposed under section 123.3 is reflected in a CCPC or substantive CCPC's "non-eligible refundable dividend tax on hand" under subsection 129(4). It is accordingly refundable under subsection 129(1) to the corporation when it pays certain taxable dividends. For more information, see the commentary under subsections 129(1) and (4) and under the new definition of "substantive CCPC" in subsection 248(1).

**Clause 4**

**Corporate tax reductions – Definitions**

ITA
123.4(1)

**"full rate taxable income"**

Section 123.4 contains rules that allow a corporation to reduce its tax otherwise payable under Part I of the Act by a percentage of its "full rate taxable income" --- a term that is separately defined in the section for Canadian-controlled private corporations (CCPCs) and for other corporations. The full rate taxable income of a corporation for a taxation year is, in general terms, that part of the corporation's taxable income for the year that is not exempt from tax and has not benefited from, or been subject to, any of the various special effective tax rates provided under the Act. This amount is determined differently depending on the status of the corporation.

Pursuant to an announcement in Budget 2022 that aims to align the taxation of investment income earned by CCPCs and substantive CCPCs, paragraph (b) of the definition of full rate taxable income is amended to include corporations that were substantive CCPCs at any time in a taxation year. This ensures that the aggregate investment income of a substantive CCPC does not benefit from the general rate reduction in subsection 123.4(2).

This amendment applies to taxation years that end on or after April 7, 2022.

For more information, see the commentary on the definition of “substantive CCPC” in subsection 248(1).

**Clause 5**

**Dividend refund to private corporation**

ITA
129(1)(b)

Section 129 allows a private corporation that pays a taxable dividend to obtain a partial refund of the taxes it has paid on its investment income (or a full refund in the case of Part IV tax paid on certain taxable dividends received). The dividend refund system is intended to integrate corporate and shareholder taxation by providing comparable tax results for Canadians who invest through private holding companies and those who invest directly.

Subsection 129(1) defines the term “dividend refund” for the purposes of the Act and provides the specific computational and administrative rules for the issuance by the Minister of National Revenue of a dividend refund for a taxation year where the corporation has filed its tax return within 3 years from the end of the taxation year.

Paragraph 129(1)(a) provides that the amount of a corporation's dividend refund for a taxation year may be refunded by the Minister of National Revenue without application, upon mailing the corporation’s notice of assessment for the year.

Paragraph 129(1)(b) requires the Minister of National Revenue to make the dividend refund after mailing the notice of assessment if the corporation has made an application for the refund within the period within which the Minister of National Revenue would be allowed under subsection 152(4) to assess tax payable under Part I by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

Paragraph 129(1)(b) is amended as a consequence of the introduction of new subsection 152(4.31). New subsection 152(4.31) extends the period within which the Minister may assess or reassess the tax, interest or penalties payable under Part IV of the Act by a taxpayer (the dividend recipient) in respect of a taxable dividend received where:

(i) the dividend recipient receives a taxable dividend in a taxation year from a corporation (the dividend payer); and

(ii) the dividend payer, as a result of having paid the dividend, is entitled to a dividend refund.

Where these conditions are met, the period within which the Minister may assess or reassess the tax, interest or penalties payable under Part IV of the Act by the dividend recipient in respect of

the taxable dividend received is extended by one year after the expiration of the normal reassessment period. (See commentary on new subsection 152(4.31) for more information.)

Paragraph 129(1)(b) is amended to ensure that the period within which a dividend refund may be issued to the dividend recipient is not shorter than the period described in new subsection 152(4.31), where that subsection applies. This ensures that the dividend recipient is entitled to receive a dividend refund if it has in turn paid a dividend to its shareholder during the extended period described in new subsection 152(4.31).

This amendment applies to taxation years that end on or after April 7, 2022.

For more information, see the commentary on the definition of "substantive CCPC" in subsection 248(1).

**Definitions**

ITA
129(4)

**"eligible portion"**

As a consequence of the Budget 2022 announcement to align the taxation of investment income earned by CCPCs and substantive CCPCs, the definition "eligible portion" is amended to ensure that the portion of a corporation's taxable capital gains or allowable capital losses for a taxation year that accrued while the property, or a property for which it was substituted, was property of a corporation that is a substantive CCPC is included in the "eligible portion" of the corporation's taxable capital gains or allowable capital losses and thus, included in the computation of its "aggregate investment income".

This amendment applies to taxation years that end on or after April 7, 2022.

For more information, see the commentary on the definition of "aggregate investment income" in subsection 129(4) and on the definition of "substantive CCPC" in subsection 248(1).

**"non-eligible refundable dividend tax on hand"**

A corporation's "non-eligible refundable dividend tax on hand" (NERDTOH) tracks:

- the refundable Part I tax in respect of the investment income of a Canadian-controlled private corporation (paragraph (a)); and
- the Part IV tax paid by a corporation in respect of dividends other than those described under ERDTOH (paragraph (b)).

A corporation's NERDTOH will be reduced by dividend refunds for a preceding taxation year in respect of its NERDTOH. Such dividend refunds can only arise upon the payment by the

corporation of non-eligible dividends. For additional information on the dividend refund mechanism, see the comments under subsection 129(1).

Paragraph (a) of the NERDTOH definition is amended to also apply to corporations that are substantive CCPCs at any time in a taxation year. This amendment is consequential to the amendments to section 123.3 and the definition of "full rate taxable income" in subsection 123.4(1) that subject the "aggregate investment income" of a substantive CCPC to a higher rate of corporate tax. This amendment aims to ensure that the appropriate proportion of a substantive CCPC's "aggregate investment income" is included in its NERDTOH, which in turn allows the corporation to receive a dividend refund when non-eligible dividends are paid to its shareholders.

This amendment applies to taxation years that end on or after April 7, 2022.

For more information on the treatment of investment income earned by substantive CCPCs, see the commentary on the definition of "substantive CCPC" in subsection 248(1).

**Clause 6**

**Definition of "normal reassessment period"**

ITA
152(3.1)

Subsection 152(3.1) defines the expression "normal reassessment period" for the purposes of various provisions in section 152. The subsection is amended to add a reference to new subsection 152(4.31) in respect of assessments or reassessments of taxpayers for taxation years that end on or after April 7, 2022.

For more information, see the commentary on new subsection 152(4.31).

**Consequential assessment of Part IV tax**

ITA
152(4.31)

New subsection 152(4.31) aims to correct an administrative issue that can arise in multi-tiered structures involving corporations with mismatched year-ends or different normal reassessment periods (see commentary on subsection 152(3.1)).

For example, where a non-Canadian-controlled private corporation (non-CCPC) (which has a normal reassessment period of four years under paragraph 152(3.1)(a)) pays a taxable dividend to a Canadian-controlled private corporation ("CCPC") (which has a normal reassessment period of three years under paragraph 152(3.1)(b)), a situation can arise where the Minister, upon reassessing the non-CCPC, is obligated to issue a dividend refund to the non-CCPC in respect of the dividend paid to the CCPC. However, the Minister may be precluded from reassessing tax payable under Part IV of the Act by the CCPC with respect to the taxable dividend received due

to the prior expiration of the CCPC's normal reassessment period. This timing mismatch results in a windfall for taxpayers who receive the dividend refund while also avoiding Part IV tax, thus permitting a permanent tax deferral advantage. The same result can arise where both corporations are either CCPCs or non-CCPCs, provided the corporations have different year-ends or different normal reassessment periods.

New subsection 152(4.31) addresses this issue by extending the period within which the Minister may assess or reassess the tax, interest or penalties payable under Part IV of the Act by a taxpayer (the dividend recipient) in respect of a taxable dividend received where:

(i) the dividend recipient receives a taxable dividend in a taxation year from a corporation (the dividend payer); and

(ii) the dividend payer, as a result of having paid the dividend, is entitled to a dividend refund (see commentary on subsection 129(1)).

Where these conditions are met, the period within which the Minister may assess or reassess the tax, interest or penalties payable under Part IV of the Act by the dividend recipient in respect of the taxable dividend received is extended by one year after the expiration of the normal reassessment period.

A consequential amendment is made to paragraph 129(1)(b) to ensure that the period within which a dividend refund may be issued to the dividend recipient is not shorter than the period described in new subsection 152(4.31), where that subsection applies. This ensures that the dividend recipient is entitled to receive a dividend refund if it has in turn paid a dividend to its shareholder during the extended period described in new subsection 152(4.31) (see commentary on subsection 129(1)).

New subsection 152(4.31) applies in respect of assessments or reassessments of taxpayers for taxation years that end on or after April 7, 2022.

**Clause 7**

**Definitions**

ITA
248(1)

Neutrality is a fundamental principle of Canadian tax policy. The Canadian income tax system aims to achieve neutrality by ensuring that income earned directly by a Canadian resident individual is taxed at roughly the same rate as income that is earned through a corporation. This objective is commonly referred to as integration.

To encourage business investment and growth, the business income of a corporation is subject to a low rate of tax in the corporation and is integrated only once dividends are paid out to shareholders. In contrast, investment income earned by Canadian-controlled private corporations

(CCPCs) is subject to additional refundable tax that approximates the highest marginal tax rate payable by Canadian resident individuals. This ensures no tax deferral advantage can be obtained by Canadian resident individuals earning their investment income through a holding corporation rather than directly.

In comparison, investment income earned by non-CCPCs is taxed at the same rate as business income and is therefore subject to a low rate of tax. This is because, theoretically, the same tax-deferral concern does not arise with non-CCPCs because they are controlled (and thus presumed to be owned) by public corporations or non-resident persons.

The distinction between a CCPC and a non-CCPC is determined by the CCPC definition. A CCPC is subject to the most comprehensive integration measures in the Act and its investment income is subject to comprehensive anti-deferral rules. However, because the CCPC definition was designed to restrict certain tax benefits to "true" Canadian-controlled private corporations, it is a restrictive definition. This has made the CCPC definition more susceptible to manipulation by taxpayers seeking to avoid the anti-deferral rules that apply to CCPCs.
The new definition of "substantive CCPC" is added to subsection 248(1) to address this concern. A corporation will be a substantive CCPC if it is a private corporation (other than a Canadian-controlled private corporation) that

(a) is controlled, directly or indirectly in any manner whatever, by one or more Canadian resident individuals, or

(b) would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual were owned by a particular individual, be controlled by the particular individual.

The following scenarios provide examples where the substantive CCPC definition would, or would not, apply.

**Example 1**

Facts

Opco is a CCPC all of the issued and outstanding shares of which are held by a Canadian resident individual. In the course of an arm's length commercial transaction, a right (described under paragraph 251(5)(b)) to acquire all of the shares of Opco is granted to a "public corporation" (as defined in subsections 89(1) and 248(1)). After a period of time, the public corporation exercises the right and acquires all of the shares of Opco.

Analysis

Opco ceases to be a CCPC (pursuant to the definition in subsection 125(7)) when the right to acquire all of its shares is granted to the public corporation. However, since it remains a "private

corporation" (as defined in subsections 89(1) and 248(1)) controlled by a Canadian resident individual, Opco becomes a substantive CCPC at that time.

Opco ceases to be a substantive CCPC upon the acquisition of all of its shares by the public corporation. At that time, Opco ceases to be a "private corporation" and thus ceases to be a substantive CCPC.

**Example 2**

Facts

Opco is a Canadian resident corporation that is a wholly-owned subsidiary of a non-resident corporation (which, in turn, is wholly-owned by non-resident individuals).

Analysis

Opco is not a substantive CCPC because it is not controlled, directly or indirectly in any manner whatever, by one or more Canadian resident individuals (nor would it be under the aggregator test in paragraph (b) of the substantive CCPC definition).

**Example 3**

Facts

Year 1: Opco is a CCPC all of the issued and outstanding shares of which are held by a Canadian resident individual.

Year 2: At the beginning of Year 2, Opco is granted articles of continuance under the corporate laws of a foreign jurisdiction. However, Opco remains resident in Canada by maintaining central management and control in Canada throughout the year.

Year 3: At the beginning of Year 3, Opco emigrates from Canada to become resident in the foreign jurisdiction.

Analysis

Year 1: Opco is a CCPC, and is consequently not a substantive CCPC.

Year 2: Upon its continuance under the corporate laws of the foreign jurisdiction, Opco ceases to be a "Canadian corporation" (as defined in subsections 89(1) and 248(1) and pursuant to subsection 250(5.1)), and thus also ceases to be a CCPC (pursuant to the definition in subsection 125(7)). However, since Opco remains a "private corporation" (other than a CCPC) that is controlled by a Canadian resident individual, Opco becomes a substantive CCPC at that time.

Year 3: Opco ceases to be resident in Canada upon its emigration and thus ceases to be a substantive CCPC at that time. However, upon its emigration, Opco becomes a "controlled

foreign affiliate" (as defined in subsection 95(1)) of the Canadian resident individual who will now be subject to the international anti-deferral regime in respect of Opco's investment income.

The substantive CCPC definition is relevant in determining the taxation of investment income earned directly as well as investment income earned through a foreign affiliate. Generally, a substantive CCPC will be subject to the same anti-deferral and integration mechanisms that apply to CCPCs. These rules include:

- the additional 10 2/3% tax under section 123.3 on the corporation's "aggregate investment income" for the year, as defined in subsection 129(4) (which includes taxable capital gains, interest, rent, royalties, and income under subsection 91(1) in respect of a share of a controlled foreign affiliate with foreign accrual property income (FAPI)),
- denial of the 13% general rate reduction under section 123.4 on the corporation's aggregate investment income for the year,
- an addition to the "non-eligible refundable dividend tax on hand" account as defined in subsection 129(4) equal to 30 2/3% of the corporation's aggregate investment income for the year, and
- the loss of the eligible dividend tax credit for dividend distributions of aggregate investment income pursuant to an addition to the corporation's "low-rate income pool" as defined in subsection 89(1).

Further, like an individual or a CCPC, a substantive CCPC holding a share of a foreign affiliate will be subject to a "relevant tax factor" (RTF, as defined in subsection 95(1)) of 1.9, which more closely reflects the high rate of tax payable on investment income earned by a CCPC, a substantive CCPC, or an individual.

One result of this adjustment to the RTF for CCPCs and substantive CCPCs will be to decrease the portion of the deemed income inclusion under subsection 91(1) in respect of the FAPI of a foreign affiliate that may be sheltered by a deduction with respect to "foreign accrual tax" (FAT) under subsection 91(4) and, conversely, to increase the "non-FAT sheltered" portion of the subsection 91(1) income that may be included in the corporation's aggregate investment income. This adjustment to the RTF for CCPCs and substantive CCPCs improves the alignment of the domestic and international anti-deferral regimes.

The new RTF for CCPCs and substantive CCPCs also affects certain amounts deductible by such corporation under section 113 with respect to dividends received from foreign affiliates. Consequential amendments also apply to the definitions of "capital dividend account" and "general rate income pool" in subsection 89(1) to address the integration of dividends received from foreign affiliates.

While substantive CCPCs are subject to the same anti-deferral rules as CCPCs, they are not eligible for the same special tax benefits provided to CCPCs, including the small business deduction and the enhanced credit for scientific research and experimental development. This is because the CCPC definition provides a more robust and comprehensive set of rules to prevent non-residents and public corporations from accessing these special tax benefits.

The new substantive CCPC definition applies to taxation years that end on or after April 7, 2022. To provide certainty for genuine commercial transactions entered into before April 7, 2022, an exception to this application date is provided where the following conditions are met:

(i) the corporation's first taxation year that ends on or after April 7, 2022 ends due to a loss restriction event (as defined in subsection 251.2(2)) caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,

(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b)) with the corporation immediately prior to the loss restriction event, and

(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before April 7, 2022.

Where the three aforementioned conditions are met, the substantive CCPC definition applies to taxation years that begin on or after April 7, 2022. Accordingly, where the exception applies to a corporation, it will not be subject to the rules applicable to substantive CCPCs in its taxation year that includes April 7, 2022 (assuming the taxation year does not begin on April 7, 2022), because it will not be a substantive CCPC in that taxation year.

For more information, see the commentary on the definitions "capital dividend account", "general rate income pool" and "low rate income pool" in subsection 89(1), the definition "relevant tax factor" in subsection 95(1), section 123.3, the definition "full rate taxable income" in subsection 123.4(1), paragraph 129(1)(b), the definitions "eligible portion" and "non-eligible refundable dividend tax on hand" in subsection 129(4), subsections 152(3.1) and new (4.31), and on new subsection 248(43).

**Substantive CCPC – anti-avoidance**

ITA
248(43)

The substantive CCPC concept is intended to cause corporations that are not CCPCs, but that are factually or legally controlled by Canadian resident individuals, to be subject to the same anti-deferral rules on investment income that apply to CCPCs. Subsection 248(43) is an anti-avoidance rule that is intended to apply where a corporation or its shareholders undertake planning that causes a corporation not to be a CCPC or a substantive CCPC.

In general, this anti-avoidance rule may apply in situations where Canadian resident individuals have a material economic interest in a corporation, directly or indirectly, but do not have legal or factual control of the corporation. For example, this could be the case because ownership of a corporation's voting shares is misaligned from economic ownership of the corporation. This could also be the case where an intermediary entity, such as a partnership or trust, is interposed between Canadian resident individuals and the corporation in a way that causes the corporation to technically not be a CCPC or a substantive CCPC (see examples below).

More specifically, new subsection 248(43) applies to deem a corporation to be a substantive CCPC where it is reasonable to consider that one of the purposes of any transaction (as defined in subsection 245(1)), or series of transactions, is to cause a corporation that is resident in Canada (other than a Canadian-controlled private corporation or a corporation that is, in absence of this subsection, a substantive CCPC) to avoid tax otherwise payable under section 123.3 on the corporation's aggregate investment income. The corporation is deemed to be a substantive CCPC from the time the transaction or series of transactions commenced until the earliest time at which the corporation

(a) becomes a Canadian-controlled private corporation,

(b) is subject to a loss restriction event, or

(c) ceases to be resident in Canada.

While the application of new subsection 248(43) is a question of fact, it is expected that the rule would apply in the following examples (note that these examples are not exhaustive, but are intended only to provide additional context when interpreting the text and purpose of new subsection 248(43)).

**Example 1**

Facts

Canco is a CCPC with a single class of issued and outstanding shares. Its shares are held in equal proportion by three arm's length Canadian-resident individuals (33 1/3% each).
Prior to realizing significant capital gains, non-participating voting preferred shares (skinny voting shares) are issued to the non-resident children of the Canadian-resident shareholders. The skinny voting shares confer a controlling interest in the corporation to their non-resident holders causing Canco to lose its CCPC status. The Canadian resident individuals assert the skinny voting shares were issued to their non-resident children for estate planning purposes.
Canco then earns significant aggregate investment income in the form of taxable capital gains. After paying tax at the low corporate tax rate on the taxable capital gain, Canco invests the after-tax proceeds in several rental properties.

Analysis

One or more of the Canadian-resident shareholders may be found to exercise de facto control over Canco. In such case, Canco would be a substantive CCPC under paragraph (a) of the definition "substantive CCPC" in subsection 248(1).

However, should the Canadian-resident shareholders be found not to have de facto control of Canco (individually or as a group), new subsection 248(43) would apply to deem Canco to be a substantive CCPC. This conclusion would be supported by the fact that the corporation's taxable capital gain would, absent the transaction (i.e. the issuance of the skinny voting shares to non-

resident persons), have been subject to tax under section 123.3. Accordingly, absent clear facts indicating otherwise, it would be reasonable to conclude that one of the purposes of the transaction was to avoid tax otherwise payable under section 123.3 on the corporation's aggregate investment income.

**Example 2**

Facts

Canco, a Canadian corporation, is a wholly-owned subsidiary of a limited partnership ("LP"). GPCo, a Canadian resident corporation all of the issued and outstanding shares of which are owned by a Canadian resident individual, is the general partner of LP. GPCo holds a nominal interest in LP.

Canadian resident individuals own, directly or indirectly, all the limited partnership interests in LP.

The partnership agreement allows 75% of the limited partners to replace the general partner. Immediately prior to Canco realizing significant capital gains, the sole shareholder of GPCo sells all the shares of GPCo to a non-resident individual. This transaction causes Canco to lose its CCPC status. After paying tax at the low corporate tax rate on the taxable capital gain, Canco invests the after-tax proceeds in portfolio assets.

Analysis

The Canadian resident partners of LP may be found to exercise de facto control over Canco. In that case, Canco would be a substantive CCPC under paragraph (a) of the definition "substantive CCPC" in subsection 248(1).

However, should the Canadian-resident partners be found not to have de facto control of Canco, new subsection 248(43) would apply to deem Canco to be a substantive CCPC. This conclusion would be supported by the fact that the corporation's taxable capital gains would, absent the transaction (i.e., the sale of GPCo's shares to a non-resident individual), have been subject to tax under section 123.3. Accordingly, absent clear facts indicating otherwise, it would be reasonable to conclude that one of the purposes of the transaction was to avoid tax otherwise payable under section 123.3 on Canco's aggregate investment income.

New subsection 248(43) applies to taxation years that end on or after April 7, 2022. To provide certainty for genuine commercial transactions entered into before April 7, 2022, an exception to this application date is provided where the following conditions are met:

(i) the corporation's first taxation year that ends on or after April 7, 2022 ends due to a loss restriction event caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,

(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b)) with the corporation immediately prior to the loss restriction event, and

(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before April 7, 2022.

Where a corporation satisfies the three aforementioned conditions, subsection 248(23) applies to taxation years of the corporation that begin on or after April 7, 2022.

For more information, see the commentary on the definition of "substantive CCPC" in subsection 248(1).

## Interest Coupon Stripping

### Clause 1

### Interest Coupon Stripping

Part XIII of the Act generally imposes an income tax (commonly referred to as "non-resident withholding tax") on interest payments made by a Canadian resident to a non-resident with which it does not deal at arm's length. The rate of non-resident withholding tax on interest is 25% where the payor and payee do not deal at arm's length. However, this rate is generally reduced when interest is paid to a resident in a country with which Canada has a tax treaty.

New subsections 212(21) to (23) of the Act are introduced to ensure that non-resident withholding tax is not avoided through arrangements in which a non-resident lender sells its right to receive future interest payments, in respect of a loan made to a non-arm's length Canadian-resident borrower, to a person or partnership that is subject to a lower rate of non-resident withholding tax (commonly referred to as "interest coupon stripping" arrangements). The rules may also apply where the right to receive interest payments is transferred to a Canadian resident that is not subject to non-resident withholding tax.

These new rules ensure that the total non-resident withholding tax paid under an interest coupon stripping arrangement will be the same as if the arrangement had not been undertaken and the interest had instead been paid to the non-resident lender. Subsection 212(21) sets out the conditions for the application of the operative rule in subsection 212(22) and subsection 212(23) relates to an exception to these rules for publicly offered debt obligations.

These rules apply to interest that accrues on or after April 7, 2022, unless the interest meets both of the following conditions:

- it is in respect of a debt or other obligation incurred by the Canadian-resident borrower before April 7, 2022; and

- it is made to an interest coupon holder that deals at arm's length with the non-resident lender and that acquired the interest coupon as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before April 7, 2022.

For cases falling within the above exception, the measure would apply to interest that accrues on or after April 7, 2023.

ITA
212(21)

Subsection 212(21) contains two conditions that, when satisfied, trigger the application of the operative rule in subsection 212(22). The first condition, set out in paragraph 212(21)(a), assesses whether an interest coupon stripping arrangement exists. This condition will generally be satisfied if the taxpayer pays interest to a person or partnership (referred to in these rules as the "interest coupon holder") in respect of a debt or other obligation (except a "specified publicly offered debt obligation", as defined in subsection 212(23)) owed to a non-resident person that does not deal at arm's length with the taxpayer (referred to in these rules as the "non-arm's length creditor"). Under subparagraph 212(21)(a)(ii), a partnership with at least one non-resident partner can also be considered a non-arm's length creditor.

The second condition, set out in paragraph 212(21)(b), is intended to test whether the interest coupon stripping arrangement would, in the absence of new subsection 212(22), result in the avoidance of non-resident withholding tax. A taxpayer will generally satisfy this condition if the non-resident withholding tax that would be payable if the interest were paid directly to the non-arm's length creditor is greater than the non-resident withholding tax payable in respect of the interest that is actually paid to the interest coupon holder. In other words, this condition will generally be satisfied if the amount of non-resident withholding tax on an interest payment would have been reduced by an interest coupon stripping arrangement in the absence of new subsection 212(22).

ITA
212(22)

Subsection 212(22) is the operative rule setting out the consequences, for the purpose of the non-resident withholding tax imposed by paragraph 212(1)(b), when the conditions in subsection 212(21) are satisfied.

If it applies, subsection 212(22) deems the taxpayer to pay interest for the purpose of paragraph 212(1)(b) to the non-resident creditor referred to in subsection 212(21) in an amount determined by the formula $A \times (B - C)/B$. This formula calculates an amount of deemed interest that will ensure that the total amount of non-resident withholding tax paid under the arrangement is the same as if the arrangement had not been carried out and the interest was instead paid directly to the non-arm's length creditor.

Variable A is the "particular amount" referred to in paragraph 212(21)(a). This amount will generally be the interest paid by the taxpayer to the interest coupon holder in respect of a debt or other obligation owed to the non-arm's length creditor.

Variable B is the rate of tax that would be imposed under Part XIII on the particular amount if it were paid by the taxpayer to the non-arm's length creditor at the time it is actually paid to the interest coupon holder.

Variable C is the rate of tax imposed under Part XIII in respect of the particular amount at the time it is paid to the interest coupon holder.

The amount of deemed interest resulting from the formula will be subject to non-resident withholding tax at the rate applicable to the non-arm's length creditor. This withholding tax, together with any withholding tax in respect of the actual payment to the interest coupon holder, will equal the amount of non-resident withholding tax that would have resulted if the interest coupon stripping arrangement had not occurred.

If no non-resident withholding tax is paid on an interest payment to an interest coupon holder, the amount of deemed interest determined by the formula will be the full amount of the interest paid to the interest coupon holder. This scenario can be illustrated by the following example:

**Example 1:**

UKCo is a UK resident corporation that wholly owns SubCo, a corporation resident in Canada. UKCo lends $100 to SubCo at an interest rate of 5% per year, payable annually. UKCo sells the right to receive interest payments from SubCo to USCo, a US resident corporation. USCo and UKCo are each entitled to treaty benefits under the relevant tax treaties.

SubCo pays an interest payment of $5 to USCo.

Under the Canada-US tax treaty, the rate of non-resident withholding tax on the interest payment is reduced to nil.

Under the Canada-UK tax treaty, the rate of non-resident withholding tax on the interest payment would have been reduced to 10% had it been paid directly to UKCo.

The conditions in subsection 212(21) are met since, under paragraph 212(21)(a), SubCo paid interest to a person (USCo, the interest coupon holder) in respect of a debt owed to a non-resident person with whom it was not dealing at arm's length (UKCo, the non-arm's length creditor) and under paragraph 212(21)(b), the non-resident withholding tax payable under the arrangement would, in the absence of subsection 212(22), be less than if SubCo had paid interest to UKCo directly.

Under subsection 212(22), an amount of interest determined by the formula $A \times (B - C)/B$ will therefore be deemed to be paid to from SubCo to UKCo.

Amount A of the formula in subsection 212(22) is $5 since this is the "particular amount" of interest paid to the interest coupon holder referred to in paragraph 212(21)(a).

Amount B of the formula in subsection 212(22) is 10% since this is the rate of non-resident withholding tax to which the $5 payment would have been subject had it been paid to UKCo.

Amount C of the formula in subsection 212(22) is 0% since this is the rate of non-resident withholding tax actually applied to the $5.

Under subsection 212(22), the amount of the deemed interest payment to UKCo is 5 × (10-0)/10) = $5. This reflects the fact that no non-resident withholding tax was paid on the interest payment to USCo, so the entire payment must be deemed to be paid to UKCo in order to ensure that the total amount of non-resident withholding tax payable is the same as if the interest coupon stripping arrangement had not occurred.

The formula in subsection 212(22) also takes into account a situation in which some non-resident withholding tax is paid by an interest coupon holder when it receives interest payments. Such withholding tax is taken into account in variable C. In this situation, the deemed interest payment created by 212(22) will be reduced such that it will generate the appropriate amount of additional withholding tax. This can be illustrated by the following example:

**Example 2:**

CaymanCo is a corporation resident in the Cayman Islands that wholly owns SubCo, a corporation resident in Canada. CaymanCo lends $100 to SubCo at an interest rate of 5% per year, payable annually. CaymanCo sells the right to receive interest payments from SubCo to DutchCo, a corporation resident in the Netherlands.

SubCo pays an interest payment of $5 to DutchCo. DutchCo is entitled to treaty benefits under the Canada-Netherlands tax treaty.

Under the Canada-Netherlands tax treaty, the rate of non-resident withholding tax on the interest payment is reduced to 10%.

The rate of non-resident withholding tax on the interest payment would have been 25% had it been paid directly to CaymanCo since Canada does not have a tax treaty with the Cayman Islands.

The conditions in subsection 212(21) are met since, under paragraph 212(21)(a), SubCo paid interest to a person (DutchCo, the interest coupon holder) in respect of a debt owed to a non-resident person with whom it was not dealing at arm's length (CaymanCo, the non-arm's length creditor) and under paragraph 212(21)(b), the non-resident withholding tax payable under the arrangement would, in the absence of subsection 212(22), be less than if SubCo had paid interest to CaymanCo directly.

Under subsection 212(22), an amount of interest determined by the formula A × (B − C)/B will therefore be deemed to be paid to CaymanCo.

Amount A of the formula in subsection 212(22) is $5 since this is the "particular amount" of interest paid to the interest coupon holder referred to in subsection 212(21).

Amount B of the formula in subsection 212(22) is 25% since this is the rate of non-resident withholding tax to which the $5 payment would have been subject had it been paid to CaymanCo.

Amount C of the formula in subsection 212(22) is 10% since this is the rate of non-resident withholding tax to which the $5 payment was actually subject.

Under subsection 212(22), the amount of the deemed interest payment to CaymanCo is 5 × (25-10)/25) = $3. This reflects the fact that some non-resident withholding tax was paid on the interest payment to DutchCo and so only a portion of the entire payment (in this example, 60% of the original $5) must be deemed to be paid to CaymanCo in order to ensure that the total amount of non-resident withholding tax payable is the same as if the interest coupon stripping arrangement had not occurred.

Had the interest been paid directly to CaymanCo, it would have resulted in withholding tax of 25% × $5 = $1.25. Paying the interest to DutchCo resulted in withholding tax of 10% × $5 = $0.50. Subjecting the deemed interest payment of $3 to the applicable 25% withholding tax rate results in additional withholding tax of 25% × $3 = $0.75. $0.50 + $0.75 = $1.25, which is also the amount of withholding tax that would have been paid if the arrangement had not occurred.

ITA
212(23)

Subsection 212(23) defines "specified publicly offered debt obligations" for the purpose of subsection 212(21), which creates an exception from the rule in subsection 212(22) for interest relating to specified publicly offered debt obligations.

A debt or other obligation is a specified publicly offered debt obligation if it meets the two conditions set out in subsection (23). The purpose of these conditions is to limit the availability of the exception for specified publicly offered debt obligations in subsection 212(21) to bona fide public debt offerings.

The first condition is that the obligation must have been issued by the taxpayer to the public as part of a lawful public debt offering. This condition will generally be met if a debt obligation was offered to the public in accordance with relevant securities laws.

The second condition is that none of the taxpayer's main purposes behind paying interest on the debt or other obligation is avoid or reduce tax that would otherwise be payable under this Part by a non-resident person or partnership to whom the debt or other obligation is owed. This condition is intended to act as a safeguard against inappropriate use of the exception for publicly offered

debt obligations as a way to avoid the application of subsection 212(22). For example, the exception would not be available where a public offering is used purposefully to allow a non-arm's length person to acquire a debt that is subsequently transferred in a coupon stripping transaction. The purpose test in this condition applies to a series of transactions or events in which the taxpayer pays interest on the debt or other obligation.

## Electronic Filing and Certification of Tax and Information Returns

**Clause 1**

**Certificate of employer**

ITA
8(10)

Subsection 8(10) of the Act provides that a deduction will not be allowed to an employee under certain provisions unless the employee files with the return of income a prescribed form signed by the employer to the effect that the employee met the requirements of the relevant provisions. Subsection 8(10) is amended to remove the requirement that the form be signed by the employer, to allow employers to use electronic signatures to confirm that the employee met the requirements of the relevant provisions.

This amendment comes into force on royal assent.

**Clause 2**

**Definition of tax preparer**

ITA
150.1

Section 150.1 of the Act provides for the use of electronic means for filing tax returns.

ITA
150.1(2.2)

Subsection 150.1(2.2) defines a "tax preparer" for the purposes of the electronic filing requirement and the associated penalty for non-compliance under subsection 162(7.3). A person or partnership is a tax preparer for a calendar year if, in the year, they accept consideration to prepare more than 10 returns of income of corporations or more than 10 returns of income for individuals (other than trusts). An employee who prepares returns of income in the course of performing their employment duties is not a tax preparer.

Section 150.1(2.2) is amended to remove the exception for returns of income of trusts and estates, and to lower the exemption threshold to five returns. A person or partnership is a tax preparer for a calendar year if, in the year, they accept consideration to prepare more than five

returns of income of corporations, more than five returns of income for individuals (other than trusts), or more than five returns of income of estates or trusts.

This amendment comes into force on January 1, 2024.

**Electronic filing – tax preparer**

ITA
150.1(2.3)

Subsection 150.1(2.3) requires tax preparers to electronically file any return of income that they prepare for consideration. This requirement is subject to the exception that a tax preparer may file in a calendar year by other means up to ten corporate returns and ten individual returns. The requirement is also subject to the exceptions set out in subsection (2.4).

Subsection 150.1(2.3) is amended to provide that a tax preparer may file in a calendar year by other means up to five corporate returns, five individual returns and five trust or estate returns.

This amendment comes into force on January 1, 2024.

**Declaration**

ITA
150.1(4)

Subsection 150.1(4) requires a person on whose behalf a return is filed electronically to complete an information return in prescribed form and containing prescribed information, to keep a copy, and to give the signed original to the person filing the return.

To facilitate the use of electronic signatures, subsection 150.1(4) is amended to remove the requirement for the information return to be signed by the person on whose behalf a return is filed.

This amendment comes into force on royal assent.

**Electronic notice of assessment**

ITA
150.1(4.1)

New subsection 150.1(4.1) allows the Minister of National Revenue to provide a notice of assessment electronically to an individual for a return of income that the individual files electronically, if the individual is registered for CRA’s My Account for Individuals.

Under new subsection (4.1), the notice of assessment is presumed to have been sent to the individual and received by the individual on the day that it is made available to the individual using electronic means.

In conjunction with the amendments made to subsection 244(14.1), a notice or other communication will be considered to be made available using electronic means only if it is posted by the Minister in the individual's secure electronic account and the individual has authorized that notices or other communications may be made available in this manner. An individual may revoke their authorization for notices or other communications to be made in this manner, effective as of the day following such a revocation.

This amendment comes into force on January 1, 2024.

**Clause 3**

**Withholding**

ITA
153(1)

Subsection 153(1) of the Act requires the withholding of tax from any of the payments described in paragraphs 153(1)(a) to (u). The person making the payment is required to remit any tax so withheld to the Receiver General.

Subsection 153(1) is amended to modernize the language and to clarify that an electronic payment at or through a designated financial institution is permissible.

See also the commentary on new section 160.5, which requires all payments or remittances to the Receiver General greater than $10,000 to be made through electronic services offered by a designated financial institution, or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of remittances made after 2021.

**Exception – remittance to designated financial institution**

ITA
153(1.4)

Subsection 153(1.4) provides that the remittance of a prescribed person for the purposes of subsection (1) is treated as having been made to the account of the Receiver General at a designated institution if it is remitted at least one day before the day upon which the amount is due.

Subsection (1.4) is amended consequential on the amendment to subsection 153(1) to align and modernize the language of the provision.

See also the commentary on new section 160.5 below, which requires all payments or remittances to the Receiver General greater than $10,000 to be made through electronic services offered by a designated financial institution, or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of remittances made after 2021.

**Clause 4**

**Electronic payments**

ITA
160.5

New section 160.5 of the Act imposes a requirement to make all payments or remittances to the Receiver General through electronic means, where the amount of the payment or remittance exceeds a certain monetary threshold.

This measure applies in respect of payments and remittances made after 2023.

**Definitions**

ITA
160.5(1)

New subsection 160.5(1) provides definitions that are relevant to the electronic payments requirement under new subsection 160.5(2).

**“designated financial institution”**

New definition “designated financial institution” has the meaning assigned by subsection 153(6). For the purposes of new section 160.5, a designated financial institution means a bank (other than an authorized foreign bank subject to the restrictions in subsection 524(2) of the Bank Act — i.e., one which operates as a so-called lending branch), a trust company and a deposit-taking mortgage lender. The definition effectively includes only those authorized foreign banks that operate a so-called full-service branch in Canada.

**“electronic payment”**

“Electronic payment” is defined as any payment or remittance to the Receiver General that is made through electronic services offered by a designated financial institution or by any electronic means specified by the Minister.

This measure applies in respect of payments and remittances made after 2023.

**Requirement – electronic payments**

ITA
160.5(2)

New subsection 160.5(2) imposes a requirement to make payments and remittances to the Receiver General through electronic means where the amount of the remittance or payment exceeds $10,000, unless the payor or remitter cannot reasonably remit or pay the amount in that manner.

See also the commentary on new subsection 162(7.4) below, which imposes a penalty of $100 for each failure to make a required payment or remittance electronically.

This measure applies in respect of payments and remittances made after 2023.

**Clause 5**

**Failure to file in appropriate manner – prescribed information returns**

ITA
162(7.02)

Subsection 162(7.02) of the Act provides a penalty for a failure to file certain information returns in the manner required by the Regulations. The penalty is based on the number of prescribed information returns of a particular type that are not filed in the appropriate manner.

Consequential on the amendment to subsection 205.1(1) of the Regulations, which require a taxpayer to file prescribed information returns electronically if more than five information returns of that type are required to be filed in a calendar year, subsection (7.02) is amended to provide a penalty for failing to file electronically equal to:

- $125 - where the taxpayer is required to file more than five and fewer than 51 returns;
- $250 - where the taxpayer is required to file more than 50 but fewer than 251 returns;
- $500 - where the taxpayer is required to file more than 250 but fewer than 501 returns;
- $1,500 - where the taxpayer is required to file more than 500 but fewer than 2,501 returns; and
- $2,500 - where the taxpayer is required to file more than 2,500 returns.

This amendment applies in respect of information returns filed after 2023.

**Penalty – electronic payments**

ITA
162(7.4)

New subsection 162(7.4) provides a penalty of $100 for each failure to make an electronic payment or remittance as required under subsection 160.5(2).

This measure applies in respect of payments and remittances made after 2023.

**Rules – partnership liable to a penalty**

ITA
162(8.1)

Subsection 162(8.1) allows various penalties imposed under section 162 to be assessed against a partnership and applies the provisions of the Act relating to assessments, objections and appeals with respect to those penalties as if the partnership were a corporation.

Subsection (8.1) is amended to apply in respect of the penalty under new subsection 162(7.4) for the failure to make a required payment or remittance electronically.

This amendment applies in respect of payments and remittances made after 2023.

**Clause 6**

**Date when electronic notice sent**

ITA
244(14.1)

Subsection 244(14.1) of the Act allows for the electronic communication of certain notices. For security reasons, a notice is conveyed electronically through secure portals such as My Account and My Business Account. Subsection 244(14.1) provides generally that for the purposes of the Act a notice or other communication will be presumed to be sent by the Minister of National Revenue and received by a person or partnership on the date that an electronic message, informing the person or partnership that a notice or other communication is available in their secure electronic account, is sent to the person or partnership's electronic address.

The notice or other communication is presumed to be sent and received on the date the electronic message is sent if the message is sent to the electronic address most recently provided by the person or partnership to the Minister of National Revenue before that date.

Consequential on the introduction of new subsection (14.2), subsection (14.1) is amended to limit its application to notices or other communications sent electronically by the Minister of National Revenue to individuals through the My Account for Individuals service. Subsection (14.1) is also amended to recognize that an individual’s electronic address maintained by the Minister of National Revenue may be updated on the same day as, but prior to the sending of the Minister’s electronic message to inform the individual of a notice or other communication made available in the individual’s secure electronic account (My Account for Individuals). For example, once an individual’s electronic address is updated through the electronic filing process,

it is appropriate for the Minister to send subsequent electronic messages to the individual's updated electronic address, including on the day that the address is updated with the Minister.

See also new subsection 150.1(4.1) which, notwithstanding subsection 244(14.1), allows the Minister of National Revenue to send by electronic means a notice of assessment in respect of an individual's return of income in certain circumstances.

This amendment comes into force on royal assent.

**Date when electronic notice sent – My Business Account**

ITA
244(14.2)

New subsection 244(14.2) changes the default method of correspondence for taxpayers that use the CRA's My Business Account service.

Subsection (14.2) provides that a notice or other communication that refers to the business number of a person of partnership is presumed to be sent and received by the person or partnership on the date that it is posted in the secure electronic account (My Business Account) in respect of the business number. With 30 days' notice, a person or partnership may request in the prescribed manner that notices or other communications making reference to the business number be sent by mail.

This measure comes into force on royal assent.

**Clause 7**

**Failure to file disclosure statement**

Tax Rebate Discounting Act
4(2)

Subsection 4(2) of the Tax Rebate Discounting Act makes it an offence for a discounter to file a return on behalf of a client without including a true copy of a statement in prescribed form describing the discounting transaction, as provided to the client and signed by the client. It is also an offence for a discounter to file a return on behalf of a client without providing the signed true copy of the prescribed statement to such persons as the Minister of National Revenue may specify.

To facilitate the use of electronic signatures, paragraphs 4(2)(a) and (b) are amended to remove the requirement for the statement to be signed by the client.

This amendment comes into force on royal assent.

**Clause 8**

**Electronic filing**

ITR
205.1(1)

Subsection 205.1(1) of the Regulations provides that where an information return is prescribed and where over 50 of one type of a prescribed information return are filed by a taxpayer in a calendar year, the returns must be filed electronically.

Subsection 205.1 is amended to provide that where over five of one type of a prescribed information return are filed by a taxpayer in a calendar year, the returns must be filed electronically. The reference to filing electronically is intended to modernize the language while remaining consistent with the existing subsection.

This amendment applies in respect of information returns filed after 2023.

**Electronic filing**

ITR
205.1(2)

Subsection 205.1(2) of the Regulations defines a “prescribed corporation” for the purpose of the electronic filing obligation under subsection 150.1(2.1) of the Act. For this purpose, a prescribed corporation is a corporation with gross revenue in excess of $1 million, with the exception of an insurance corporation, a non-resident corporation, a corporation reporting in functional currency or a corporation exempt from tax under section 149 of the Act.

Subsection (2) is amended to remove the exception for corporations with gross revenue of $1 million or less. As a result, any corporation is required to file its return of income electronically under subsection 150.1(2.1) of the Act, with the exception of an insurance corporation, a non-resident corporation, a corporation reporting in functional currency, or a corporation exempt from tax under section 149 of the Act.

This amendment applies to taxation years that begin after 2023.

**Clause 9**

**Distribution of taxpayer’s portions of returns (information slips)**

ITR
209(5)

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

An issuer can provide an information slip electronically only if

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

Subsection 209(5) is amended to also permit issuers to electronically distribute the Statement of Pension, Retirement, Annuity, and Other Income (T4A) information return and the Statement of Investment Income (T5) information return.

This amendment applies in respect of information returns sent after 2021.

## Reporting Requirements for Trusts

**Clause 1**

ITA
104(1)

Subsection 104(1) of the Act provides a rule under which a reference to a trust or estate is read in the Act as a reference to the trustee or the executor, administrator, heir or other legal representative having ownership or control over trust property.

Subsection 104(1) provides that, except for the purposes of certain specified provisions, references in the Act to trusts are considered not to include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as “bare trusts”. Trusts described in paragraphs (a) to (e.1) of the definition “trust” in subsection 108(1) are expressly not affected by this exclusion.

Consequential on the introduction of new subsection 150(1.3), subsection 104(1) is amended to provide that the exclusion of bare trusts from references in the Act to trusts does not apply for the purposes of section 150.

This amendment applies to taxation years that end after December 30, 2022.

**Clause 2**

ITA
150

Section 150 of the Act provides rules for the filing of returns of income under the Act.

Section 150 is amended, as described in more detail below, as part of the introduction of new trust reporting requirements. In general terms, these amendments require trusts to file returns of income each year, unless the trust is subject to one of the exceptions listed in new subsection 150(1.2). The annual return of income for the trust will include certain prescribed information in respect of any person who

- is a trustee, beneficiary or settlor of the trust, or
- has the ability to exert influence over trustee decisions regarding the appointment of income or capital of the trust in the year.

**Exception**

ITA
150(1.1)

Subsection 150(1) stipulates the tax return requirements and the filing dates for different categories of taxpayers. Subsection 150(1.1) sets out exceptions to subsection 150(1), when the filing of a tax return is not required.

Subsection 150(1.1) is amended to make it subject to new subsection 150(1.2). Specifically, amended subsection 150(1.1) in effect now provides that the exceptions from filing a return outlined in that subsection do not apply to an express trust, or for civil law purposes a trust other than a trust that is established by law or by judgement, that is resident in Canada, unless the trust meets one of the exceptions outlined in new paragraphs 150(1.2)(a) to (o).

The amendment applies to taxation years that end after December 30, 2022.

**Exception – trusts**

ITA
150(1.2)

New subsection 150(1.2) provides for a limitation on the return-filing exceptions in subsection 150(1.1). In particular, by stipulating that subsection (1.1) does not apply, it causes subsection 150(1) to require tax return filing for a trust that is both

- resident in Canada (including trusts that are deemed resident in Canada under section 94), and
- an express trust (or for civil law purposes a trust other than a trust that is established by law or by judgement).

New subsection 150(1.2), however, also includes a number of exceptions to the requirement to file a return, which are listed in paragraphs (a) to (o). In addition, a trust that meets one of the exceptions listed in paragraphs 150(1.2)(a) to (o) is not required to provide the additional information set out in new section 204.2 of the Regulations. Trusts that are required to file a return, whether because of current filing requirements under subsection 150(1) or because of new subsection 150(1.2), will be required to provide the additional information outlined in new section 204.2 of the Regulations. For more information, please see the commentary on new section 204.2 of the Regulations.

The exceptions to the reporting requirements established through new subsection 150(1.2) are as follows:

- trusts that have been in existence for less than three months;
- trusts that hold assets with a total fair market value that does not exceed $50,000 throughout the year, where the only assets held by the trust throughout the year are one or more of
  - money,
  - certain government debt obligations,
  - a share, debt obligation or right listed on a designated stock exchange,
  - a share of the capital stock of a mutual fund corporation,
  - a unit of a mutual fund trust,
  - an interest in a related segregated fund (within the meaning assigned by paragraph 138.1(1)(a)), and
  - an interest, as a beneficiary under a trust, that is listed on a designated stock exchange;
- trusts that are required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client or clients (this provides an exception for a lawyer's general trust account, but not for specific client accounts);
- trusts that qualify as non-profit organizations or registered charities;
- mutual fund trusts, segregated funds and master trusts;
- a trust, all of the units of which are listed on a designated stock exchange;
- graduated rate estates;
- qualified disability trusts;
- employee life and health trusts;
- certain government funded trusts;
- trusts under or governed by a deferred profit sharing plan, pooled registered pension plan, registered disability savings plan, registered education savings plan, registered pension plan, registered retirement income fund, registered retirement savings plan, employee profit sharing plan, registered supplementary unemployment benefit plan or first home saving account; and
- cemetery care trusts and trusts governed by eligible funeral arrangements.

Subsection 150(1.2) applies to taxation years that end after December 30, 2022.

ITA
150(1.3)

New subsection 150(1.3) provides that, for the purposes of section 150, trusts include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as “bare trusts”.

This amendment, along with the consequential amendment in subsection 104(1) mean that bare trusts will be subject to the reporting requirements in this section and section 204.2 of the Regulations.

New subsection 150(1.3) applies to taxation years that end after December 30, 2022.

ITA
150(1.4)

Paragraph 150(1.2)(c) provides an exception to the trust reporting requirements for a lawyer's or notary’s general trust account, but not for specific client accounts.

New subsection 150(1.4) provides that, for greater certainty, the trust reporting requirements do not require the disclosure of information that is subject to solicitor-client privilege.

New subsection 150(1.4) applies to taxation years that end after December 30, 2022.

**Clause 3**

**False statement or omission – trust return**

ITA
163(5) and (6)

New subsection 150(1.2) of the Act and section 204.2 of the Regulations introduce reporting requirements for certain trusts to file a return of income and to provide additional information. New subsection 163(5) of the Act introduces a penalty for a failure to comply with these new reporting requirements, including the additional information requested in section 204.2 of the Regulations.

New subsection 163(5) imposes a penalty on any person or partnership that is subject to the reporting requirements in section 204.2 and that fails to file a return for a trust or that knowingly or under circumstances amounting to gross negligence either makes — or participates in, assents to or acquiesces in, the making of — a false statement or omission in the return.

In addition, the penalty applies if the person or partnership fails to comply with a demand by the Canada Revenue Agency under subsection 150(2) or 231.2(1) to file the return.

New subsection (6) sets out the amount of the penalty in respect of a trust for the purposes of subsection (5) as the greater of $2,500 and 5% of the highest total fair market value of all the property held by the trust in the year.

Subsections 163(5) and (6) apply to taxation years that end after December 30, 2022.

**Clause 4**

ITR
204.2

New section 204.2 of the Regulations is introduced in order to provide for additional information reporting requirements for certain trusts.

New subsection 204.2(1) introduces a requirement for all trusts that are required to file a return of income to provide additional information (in the T3 form), except for those trusts specifically listed in any of paragraphs 150(1)(a) to (o) of the Act. This additional information includes the name, address, date of birth (in the case of an individual other than a trust), jurisdiction of residence and taxpayer identification number (or TIN, as defined in subsection 270(1) of the Act) for each person who, in the year,

- is a trustee, beneficiary or settlor (as defined in subsection 17(15) of the Act) of the trust; or
- has the ability (through the terms of the trust or a related agreement) to exert influence over trustee decisions regarding the appointment of income or capital of the trust. This would include, for example, a protector of the trust.

New subsection 204.2(2) provides that for the purposes of subsection (1), the requirement to provide information in respect of the beneficiaries of a trust is met if

- the required information is provided in respect of each beneficiary of the trust whose identity is known or ascertainable with reasonable effort by the person making the return at the time of filing the return;
- in respect of a trust, the beneficiaries of which are all of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of The Constitution Act, 1982, or an identifiable class of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of The Constitution Act, 1982, the person making the return provides a sufficiently detailed description of the class of beneficiaries to determine with certainty whether any particular person is a member of that class of beneficiaries;
- in respect of a trust where some but not all of the units of which are listed on a designated stock exchange, to the extent of those classes of units of the trust that are not all listed on a designated exchange, the person making the return provides the required information regarding the beneficiaries of those unlisted classes of units; and
- for beneficiaries whose identity is not known or ascertainable with reasonable effort by the person making the return, the person making the return provides sufficiently detailed

information to determine with certainty whether any particular person is a beneficiary of the trust.

For example, the beneficiary of a trust may not be known where the trust provides for a class of beneficiaries that includes the settlor's current children and grandchildren and any children or grandchildren that the settlor may have in the future. In these circumstances the reporting requirement will be met if the relevant information in respect of all of the settlor's current children and grandchildren are included as well as the details of the terms of the trust that extend the class of beneficiaries to any of the settlor's future children or grandchildren.

Section 204.2 applies to taxation years that end after December 30, 2022.

**Clause 5**

**Master trust**

ITR
4802(1.1)

Subsection 4802(1.1) of the Regulations sets out the conditions to prescribe a trust as a “master trust” for the purposes of paragraph 149 (1)(o.4) of the Act. Among other things, a master trust holds investments exclusively for beneficiaries that are registered pension plans or deferred profit sharing plans.

Subsection 4802(1.1) is amended so that the conditions for prescribing a trust as a master trust apply for the purposes of new paragraph 150(1.2)(i) of the Act. For more information, see the commentary on subsection 150(1.2).

The amendment applies to taxation years that end after December 30, 2022.

## Fixing Contribution Errors in Defined Contribution Pension Plans

**Clause 1**

**Definitions**

ITA
146(1)

Subsection 146(1) provides definitions for terms that are relevant for the purposes of the provisions of section 146 of the Act relating to registered retirement savings plans. Subsection 146(1) contains a definition of a taxpayer's net past service pension adjustment (net PSPA) for the purposes of computing the taxpayer's RRSP deduction limit and the taxpayer's unused RRSP deduction room.

A taxpayer's net PSPA for a year is defined to be the amount determined by the formula P + Q – G. Variable Q refers to an amount prescribed for the taxpayer under a government-sponsored retirement arrangement. Currently, such an amount is not prescribed under the Income Tax Regulations.

Consequential on the introduction of permitted corrective contributions under new subsection 147.1(20) of the Act, variable Q is amended to refer instead to contributions made under subsection 147.1(20) in respect of the taxpayer in the year immediately preceding the taxation year. Accordingly, the permitted corrective contribution will be added to a taxpayer's net PSPA and will reduce the taxpayer's "RRSP deduction limit" and "unused RRSP deduction room" (each as defined in subsection 146(1)) for the taxation year after the year in which the permitted corrective contribution is made.

For more information on the rules to determine a permitted corrective contribution, please see the commentary on the definitions added to subsection 147.1(1) of the Act and the commentary on new subsection 147.1(20) of the Act.

This amendment comes into force on January 1, 2021.

**Clause 2**

**Registered Pension Plans**

ITA
147.1

Section 147.1 sets out rules relating to the registration, amendment, administration and revocation of registration of a registered pension plan (RPP). The section also contains the pension adjustment limits and the restriction on the payment of past service benefits.

Under the current rules, defined benefit pension plans may provide additional benefits to an employee in respect of past years of service. In contrast to defined benefit provisions, the registration rules do not permit contributions to a money purchase provision of an RPP in respect of an employee's earnings in prior years. For example, where a plan administrator discovers an under-contribution error in prior years under a money purchase provision, the tax rules do not provide the legislative authority to enable the administrator to correct the contribution error.

Budget 2021 proposed to provide flexibility to plan administrators of money purchase pension plans to correct for under-contribution errors. Additional contributions (defined as "permitted corrective contributions") to an employee's money purchase account will be permitted to compensate for an under-contribution error made in any of the 10 years preceding the year of the additional contribution, subject to a dollar limit.

The permitted corrective contributions will reduce the employee's registered retirement savings plan (RRSP) contribution room for the taxation year following the year in which the contribution is made. If the result is negative RRSP room, the individual is prohibited from making new

deductible RRSP contributions (and may be subject to Part X.1 tax on undeducted RRSP contributions) until the individual earns future RRSP room and eliminates the negative balance.

The amendments to section 147.1 of the Act come into force on January 1, 2021.

**Definitions**

ITA
147.1(1)

Subsection 147.1(1) defines those terms that are relevant for the purposes of the provisions of sections 147.1, 147.2 and 147.3 of the Act relating to registered pension plans.

The definitions "designated money purchase provision" and "permitted corrective contributions" are being added consequential on the introduction of new subsection 147.1(20) of the Act.

**"designated money purchase provision"**

A money purchase provision is a designated money purchase provision in a calendar year if the provision meets one of the following conditions:

- accounts are maintained for 10 or more members under the money purchase provision throughout the year; or
- not more than 50% of the contributions made under the provision in the year are with respect to individuals described in paragraph 8515(4)(a) or (b) of the Income Tax Regulations (i.e. connected persons and employees whose remuneration for the year exceeds 2.5 times the year's maximum pensionable earnings (for Canada Pension Plan purposes)).

**"permitted corrective contribution"**

A "permitted corrective contribution" in a calendar year is a contribution, with respect to an individual, that would have been made to a money purchase provision of an RPP in any of the 10 immediately preceding years (each referred to as a "retroactive year") in accordance with the plan terms, but for a failure to enroll the individual in the plan or a failure to make a contribution required by the terms of the plan as registered. A permitted corrective contribution cannot exceed the lesser of the two amounts determined in paragraphs (a) and (b).

Paragraph (a) is the total catch-up contributions that may be made in respect of the retroactive years. It is the total of formula A + B – C that applies for each of the 10 retroactive years.

Variable A is the amount by which the required contributions with respect to the individual under the money purchase provision for the retroactive year exceeds the amounts actually contributed with respect to the individual in the retroactive year.

Variable B is the amount of interest, if any, that may be added to the amounts determined for variable A at a rate that is either:

(i) required by the Pension Benefits Standards Act, or a similar law of a province; or

(ii) if the relevant law does not impose a requirement, a rate that does not exceed a reasonable rate.

Note that, in the case of several missed contributions (e.g. over several months) in a retroactive year, there could be multiple interest calculations to determine a total amount for variable B. Variable C is the amount of permitted corrective contributions previously contributed under subsection 147.1(20) of the Act in respect of the individual for the retroactive year.

Paragraph (b) is the dollar limit determined by the formula E – F. Variable E is 150% of the money purchase limit for the year in which the permitted corrective contributions are made. Variable F is the total permitted corrective contributions previously made with respect to the individual under subsection 147.1(20) of the Act under the money purchase provision of the plan or another plan under which the employer participates.

**Illustration of a permitted corrective contribution**

Andreya was hired on January 1, 2018 and earned a salary of $90,000 plus an annual bonus. Her employer participates in a money purchase pension plan that requires each employee to contribute 6% of earnings and requires the employer to match the employee contribution. She also makes contributions to her personal Registered Retirement Savings Plan (RRSP).

In April 2021, the plan administrator discovered that Andreya had not been enrolled in the plan. On May 31, 2021, she and the employer each make a lump sum catch-up contribution to make up for the contributions not made in years 2018 to 2020. The employer also adds credited interest (for both employer and employee portions) at the fund rate of return of 5% per annum.

The total (employer plus employee) catch-up contribution in 2021 in respect of Andreya cannot exceed the lesser of the amounts determined in the formulas under paragraphs (a) and (b) of the definition “permitted corrective contribution”.

The amount in paragraph (a) is the total contributions (plus credited interest) that may be made in respect of the three retroactive years, each year determined by the formula A + B – C.

For 2018:
A = $90,000 x 12% = $10,800
B = compound interest for 3 years at 5% per annum = $540 + $567 + $595 = $1,702
C = $0
A + B – C = $10,800 + $1,702 – 0 = $12,502

For 2019:
A = $90,000 x 12% = $10,800
B = compound interest for 2 years at 5% per annum = $540 + $567 = $1,107
C = $0

A + B – C = $10,800 + $1,107 – 0 = $11,907

For 2020:
A = $90,000 x 12% = $10,800
B = 10,800 x .05 = $540
C = $0
A + B – C = $10,800 + $540 – 0 = $11,340

The total amount for paragraph (a) is $12,502 + $11,907 + $11,340 = **$35,749**

The amount in paragraph (b) is the dollar limit determined by the formula E – F, where
E = 150% of the money purchase limit for 2021 (which is $29,210)
F = $0
E – F = $43,815 – $0 = $43,815

The lesser of the amounts in paragraphs (a) and (b) is **$35,749**.

On May 31 2021, a permitted corrective contribution was deposited to Andreya's account under the plan equal to **$35,749**. The plan administrator must file a prescribed information return with the Canada Revenue Agency to report the amount within 120 days after the contribution is made (i.e. on or before September 28, 2021). The administrator does not need to amend T4 slips for any of the 2018, 2019 or 2020 year.

The contribution will reduce Andreya's RRSP contribution room for 2022 (i.e. the year following the year of the catch-up contribution). If Andreya otherwise would have had less than $35,749 of RRSP contribution room for 2022, she will not be able to make deductible RRSP contributions in 2022 (and in any future years in which RRSP room remains negative). If she chooses to make non-deductible RRSP contributions, she would be subject to a Part X.1 tax on overcontributions. However, the negative RRSP room does not impede current or future required contributions to the registered pension plan by Andreya and her employer.

**Second error discovered in 2022:**

In June 2022, the plan administrator discovered that Andreya's annual bonus of $10,000 for each of 2020 and 2021 was not included in determining the pension contribution amount for those two years. Therefore, in 2022, the plan administrator will facilitate another permitted corrective contribution to the plan for Andreya.

Her permitted corrective contribution amount in 2022 cannot exceed the lesser of the amounts determined in the formulas under paragraphs (a) and (b) of the definition "permitted corrective contribution".

The amount in paragraph (a) is the total catch-up contributions that may be made in respect of the retroactive years, each year determined by the formula A + B – C that applies for each of the retroactive years (in this case for 2020 and 2021).

For 2020:
A = (($90,000 salary + $10,000 bonus) x 12%) minus nil contributions made in 2020
A = $12,000
B = compound interest for 2 years at 5% per annum = $600 + $630 = $1230
C = $11,340 (catch-up contributed under subsection 147.1(20) in 2020)
A + B – C = $12,000 + $1,230 – $11,340 = $1,890

For 2021:
A = required contributions for 2021 minus contributions already made in 2021
= ($100,000 * 12%) – ($90,000 * 12%) = $1,200
B = $1,200 x .05 = $60
C = 0
A + B – C = $1,200 + $60 – 0 = $1,260

The amount for paragraph (a) is $1,890 + $1,260 = $3,150.

The amount for paragraph (b) is the dollar limit determined by the formula E – F, where
E = 150% of the money purchase limit for 2022 ($30,780) = $46,170
F = $35,749
E – F = $10,421

The lessor of the amounts in paragraphs (a) and (b) is **$3,150**.

On June 20, 2022, a permitted corrective contribution is deposited to Andreya's account under the plan equal to **$3,150**. The plan administrator must file a prescribed information return with the Canada Revenue Agency to report the amount within 120 days after the contribution is made (i.e. on or before October 18, 2022). The administrator does not need to amend T4 slips for 2020 or 2021.

**Permitted corrective contribution**

ITA
147.1(20)

New subsection 147.1(20) of the Act permits an individual or an employer to make a catch-up contribution in a calendar year to a money purchase provision of a registered pension plan in respect of the individual under certain conditions. Those conditions are that the contribution is a permitted corrective contribution and the provision was a designated money purchase provision in each of the years in respect of which a permitted corrective contribution is made.

Permissible contributions to a registered pension plan are listed under paragraph 8502(b) of the Regulations and are part of the registration conditions applicable to pension plans. Notwithstanding the registration conditions, plan administrators will not be required to amend the plan terms to explicitly provide for permitted corrective contributions.

For information on the definitions permitted corrective contribution and designated money purchase provision, see the commentary on the amendments made to subsection 147.1(1) of the Act.

For more information on reporting requirements for a permitted corrective contribution for an individual, see the commentary on new subsection 8402(4) of the Regulations.

**Clause 3**

**Pension contributions deductible — employer contributions**

ITA
147.2(1)(a)

Paragraph 147.2(1)(a) of the Act permits an employer to deduct from income for a taxation year the amount of contributions it makes under a money purchase provision of a registered pension plan, if the contributions are in respect of periods before the end of the taxation year and made in accordance with the plan as registered.

Paragraph 147.2(1)(a) is amended to allow an employer to deduct "permitted corrective contributions" under new subsection 147.1(20) in respect of periods before the end of the taxation year. The paragraph is split into two subparagraphs. Subparagraph (i) preserves the traditional rule permitting a deduction for contributions made in accordance with the plan as registered. Subparagraph (ii) refers to permitted corrective contributions made under subsection 147.1(20).

For more information, please see the commentary on subsection new 147.1(20) of the Act.

**Service after 1989**

ITA
147.2(4)(a)

Subsection 147.2(4) of the Act provides rules that govern the deductibility of employee contributions to registered pension plans. Paragraph 147.2(4)(a) allows an individual to deduct contributions in respect of years after 1989, or a prescribed eligible contribution, to the extent that the contributions are made in accordance with the terms of the plan as registered.

Consequential on the introduction of permitted corrective contributions under new subsection 147.1(20) of the Act, paragraph 147.2(4)(a) is amended to allow an individual to deduct, in addition to the contributions described above, a permitted corrective contribution. The paragraph is split into two subparagraphs. Subparagraph (i) preserves the traditional rule permitting the deduction of contributions made in accordance with the plan as registered. Subparagraph (ii) refers to permitted corrective contributions made under new subsection 147.1(20).

For more information on the rules to determine a permitted corrective contribution, see the commentary on subsection 147.1(20) of the Act.

These amendments comes into force on January 1, 2021.

**Clause 4**

ITR
8301(4)(a)

Paragraph 8301(4)(a) of the Regulations describes the contributions made in a year with respect to an individual under a money purchase provision of a registered pension plan that are included and excluded in determining the individual's pension credit for the year.

Consequential on the introduction under section 147.1 of the Act of new rules related to permitted corrective contributions, paragraph 8301(4)(a) is amended to exclude a contribution made under subsection 147.1(20) from the determination of an individual’s pension credit.

For more information on the rules to determine and report a permitted corrective contribution, see the commentary on subsections 147.1(1) and (20) of the Act and on new subsection 8402(4) of the Regulations.

This amendment comes into force on January 1, 2021.

**Clause 5**

**Total Pension Adjustment Reversal**

ITR
8304.1(1)

Subsection 8304.1(1) of the Regulations defines, for the purposes of the Act, an individual's “total pension adjustment reversal” for a year as the sum of the individual's pension adjustment reversal determined in connection with the individual's termination in the year from a deferred profit sharing plan or a registered pension plan.

An individual's total pension adjustment reversal for a year is taken into account in determining the individual's “RRSP deduction limit” and “unused RRSP deduction room” (each as defined in subsection 146(1) of the Act). It is also taken into account in determining if an individual has undeducted RRSP contributions that are subject to an overcontribution tax under Part X.1 of the Act.

Consequential on the introduction of new subsection 8304.1(16), subsection 8304.1(1) is amended to define an individual’s “total pension adjustment reversal” for a year to mean the sum of the pension adjustment reversal and a pension adjustment correction in respect of the individual for the year.

The subsection is split into paragraphs. Paragraph (a) preserves the traditional pension adjustment reversal that is determined in connection with an individual's termination in the year from a deferred profit sharing plan or a benefit provision of a registered pension plan. Paragraph (b) adds the new pension adjustment correction determined in respect of the individual for the year under new subsection 8304.1(16).

For more information on the rules to determine a pension adjustment correction, please see the commentary on new subsection 8304.1(16) of the Regulations.

This amendment comes into force on January 1, 2021.

**Pension Adjustment Correction**

ITR
8304.1(16)

A registered pension plan becomes a revocable plan if it is not administered in accordance with the terms of the plan as registered. For example, if a contribution to the plan exceeds what is permitted by the plan terms, the plan becomes a revocable plan. Subparagraph 8502(d)(iii) of the Regulations permits a registered pension plan to return contributions made by an individual or employer in order to avoid revocation of the registration of the plan.

New subsection 8304.1(16) requires that a pension adjustment correction be determined for an individual when a distribution described in subparagraph 8502(d)(iii) or subsection 147.1(19) of the Act is made from a money purchase provision.

In general terms, a pension adjustment correction restores an individual’s RRSP contribution room in the calendar year of the contribution refund. The amount will be added to an individual’s total pension adjustment reversal that is used to determine the individual's “RRSP deduction limit” and the individual's “unused RRSP deduction room” for a calendar year.

An individual’s pension adjustment correction is generally the portion of a refund of contributions made in the 10 previous years that reduced the individual’s RRSP room (i.e. the portion that did not exceed pension adjustment limits). The pension adjustment correction is the total of formula A – B – C that applies for each of the 10 retroactive years.

Variable A is the pension adjustment reported for the individual under the money purchase provision of the plan for the retroactive year.

Variable B is the amount that should have been contributed to the provision in accordance with the terms of the plan with respect to the individual for the retroactive year.

Variable C is the amount by which an individual’s total pension adjustment (i.e. the total pension credits determined under money purchase provisions, defined benefit provisions and deferred profit sharing plans) for the retroactive year exceeds the lesser of the money purchase limit for

the retroactive year and 18% of the individual's compensation (as defined in subsection 147.1(1) of the Act) for the year from participating employers.

Variable C reduces an individual's pension adjustment correction by the amount by which the pension adjustment reported for the individual for the year exceeds the individual's pension adjustment limit (being the lesser of 18% of compensation from participating employers or the money purchase limit).

To simplify reporting requirements, the plan administrator is required to report the pension adjustment correction with respect to the individual to the Canada Revenue Agency using a prescribed information return, rather than to amend T4 slips for prior years. For more information on the reporting requirements of a pension adjustment correction, please see the commentary on new subsection 8402.01(4.1) of the Regulations.

For more information on an individual's total pension adjustment reversal for a calendar year, please see the commentary on amendments made to subsection 8304.1(1) of the Regulations.

**Illustration of a pension adjustment correction:**

Aly earned an annual salary of $115,000 in 2019 and 2020. His employer participates in a money purchase pension plan that requires each employee to contribute 7.5% of earnings and requires the employer to match the employee contribution of 7.5%.

In May 2021, the plan administrator discovered that, in both 2019 and 2020, Aly contributed 10% of his earnings to the plan and the employer contributed an additional 10% of earnings. A pension adjustment of $23,000 was reported on his T4 slips in 2019 and 2020.

As a result of the over-contributions in 2019 and 2020, the plan was not administered in accordance with the terms of the plan and therefore becomes a revocable plan. In order to avoid the revocation, the plan administrator refunded $11,500 from Aly's account ($5,750 paid to Aly and paid $5,750 to the employer).

As a result of the refunds of over-contributions, a pension adjustment correction is required to be determined for Aly, equal to the sum of A – B – C for 2019 plus A – B – C for 2020.

For 2019:
A = $23,000
B = $17,250
C = $23,000 – (lesser of $27,230 and $20,700) = $2,300
A – B – C
= $23,000 – $17,250 – $2,300
= **$3,450**

For 2020, the result of A – B – C will be also be **$3,450** (based on the same calculations as for year 2019).

Aly's pension adjustment correction is $6,900. Therefore, the plan administrator must file the prescribed information return with the Canada Revenue Agency to report the $6,900 amount. The filing deadline for the form is 60 days after the end of the second calendar quarter (or August 29, 2021). As a result of pension adjustment correction and the required form being filed with the CRA, Aly's RRSP room will be increased by $6,900 for taxation year 2021.

For 2021, the total over-contribution amount for 2019 and 2020 equals $11,500. Both Aly and his employer will receive a tax T4A slip to report the $5,750 over-contribution amount refunded to each of them. The refunds must be reported in their income unless the exemption under clause 56(1)(a)(i)(G) of the Act applies with respect to the refunds.

Although the total contribution refund is $11,500, the pension adjustment correction to restore Aly's RRSP contribution room is limited to $6,900. Aly's pension adjustment limit for each of 2019 and 2020 was $20,700 (18% x $115,000). The pension adjustment reported on his T4 slips in each of those 2 years was $2,300 more than the pension adjustment limits (23,000 – 20,700 = 2,300). The $4,600 of contributions ($2,300 + $2,300) did not reduce his RRSP contribution room and accordingly should not be part of his pension adjustment correction. The $11,500 refund minus the excluded $4,600 portion equals Aly's $6,900 pension adjustment correction (and RRSP room increase).

This amendment comes into force on January 1, 2021.

**Clause 6**

ITR
8308(5.4)

New subsection 8308(5.4) of the Regulations permits a member of a pension plan to enter into a written commitment with the plan administrator or participating employer to make a permitted corrective contribution by installments.

Subsection 8308(5.4) deems that the permitted corrective contribution is made at the time the written commitment is entered into, for the purpose of the pension adjustment reporting requirements under subsection 8402(4) and for determining the member's "net past service pension adjustment" (as defined in 146(1) of the Act).

That deeming rule has two consequences. First, the full amount of the permitted corrective contribution must be reported under subsection 8402(4) within 120 days after the written commitment is entered into and not each time an installment payment is made. Second, by including it in the member's "net past service pension adjustment" for the year of the written agreement, that full amount reduces the member's RRSP contribution room for the taxation year after the year the member entered into the written commitment.

For more information on the rules to determine and report a permitted corrective contribution, see the commentary on subsections 147.1(1) and 147.1(20) of the Act and subsection 8402(4) of the Regulations.

**Clause 7**

ITR
8402(4)

Section 8402 of the Regulations sets out the reporting requirements when certain past service benefits are increased under registered pension plans.

New subsection 8402(4) requires that if a permitted corrective contribution is made under new subsection 147.1(20) of the Act with respect to an individual, the administrator of the plan must file with the Canada Revenue Agency an information return in prescribed form within 120 days after the contribution is made to the plan.

For more information on the rules to determine a permitted corrective contribution, see the commentary on subsections 147.1(1) and 147.1(20) of the Act.

This amendment comes into force on January 1, 2021.

**Clause 8**

**Pension adjustment correction – employer reporting**

ITR
8402.01(4.1)

New subsection 8402.01(4.1) requires that if a pension adjustment correction is determined for an individual in connection with a distribution from a money purchase provision of a registered pension plan, the administrator of the plan must file with the Canada Revenue Agency an information return in prescribed form to report the amount.

Paragraph (a) requires that if the distribution occurs in the first, second or third quarter of a calendar year, the prescribed information return must be filed no later than 60 days after the end of the quarter. Paragraph (b) requires that if the distribution occurs in the fourth quarter of a calendar year, the prescribed information return must be filed before February of the following calendar year.

Note that subsection 8402.01(5) defines the first quarter, second quarter, third quarter and fourth quarter of a calendar year.

For more information regarding the determination of a pension adjustment correction, please see the commentary on new subsection 8304.1(16) of the Regulations.

This amendment comes into force on January 1, 2021.

**Clause 9**

**Permissible distributions**

ITR
8502(d)(v)

Subparagraph 8502(d)(v) permits a reasonable rate of interest to be added to a return of contributions described in subparagraph 8502(d)(iv). Contributions described in that subparagraph are contributions refunded to an employee from a defined benefit provision of a registered pension plan, where such refund is pursuant to an amendment to a pension plan under which future employee contributions to the provision are reduced.

Subparagraph 8502(d)(v) is amended to add a reference to subparagraph 8502(d)(iii), thereby permitting a reasonable rate of interest to be added to a return of contributions to avoid the revocation of plan registration.

This amendment comes into force on January 1, 2021.

## Mandatory Disclosure Rules

**Clause 1**

**Assessment and reassessment**

ITA
152(4)(b.1)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may, at any time, assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. Exceptions to this general rule are described in paragraphs 152(4)(a) to (d). Paragraph (b.1) currently provides an exception where an information return described in subsection 237.1(7) or 237.3(2) is not filed as and when required

Consequential on the amendments to section 237.3, paragraph 152(4)(b.1) is amended so that it applies only in respect of information returns described in subsection 237.1(7). New paragraph 152(4)(b.5) is being added to address situations where an information return is required to be filed under subsection 237.3(2).

This amendment applies to taxation years that begin after 2022.

**Assessment and reassessment**

ITA
152(4)(b.5) to (b.7)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may, at any time, assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. Exceptions to this general rule are described in paragraphs 152(4)(a) to (d).

Paragraph 152(4) of the Act is amended to add new paragraphs (b.5) to (b.7), consequential on the amendments to section 237.3 and the additions of sections 237.4 and 237.5.
New paragraph (b.5) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.3(2) (relating to reportable transactions) is not filed as and when required.

New paragraph (b.6) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.4(4) (relating to notifiable transactions) is not filed as and when required.

New paragraph (b.7) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.5(2) (relating to uncertain tax treatments) is not filed as and when required.

These new paragraphs apply to taxation years that begin after 2022.

**Extended period of assessment**

ITA
152(4.01)

Subsection 152(4.01) of the Act limits the matters in respect of which the Minister of National Revenue can assess when an assessment to which paragraph 152(4)(a), (b), (b.1), (b.3), (b.4) or (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. In general terms, such a reassessment can be made only to the extent that it can reasonably be regarded as relating to a matter specified in any of those paragraphs.

Consequential on the addition of paragraphs 152(4)(b.5) to (b.7), the portion of subsection 152(4.01) before paragraph (a) is amended to include references to these new paragraphs. In addition, paragraph 152(4.01)(b) is amended to include:

- references to new paragraphs 152(4)(b.5) to (b.7) in its opening words;
- a revised reference to paragraph 152(4)(b.1) (which has been modified to confine its scope to subsection 237.1(7)) in paragraph 152(4.01)(b)(vii); and
- references to new paragraphs 152(4)(b.5) to (b.7) in new paragraphs 152(4.01)(b)(viii) to (x).

For more information, see the commentary on new paragraphs 152(4)(b.5) to (b.7) and on sections 237.3 to 237.5.

This amendment applies to taxation years that begin after 2022.

**Clause 2**

**Interest on penalties**

ITA
161(11)(b.1)

Subsection 161(11) of the Act requires the payment of interest on penalties imposed under the Act.

Consequential on the addition of sections 237.4 and 237.5 to the Act, paragraph 161(11)(b.1) is amended to include references to penalty provisions set out in those new sections.

This amendment comes into force on royal assent.

**Clause 3**

**Partnership liable to penalty**

ITA
163(2.9)

Subsection 163(2.9) of the Act allows a penalty imposed under subsection 163(2.4) or section 163.3, 237.1 or 237.3 to be assessed against a partnership and applies the provisions of the Act relating to assessments, interest, refunds, objections and appeals with respect to the penalty as if the partnership were a corporation.

Consequential on the addition of section 237.4 to the Act, subsection 163(2.9) is amended to include a reference to that new section.

This amendment comes into force on royal assent.

**Clause 4**

**Assessment**

ITA
227(10)(b)

Subsection 227(10) of the Act empowers the Minister of National Revenue to assess a person for various amounts, including penalties and other amounts payable by the person in respect of the failure to comply with the various provisions of the Act.

Consequential on the addition of sections 237.4 and 237.5 to the Act, paragraph 227(10)(b) is amended to include references to the penalty provisions set out in those new sections.
This amendment comes into force on royal assent.

**Clause 5**

**Definitions**

ITA
237.3(1)

Subsection 237.3(1) of the Act contains definitions that are relevant for the purposes of the "reportable transaction" rules in section 237.3(1).

**"avoidance transaction"**

The term "avoidance transaction" in subsection 237.3(1) of the Act currently has the same meaning as it does under the General Anti-Avoidance Rule (GAAR) in section 245.
The definition is amended to mean a transaction if it may reasonably be considered that one of the main purposes of the transaction, or of a series of transactions of which the transaction is a part, is to obtain a tax benefit. This provides a lower threshold for there to be an avoidance transaction under the reportable transaction rules than under the GAAR, which uses a primary purpose test.

**"reportable transaction"**

The definition "reportable transaction" in subsection 237.3(1) of the Act is amended to provide that only one of the conditions described in paragraphs (a) to (c) of this definition need be present in order for a transaction to be a reportable transaction.

Paragraph (b) of the definition "reportable transaction" is amended to stipulate that the confidential protection obtained, and the prohibition on disclosure provided under the confidential protection, is to be in respect of a tax treatment in relation to the avoidance transaction. This amendment therefore provides that the protection of trade secrets that do not relate to tax do not give rise to a reporting requirement.

Paragraph (c) of the definition "reportable transaction" is also amended to provide an exclusion from reporting requirements regarding contractual protection that applies in the context of normal commercial transactions, and which does not extend to the tax treatment in respect of an avoidance transaction. This amendment is intended to be similar to the exclusion that applies in subparagraph (a)(v) of the definition "advantage" in subsection 207.01(1), in the context of the anti-avoidance rules, set out in Part XI.01 of the Act, which help to ensure that registered plans are not used to provide excessive tax advantages unrelated to their respective basic objectives.

**"tax treatment"**

The new definition "tax treatment" is primarily relevant to paragraph 237.3(2)(a) of the Act, which provides the reporting obligation in respect of reportable transactions.

The term generally refers to a tax filing position taken by a person, and is largely modeled upon the definitions “tax treatment” and “uncertain tax treatment” in IFRIC Interpretation 23, as developed by the International Financial Reporting Standards (IFRS) Interpretations Committee.

These amendments and the new definition apply to reportable transactions entered into after 2022.

**Application**

ITA
237.3(2)(a)

Subsection 237.3(2) of the Act imposes an obligation on certain persons to file an information return in respect of reportable transactions. Currently, this obligation will apply if, in general terms, any of paragraphs (a) to (c) of the definition “reportable transaction” are applicable in respect of an avoidance transaction or series of transactions that includes the avoidance transaction.

Paragraph 237.3(2)(a) of the Act is replaced to provide that an information return in prescribed form and containing prescribed information in respect of a reportable transaction must be filed with the Minister by every person for whom a tax benefit results from any of the sources set out in subparagraphs (i) to (iii). It also requires reporting by a person for whom a tax benefit is expected to result based on the person’s tax treatment of the reportable transaction. This is intended to ensure that reporting is required in circumstances where a person’s filing position is successfully challenged. The three sources are:

- the reportable transaction;
- any other reportable transaction that is part of a series of transactions that includes the reportable transaction; and
- a series of transactions that includes the reportable transaction.

This amendment applies to reportable transactions entered into after 2022.

**Application**

ITA
237.3(4)

Subsection 237.3(4) of the Act currently provides that if more than one person is required to file an information return under subsection (2) in respect of a reportable transaction, the filing of an information return with full and accurate disclosure in prescribed form by one person satisfies the requirement to file for any other person who is also subject to a reporting obligation for the same transaction.

Subsection 237.3(4) is replaced with a new rule which provides that the reporting obligations imposed under subsection (2) do not apply to a person solely because the person provided clerical services or secretarial services with respect to the planning.

This amendment applies to reportable transactions entered into after 2022.

**Time for filing return**

ITA
237.3(5)

Subsection 237.3(5) of the Act sets out the time period within which a person who is required to file an information return under subsection 237.3(2) in respect of a reportable transaction must file the return with the Minister of National Revenue.

Subsection 237.3(5) of the Act is amended to provide that an information return for a reportable transaction under subsection 237.3(2) is required to be filed with the Minister

- by a particular person described in paragraph 237.3(2)(a), within 45 days of the earlier of:
  - the day the particular person becomes contractually obligated to enter into the transaction (or a person described in paragraph 237.3(2)(b) becomes contractually obligated to enter into the transaction for the benefit of the particular person); and
  - the day the particular person enters into the transaction (or a person described in paragraph 237.3(2)(b) enters into the transaction for the benefit of the particular person). This is intended to reflect situations where there is no contractual obligation to enter into the transaction before the date the transaction is entered into (for example, if the reportable transaction is an “event”);
- by a particular person described in paragraph 237.3(2)(b), within 45 days of the earlier of:
  - the day the particular person becomes contractually obligated to enter into the transaction for the benefit of a person described in paragraph 237.3(2)(a); and
  - the day the particular person enters into the transaction for the benefit of a person described in paragraph 237.3(2)(a); and
- by a person described in paragraph 237.3(2)(c) or (d), within 45 days of the earlier of the day that a particular person described in paragraph 237.3(2)(a) or (b) becomes contractually obligated to enter into the transaction, and the day the particular person enters into the transaction.

This amendment applies to reportable transactions entered into after 2022.

**Tax benefits disallowed**

ITA
237.3(6)

Subsection 237.3(6) of the Act applies when an information return in respect of a reportable transaction is not filed in accordance with subsection 237.3(2) and when any resulting penalty

under subsection 237.3(8) and any interest on that penalty are unpaid. Where subsection (6) currently applies, the General Anti-Avoidance Rule (the GAAR) in subsection 245(2) is deemed to apply, regardless of whether the misuse or abuse test in subsection 245(4) is met.

Consequential on amendments to the definition "avoidance transaction" in subsection 237.3(1), which delink that definition from the "avoidance transaction" definition used under the GAAR, subsection 237.3(6) is amended so that when it applies, section 245 is to be read without reference to the misuse or abuse test in subsection 245(4). As a result, a transaction would need to be an avoidance transaction as defined in subsection 245(3) for the deeming rule in subsection 237.3(6) to cause the GAAR to apply.

This amendment applies to reportable transactions entered into after 2022.

**Penalty**

ITA
237.3(8)

When an information return in respect of a reportable transaction or, in the case of a series of transactions, each reportable transaction that is part of the series, is not filed in accordance with subsection 237.3(2) and subsection 237.3(5) of the Act, every person who has failed to file an information return in respect of the reportable transaction or of each reportable transaction that is part of the series is liable to pay a penalty.

Subsection 237.3(8) of the Act is amended to provide different penalties for different circumstances. In particular, when a person fails to file an information return in respect of a reportable transaction as required under subsection 237.3(2) on or before the day required under subsection 237.3(5), they are liable to a late-filing penalty equal to

- in the case of a person for whom a tax benefit results, or – based on the person's tax treatment of the transaction – is expected to result, from the reportable transaction, as well as another who enters into the reportable transaction for the benefit of that person
  - $500 per week for each failure to report a reportable transaction, up to the greater of $25,000 and 25% of the tax benefit, or
  - for corporations with assets having a total carrying value of $50 million or more for its last taxation year that ends prior to the day on which the information return is required to be filed, a penalty of $2,000 per week for each failure to report a reportable transaction, up to the greater of $100,000 and 25% of the tax benefit; and
- in the case of advisors and promoters, as well as any other person who does not deal with them at arm's length and is entitled to a fee in respect of the reportable transaction or any transaction in a series that includes the reportable transaction, the total of
  - the amount of the fees charged by that person in respect of the reportable transaction,
  - $10,000, and
  - $1,000 per day that the person fails to report the reportable transaction, up to a maximum of $100,000.

For greater certainty, where a person enters into a reportable transaction for the benefit of a particular person, the amount of the tax benefit is the amount of the tax benefit for the particular person.

This amendment applies to reportable transactions entered into after 2022, excluding transactions entered into before the date on which the enacting legislation receives Royal Assent.

**Penalty – greater of amounts**

ITA
237.3(8.1)

It is possible for a person to be described in both paragraphs 237.3(2)(b) and (d) in respect of a reportable transaction. Subsection (8) provides different penalty computations for people described in those two paragraphs.

New subsection (8.1) provides that if a person described in both paragraphs 237.3(2)(b) and (d) fails to file an information return in respect of a reportable transaction as required by subsection 237.3(2) on or before the day required under subsection 237.3(5), that person is liable to a penalty equal to the greater of the amounts determined under paragraphs 237.3(8)(a) and (b).

New subsection 237.3(8.1) applies to reportable transactions entered into after 2022, excluding transactions entered into before the date on which the enacting legislation receives Royal Assent.

**Determining carrying value**

ITA
237.3(8.2)

The penalty under subsection 237.3(8) of the Act is determined in part for certain corporations by reference to the carrying value of the corporation's assets.

New subsection (8.2) provides that, for the purpose of subparagraph 237.3(8)(a)(i), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). In effect, the carrying value of the assets of a corporation is based on the corporation's balance sheet.

New subsection 237.3(8.2) applies to reportable transactions entered into after 2022, excluding transactions entered into before the date on which the enacting legislation receives Royal Assent.

**Joint and several liability – special cases**

ITA
237.3(10)

Under subsection 237.3(9), every person who is subject to a penalty under subsection 237.3(8) is jointly and severally, or solidarily, liable to pay the penalty, subject to the limitation provided under subsection 237.3(10) for advisors and promoters.

Consequential on the imposition of separate reporting requirements and penalties for people in respect of reportable transactions, subsection 237.3(10) is repealed.

This amendment applies to reportable transactions entered into after 2022, excluding transactions entered into before the date on which the enacting legislation receives Royal Assent.

**Application of ss. 231 to 231.3**

ITA
237.3(13)

Subsection 237.3(13) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to any person who is required to file an information return in respect of a reportable transaction under subsection (2) notwithstanding that, at the time of such audit or inspection, a return of income may not have been filed for the taxation year in which a tax benefit results from the reportable transaction or series of transactions that includes the reportable transaction.

Consequential on the amendments to section 237.3, subsection (13) is amended to update its language and ensure that the provision applies to the year in which a transaction that is relevant to a tax benefit occurs, even if the tax benefit results in a subsequent year. This may be the case where, for example, a transaction creates a tax attribute that is to be used in a later year.

This amendment applies to reportable transactions entered into after 2022.

**Clause 2**

**Notifiable Transactions**

ITA
237.4

New section 237.4 of the Act requires certain persons to report to the Minister of National Revenue prescribed information in respect of a notifiable transaction (as defined in subsection 237.4(1)).

New section 237.4 applies to notifiable transactions entered into after 2022, except that the penalty rules in 237.4(12) to (15) do not apply to notifiable transactions entered into before the date on which the enacting legislation receives Royal Assent.

**Definitions**

ITA
237.4(1)

New subsection 237.4(1) of the Act provides a number of definitions that apply for the purposes of section 237.4.

**“advisor”**

The definition “advisor” is relevant in determining whether a person is required to file an information return in respect of a notifiable transaction, and the amount of the penalty to which that person may be liable under new subsection 237.4(8).

An “advisor” in respect of a notifiable transaction means each person who provides any assistance or advice with respect to creating, developing, planning, organizing or implementing the notifiable transaction to another person. This includes any person who enters into the notifiable transaction for the benefit of another person.

A person can also be an advisor in respect of a notifiable transaction if that person provides assistance or advice to any promoter or any other advisor in respect of the transaction, even though the person does not provide contractual protection, assistance or advice directly to the person who entered into the transaction or series. Therefore, although an advisor would generally be a person whose business is to provide professional services or contractual protection to a person entering into a notifiable transaction, other persons can also be considered to be an “advisor” in respect of the transaction or series. More than one person may be an advisor in respect of a particular notifiable transaction or series of transactions.

A person or partnership that provides advice or representation to a person only in respect of an audit or tax dispute in relation to a particular notifiable transaction would not be an advisor in respect of that notifiable transaction, if they were neither involved in the creation, development, planning, organizing or implementation of the transaction, nor in the providing of contractual protection.

**“fee”**

A “fee”, in respect of a notifiable transaction, has the same meaning as in subsection 237.3(1) of the Act.

**“notifiable transaction”**

New subsection 237.4(3) of the Act gives the Minister of National Revenue the authority to designate transactions or series of transactions for the purposes of section 237.4. This designation is to be made with the concurrence of the Minister of Finance. Subsection 237.4(4) provides a requirement to report notifiable transactions.

The definition “notifiable transaction” incorporates the transactions and series of transactions designated by the Minister of National Revenue into the reporting requirement rules in section

237.4. In particular, a notifiable transaction is a transaction that is the same as, or substantially similar to, a designated transaction, or a transaction in a series of transactions that is the same as, or substantially similar to, a designated series of transactions.

Subsection 237.4(2) sets out an interpretative rule that applies with respect to the term "substantially similar" for the purposes of notifiable transactions.

**"person"**

"Person" includes a partnership. This ensures that partnerships are subject to the notifiable transaction rules.

**"promoter"**

"Promoter", in respect of a notifiable transaction, has the same meaning as in subsection 237.3(1) of the Act.

**"tax benefit"**

"Tax benefit" has the same meaning as in subsection 245(1) of the Act, which contains the General Anti-Avoidance Rule.

**"tax treatment"**

"Tax treatment", has the same meaning as in subsection 237.3(1) of the Act. For more information, see the commentary on that definition.

**"transaction"**

"Transaction" has the same meaning as in subsection 245(1) of the Act and, as a result, includes an arrangement or event.

**Interpretation – substantially similar**

ITA
237.4(2)

New subsection 237.4(2) of the Act sets out an interpretation rule regarding the application of the phrase "substantially similar", which is used in the definition "notifiable transaction" in subsection 237.4(1). Two transactions (or series of transactions) are substantially similar if they are expected to obtain the same or similar types of "tax consequences" (as defined in subsection 245(1)) to one or more persons and the transactions (or series of transactions) are either factually similar or based on the same or similar tax strategy.

The phrase "substantially similar" is to be interpreted broadly in favour of disclosure, such that the purpose of the obligation to report is not frustrated by slight variations in facts, tax

consequences, or tax strategy. To this end, any background information provided in the Minister of National Revenue's publications setting out the notifiable transactions could be relevant.

**Example Notifiable Transaction**

Assume that the Minister designates the following series of transactions to require reporting in situations where taxpayers attempt to "break" Canadian-controlled private corporation (CCPC) status in order to avoid the application of certain anti-deferral rules in the Act that otherwise apply to CCPCs earning or realizing investment income (planning that is addressed through new proposed rules targeting "substantive CCPCs").

Foreign Continuance

A taxpayer's corporation that holds investment assets, or assets that subsequently become investment assets, and that is initially incorporated in Canada is later continued under the laws of a foreign jurisdiction. As a result, it ceases to be a CCPC by virtue of it no longer being a "Canadian corporation". However, by ensuring that the central management and control of the corporation are exercised in Canada and that subsection 250(5) does not apply, the corporation remains resident in Canada and, as a result, it is not considered to have emigrated and it is not subject to the foreign accrual property income (FAPI) regime.

Examples of Substantially Similar Transactions

The following three examples (Foreign Incorporation, "Skinny" Voting Shares, and Option to Acquire Control) illustrate other series of transactions that are "substantially similar" to the example notifiable transaction provided above describing a foreign continuance to break CCPC status in order to avoid the application of certain anti-deferral rules in the Act. This is because each example:

- obtains the same tax consequences, with the corporation avoiding the anti-deferral rules that apply to CCPCs and not being subject to the FAPI regime; and
- is factually similar, in that each takes the same or a slightly different path, through manipulation of either "Canadian corporation" status or "Canadian-controlled" status, to rely on technical provisions of the Act to break the CCPC status while remaining, in substance, a Canadian-controlled private corporation that is ultimately controlled (in law or in fact) by Canadian resident individuals.

Foreign Incorporation

A taxpayer initially incorporates a corporation in a foreign jurisdiction and capitalizes it with investment assets, or assets that subsequently become investment assets. Such a corporation would not be a CCPC by virtue of it not being a "Canadian corporation". However, by ensuring that the central management and control of the corporation are exercised in Canada, the corporation is taxed as a resident of Canada with the result that it is not subject to the foreign accrual property income regime.

"Skinny" Voting Shares

On or after incorporation, a corporation that holds or is capitalized with investment assets, or assets that subsequently become investment assets, issues a majority of special voting shares, redeemable for a nominal amount (also known as "skinny" voting shares), to a non-resident person in order to cause the corporation to not be "Canadian-controlled" and, as such, to not be a CCPC. The non-resident person who owns the voting shares is often (but not necessarily) an entity owned and controlled by Canadian residents.

Alternatively, the skinny voting shares could be issued to a public corporation instead of a non-resident person.

Option to Acquire Control

A corporation that holds investment assets, or assets that subsequently become investment assets, issues an option to a non-resident person for the acquisition of a majority of the voting shares of a corporation in order to cause the corporation to not be "Canadian-controlled" and, as such, to not be a CCPC. This right to acquire control through the majority of the voting shares is often (but not necessarily) held by a non-resident entity that is owned by Canadian residents or accommodating non-resident persons.

Alternatively, the option to acquire control could be issued to a public corporation instead of a non-resident person.

**Designation of notifiable transactions**

ITA
237.4(3)

New subsection 237.4(3) of the Act authorizes the Minister of National Revenue to designate transactions, or series of transactions, for the purposes of section 237.4. Due to the definition "notifiable transaction" in subsection (1), transactions that have been designated or that are included in a series of transactions that have been designated (including substantially similar transactions or series, as the case may be) are required to be reported under subsection (4). Transactions can be designated in the manner that the Minister of National Revenue considers appropriate, such as on the Canada Revenue Agency webpages. The designations are to be made with the concurrence of the Minister of Finance.

**Requirement to file return**

ITA
237.4(4)

New subsection 237.4(4) of the Act imposes an obligation on certain persons to file an information return in respect of a notifiable transaction. More specifically, the persons required to file information returns are as follows:

- every person for whom a tax benefit results, or for whom a tax benefit is expected to result based on the person's tax treatment of the notifiable transaction, from
  - the notifiable transaction,
  - any other notifiable transaction that is part of a series of transactions that includes the notifiable transaction, or
  - a series of transactions that includes the notifiable transaction;
- every person who has entered into, for the benefit of a person for whom a tax benefit results, or for whom a tax benefit is expected to result based on the person's tax treatment of the transaction, a notifiable transaction;
- every advisor or promoter in respect of the notifiable transaction; and
- every person who is not dealing at arm's length with an advisor or promoter in respect of the notifiable transaction and who is or was entitled, either immediately or in the future and either absolutely or contingently, to a fee in respect of the notifiable transaction.

The reporting requirements apply on a transaction-by-transaction basis. In other words, reporting is required in respect of each transaction that is part of a series of transactions that includes the notifiable transaction. However, subsection 237.4(6) provides that if the reporting of a notifiable transaction describes each transaction in the series, the requirement to report each transaction in the series will be met. More than one person may have a reporting requirement in respect of the same notifiable transaction. As well, every person described in paragraphs 237.4(4)(a) to (d) is required to file an information return for each notifiable transaction in respect of each person for whom a tax benefit could result from the notifiable transaction, or from the series of transactions that includes the notifiable transaction.

Unless information returns in respect of a notifiable transaction are filed with the Minister of National Revenue, the Minister can deny any tax benefit that could result from the notifiable transaction, and impose a penalty on each person who failed to report any notifiable transaction, to which they would be jointly and severally, or solidarily, liable. Moreover, unless and until an information return in respect of a notifiable transaction is filed as and when required, the Minister of National Revenue may reassess a participant in a notifiable transaction outside of the normal reassessment period for a taxation year in respect of the transaction.

The information return must contain prescribed information as determined by the Minister of National Revenue. Every person who is subject to a reporting requirement would be expected to make reasonable and good faith efforts to identify the information to be reported and ensure that such information is provided to the Minister of National Revenue in order to satisfy that person's reporting obligation in respect of a notifiable transaction. New subsection 237.4(17) provides an exclusion from the imposition of failure-to-report penalties if due diligence has been exercised by the person required to report the notifiable transaction.

**Application**

ITA
237.4(5)

New subsection 237.4(5) alleviates reporting obligations for employees, as well as for partners, in respect of a notifiable transaction where the employer or partnership has filed the required information return.

This subsection provides that the reporting obligations under paragraph (4)(c) or (d) that would otherwise be imposed upon employees of an employer, or upon partners of a partnership, in respect of a notifiable transaction do not apply if an information return is filed by the employer, or by the partnership, in respect of the notifiable transaction under subsection (4) in prescribed form and manner. If such an information return is filed by an employer, or a partnership, in respect of a particular notifiable transaction, then for the purposes of paragraphs (4)(c) and (d) of section 237.4, that filing is deemed to have been made by each employee of the employer, or each partner of the partnership, to whom subsection (4) applies in respect of the transaction.

As a corollary, new subsection 237.4(14) removes liability for penalties under subsection (12) in respect of the relevant transaction for those taxpayers that were deemed to have filed an information return under this subsection.

**Secondary or ancillary financial services – exclusion**

ITA
237.4(6)

New subsection 237.4(6) provides that reporting obligations that would otherwise be imposed under paragraph (4)(c) or (d) do not apply, in respect of a notifiable transaction, to banks carrying on the business of banking, corporations carrying on an insurance business, or to credit unions. This is subject to the limitation provided in subsection (7).

**Financial services exclusion – limitation**

ITA
237.4(7)

New subsection 237.4(7) stipulates that the exclusion of reporting obligations provided under subsection 237.4(6) does not apply if the bank, insurance company or credit union described in subsection (6) knows, or would reasonably be expected to know but for circumstances amounting to gross negligence, that the particular transaction is a notifiable transaction.

**Clerical or secretarial services**

ITA
237.4(8)

New subsection (8) provides that the reporting obligations imposed under subsection (4) do not apply to a person solely because the person provided clerical services or secretarial services with respect to the planning.

**Time for filing return**

ITA
237.4(9)

New subsection 237.4(9) of the Act provides two deadlines for the information return required by subsection 237.4(4) to be filed with the Minister for a notifiable transaction, depending on the person required to file the return.

A person for whom a tax benefit results from the notifiable transaction (or is expected to result based on the person's tax treatment of the notifiable transaction), as well as a particular person who enters into the notifiable transaction for the benefit of that person, must file on or before the particular day that is 45 days after the earliest of

- the day on which the person becomes contractually obligated to enter into the notifiable transaction,
- the day on which the person enters into the notifiable transaction, and
- if the person is a person for whom a tax benefit results (or is expected to result based on the person's tax treatment of the notifiable transaction) and another person enters into the notifiable transaction for the benefit of that person, the day on which the notifiable transaction is entered into.

An advisor or promoter in respect of the notifiable transaction (as well as by a person who does not deal at arm's length with the advisor or promoter and is or was entitled to a fee) must file no later than the earliest deadline for a person described above in respect of the notifiable transaction.

**Clarification of reporting transactions in series**

ITA
237.4(10)

New subsection 237.4(10) of the Act provides that the filing of a full and accurate information return under subsection 237.4(4) by a person in respect of a notifiable transaction that is part of a series that includes the notifiable transaction, and which accurately describes each transaction that is part of the series, will satisfy the person's reporting obligation in respect of each transaction that is part of the series.

**Assessments**

ITA
237.4(11)

New subsection 237.4(11) of the Act provides the Minister of National Revenue with the authority to make such assessments, determinations and redeterminations that are necessary to

give effect to the new rules in subsection 237.4(12), which impose penalties for late-filing in respect of the notifiable transaction reporting obligation imposed under new subsection 237.4(4).

**Penalty**

ITA
237.4(12)

New subsection 237.4(12) of the Act provides penalties for the failure to file an information return in respect of a notifiable transaction as required under subsection (4) by the deadline provided in subsection (9). If it applies, a person is liable to a late-filing penalty equal to

- in the case of a person for whom a tax benefit results, or – based on the person's tax treatment of the transaction – is expected to result, from the notifiable transaction, as well as another who enters into the notifiable transaction for the benefit of that person
  - $500 per week for each failure to report a notifiable transaction up to the greater of $25,000 and 25% of the tax benefit, or
  - for corporations that have assets that have a total carrying value of $50 million or more for its last taxation year that ends prior to the day on which the information return is required to be filed, a penalty of $2,000 per week for each failure to report a notifiable transaction, up to the greater of $100,000 and 25% of the tax benefit; and
- in the case of advisors and promoters, as well as any other person who does not deal with them at arm's length and is entitled to a fee in respect of the notifiable transaction, the total of
  - the amount of the fees charged by that person in respect of the notifiable transaction,
  - $10,000, and
  - $1,000 per day that the person fails to report the reportable transaction, up to a maximum of $100,000.

**Penalty – deeming rule**

ITA
237.4(13)

Under new subsection 237.4(13) of the Act, if a person is liable to a penalty under paragraph 237.4(4)(b) on account of having entered into a notifiable transaction for the benefit of a person for whom a tax benefit results (or, based on the person's tax treatment of the transaction, is expected to result) as well as under paragraph 237.4(4)(d) on account of their entitlement to a fee from their dealings with an advisor or promoter in respect of the notifiable transaction, the amount of that person's penalty is deemed to be equal to the greater of the amounts determined under paragraphs 237.4(12)(a) and (b).

**Penalty – deemed filers not liable**

ITA
237.4(14)

New subsection 237.4(5) alleviates reporting obligations of employees, as well as partners, in respect of a notifiable transaction where the employer or partnership has made the required filing.

Consequential on the addition of subsection 237.4(5), new subsection 237.4(14) confirms that if any employee or partner is deemed to have filed an information return in prescribed form and manner in respect of a particular notifiable transaction under subsection (5), that employee or partner is not liable to a penalty under subsection (12) in respect of the particular transaction.

**Determining carrying value**

ITA
237.4(15)

The penalty under subsection 237.4(12) of the Act is determined in part for certain corporations by reference to the carrying value of the corporation's assets.

New subsection 237.4(15) provides that, for the purpose of new subparagraph 237.4(12)(a)(i), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). In effect, the carrying value of the assets of a corporation is based on the corporation's balance sheet.

**Joint and several liability**

ITA
237.4(16)

New subsection 237.4(16) of the Act provides that every person who is subject to a penalty under subsection 237.4(12) in respect of a notifiable transaction is jointly and severally, or solidarily, liable to pay the penalty.

**Due diligence**

ITA
237.4(17)

New subsection 237.4(17) of the Act provides that a person will not be liable to a penalty under subsection 237.4(12) if the person has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances. Whether a person has exercised the degree of care, diligence and skill required will be based on the facts and circumstances of each case.

**Reporting not an admission**

ITA
237.4(18)

New subsection 237.4(18) of the Act provides that the filing of an information return under new subsection 237.4(4) in respect of a notifiable transaction is not an admission by the person that any transaction is part of a series of transactions. This is similar to paragraph 237.3(12)(b), which applies to reportable transactions.

**Application of ss. 231 to 231.3**

ITA
237.4(19)

New subsection 237.4(19) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to any person who is required to file an information return in respect of a notifiable transaction, and regardless of whether a return of income has been filed for the taxation year in which the tax benefit results (or is expected to result) from the notifiable transaction.

The language in subsection 237.4(19) also ensures that the provision applies to the year in which a transaction that is relevant to a tax benefit occurs, even if the tax benefit results in a subsequent year. This may be the case where, for example, a transaction creates a tax attribute that is to be used in a later year.

**Solicitor-client privilege**

ITA
237.4(20)

For the purpose of new section 237.4 of the Act, a lawyer (including an advocate or notary in the province of Quebec) who is an advisor in respect of a notifiable transaction is not required to disclose in an information return in respect of the transaction, any information in respect of which the lawyer, on reasonable grounds, believes that a client of the lawyer has solicitor-client privilege. Such a person would nevertheless be expected to provide information for which solicitor-client privilege does not exist.

**Clause 3**

**Reportable Uncertain Tax Treatments**

ITA
237.5

New section 237.5 of the Act requires certain corporations to report to the Minister of National Revenue in respect of reportable uncertain tax treatments.

New section 237.5 applies to taxation years that begin after 2022, except that the penalty under subsection 237.5(5) does not apply to taxation years that begin before the date on which the enacting legislation receives Royal Assent.

**Definitions**

ITA
237.5(1)

New subsection 237.5(1) of the Act provides a number of definitions that apply for the purposes of section 237.5.

**“consolidated financial statements”**

“Consolidated financial statements” has the meaning assigned by subsection 233.8(1) of the Act. It means financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity.

**“person”**

“Person” includes a partnership. This makes possible the consideration of partnerships within consolidated groups, for purposes of the definition “relevant financial statements”.

**“relevant financial statements”**

“Relevant financial statements” of a corporation for a taxation year means audited financial statements that are

- in respect of the corporation, or a consolidated group of which the corporation is a member (for this purpose, a consolidated group is a group of two or more persons required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles);
- prepared in accordance with International Financial Reporting Standards, or other country-specific generally accepted accounting principles (GAAP) relevant for corporations that are listed on a stock exchange outside Canada; and
- prepared for a period of time that ends in the year.

**“reportable uncertain tax treatment”**

A “reportable uncertain tax treatment” of a corporation for a taxation year is a tax treatment of the corporation in respect of which uncertainty is reflected in relevant financial statements of the corporation for the year.

Relevant financial statements of a corporation are generally audited financial statements of the corporation, or audited consolidated financial statements of a group of which the corporation is a member, that are prepared in accordance with International Financial Reporting Standards or

other country-specific generally accepted accounting principles (GAAP) relevant for domestic public companies (e.g., U.S. GAAP). For more information, see the commentary on the definition "relevant financial statements."

As noted in the commentary on the definition "tax treatment," the meaning of tax treatment is largely modeled upon the definitions "tax treatment" and "uncertain tax treatment" in IFRIC Interpretation 23, as developed by the IFRS Interpretations Committee.

Uncertainty is considered to be reflected in financial statements when the tax attributes used in the financial statements (e.g., taxable profit, tax loss, tax bases, unused tax losses, unused tax credits, tax rates) are not consistent with the tax treatment. For example, regarding financial statements prepared in accordance with IFRS, pursuant to IFRIC Interpretation 23:

- an uncertain tax treatment is a tax treatment for which there is uncertainty over whether the relevant taxation authority (in the Canadian context, this ultimately refers to the courts) will accept the tax treatment under tax law;
- if an entity concludes it is not probable that the taxation authority will accept an uncertain tax treatment, the entity shall reflect the effect of uncertainty in determining the related taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates; and
- an entity shall reflect the effect of uncertainty for each uncertain tax treatment that it concludes is not probable that the taxation authority will accept by using the most likely amount or the expected value amount, rather than the tax treatment.

As another example, uncertainty would be considered to be reported in financial statements prepared in accordance with U.S. GAAP when a reserve with respect to a tax position taken in a tax return (which is similar in meaning to a tax treatment) has been recorded in the financial statements. For example, pursuant to Accounting Standards Codification (ASC) 740, if it is not more likely than not that a tax position taken in a tax return will be sustained upon examination, an unrecognized tax benefit is established in the financial statements for the entire tax benefit.

**"reporting corporation"**

A "reporting corporation" for a taxation year is a corporation that has prepared relevant financial statements for the year, has assets that have a total carrying value of $50 million or more at the end of the year and is required to file a return of income for the year under section 150 of the Act.

A corporation that is a resident of Canada, or a non-resident with a taxable presence in Canada, is required to file a return of income under section 150, and as such would be a reporting corporation if the other criteria described above are met.

Pursuant to subsection 237.5(9), the determination of whether the carrying value of a corporation's assets is greater than or equal to $50 million at the end of a taxation year (the "asset threshold") is to be made in accordance with paragraphs 181(3)(a) and (b).

For this purpose, relevant financial statements are generally audited financial statements of a corporation, or audited consolidated financial statements of a group of which the corporation is a member (referred to as the corporation's "group"), that are prepared in accordance with International Financial Reporting Standards or other country-specific generally accepted accounting principles (GAAP) relevant for domestic public companies (e.g., U.S. GAAP).

Canadian GAAP require that the audited financial statements of public corporations be prepared in accordance with IFRS. As a result, Canadian public corporations would generally be reporting corporations, subject to the asset threshold. Since IFRS require that a public corporation's financial statements be prepared on a consolidated basis with those corporations that it controls, each corporation that is controlled by a Canadian public corporation would also be a reporting corporation (each subject to the asset threshold).

A reporting corporation also includes a private corporation that meets the asset threshold if it, or its group, has audited financial statements prepared in accordance with IFRS. While normally a private corporation would not have audited financial statements prepared in accordance with IFRS, where it does, those statements would be presented on a consolidated basis with those corporations it controls and would, when appropriate, reflect uncertainty pertaining to uncertain tax treatments relating to those corporations.

A reporting corporation also includes a corporation that meets the asset threshold if it, or its group, has audited financial statements prepared in accordance with another country-specific GAAP relevant for domestic public corporations (e.g., U.S. GAAP). For example, a U.S.-resident corporation with audited financial statements prepared in accordance with U.S. GAAP would be a reporting corporation if the carrying value of its assets is greater than or equal to $50 million at the end of the year. This is meant to ensure that the requirement to disclose reportable uncertain tax treatments will apply appropriately where a corporation is a Canadian corporation controlled by a non-resident corporation, or is a non-resident corporation carrying on business in Canada through a permanent establishment.

**"tax treatment"**

"Tax treatment" of a corporation means a treatment in respect of a transaction, or series of transactions, that the corporation uses, or plans to use, in a return of income or an information return (or would use in a return of income or an information return if a return of income or an information return were filed), and includes the corporation's decision not to include a particular amount in a return of income or an information return. This definition is largely modeled upon the definitions "tax treatment" and "uncertain tax treatment" in IFRIC Interpretation 23, as developed by the IFRS Interpretations Committee.

**"transaction"**

"Transaction" has the same meaning as in subsection 245(1) of the Act and, as a result, includes an arrangement or event.

**Requirement to file return**

ITA
237.5(2)

New subsection 237.5(2) of the Act provides that a reporting corporation that has one or more reportable uncertain tax treatments for a taxation year shall file with the Minister of National Revenue an information return in prescribed form and containing prescribed information in respect of each reportable uncertain tax treatment. This information is expected to be readily available given the need to analyze uncertain tax treatments as part of the preparation of relevant financial statements.

**Time for filing return**

ITA
237.5(3)

New subsection 237.5(3) of the Act provides that a corporation required to file an information return under new subsection 237.5(2), in respect of a reportable uncertain tax treatment of the corporation for a taxation year, must file the return with the Minister of National Revenue on or before the corporation's filing-due date for the year.

**Assessments**

ITA
237.5(4)

New subsection 237.5(4) of the Act provides the Minister of National Revenue with the authority to make such assessments, determinations and redeterminations as are necessary to give effect to new subsection 237.5(5), which provides a penalty for late-filing in respect of the reportable uncertain tax treatment reporting obligation imposed under new subsection 237.5(2).

**Penalty**

ITA
237.5(5)

New subsection 237.5(5) of the Act provides that when a corporation fails to file, on or before the day required under new subsection 237.5(3), an information return in respect of a reportable uncertain tax treatment, the corporation is liable to a penalty equal to $2,000 for each week during which the failure continues, up to a maximum of $100,000.

**Due diligence**

ITA
237.5(6)

Under new subsection 237.5(6) of the Act, a corporation will not be liable for a penalty under new subsection 237.5(5) if the corporation has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances. Whether a corporation has exercised the degree of care, diligence and skill required will be based on the facts and circumstances of each case.

**Reporting not an admission**

ITA
237.5(7)

New subsection 237.5(7) of the Act provides that the filing of an information return under new subsection 237.5(2) in respect of a reportable uncertain tax treatment is not an admission by the corporation that the tax treatment is not in accordance with the Act and the Income Tax Regulations, or that any transaction is part of a series of transactions. This is similar to paragraph 237.3(12), which applies to reportable transactions.

**Application of ss. 231 to 231.3**

ITA
237.5(8)

New subsection 237.5(8) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to a corporation that is required to file, under new subsection 237.5(2), an information return in respect of a reportable uncertain tax treatment for a taxation year, notwithstanding that, at the time of such audit or inspection, a return of income might not have been filed for the year.

**Determining carrying value**

ITA
237.5(9)

New subsection 237.5(9) of the Act provides that, for the purposes of the definition “reporting corporation” in new subsection 237.5(1), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). As such, the carrying value of a corporation’s assets is to be based on the corporation’s balance sheet.

## Avoidance of Tax Debts

**Clause 1**

ITA
160(0.1)

Section 160 contains rules regarding the joint and several, or solidary liability of a taxpayer for the income tax liability of another person who, when not dealing at arm's length with the taxpayer, transferred property to the taxpayer for consideration less than its fair market value.

Consequential on the introduction of the section 160 anti-avoidance rules in new subsection 160(5) and the section 160 avoidance planning penalty in new section 160.01, section 160 is amended by adding new subsection 160(0.1). Subsection 160(0.1) provides that in sections 160 and 160.01, a transaction includes an arrangement or event. Please see the commentary in new subsection 160(5) and new section 160.01 for more information.

The amendment comes into force on April 19, 2021.

ITA
160(5)

The amount that a taxpayer is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 160(1). The Minister may assess the taxpayer for such a liability under subsection 160(2).

Subsection 160(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the year of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 160(5) introduces new anti-avoidance rules to prevent planning which seeks to circumvent the application of section 160.

New paragraph 160(5)(a) addresses planning that attempts to circumvent the application of section 160 by avoiding the requirement that property be transferred between persons that do not deal at arm’s length. This paragraph deems, for the purposes of subsections 160(1) to (4), a transferor and transferee of property to not be dealing at arm’s length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm’s length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under this Act.

New paragraph 160(5)(b) addresses planning that attempts to circumvent the application of section 160 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the taxation year in which the property is transferred, or any preceding taxation year. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 160, regardless of whether the Minister has made an assessment under subsection 160(2) for that amount) is deemed to have become payable in the taxation year in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under the Act by the transferor or transferee.

New paragraph 160(5)(c) addresses planning that attempts to effectively avoid section 160 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 160, subparagraph 160(1)(e)(i) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the year in which the transfer took place, or any preceding taxation year. Subparagraph (1)(e)(i) limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (5)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 160, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series that includes the transfer of property.

For this purpose, paragraph (5)(c) deems the amount determined under subparagraph (1)(e)(i) to be the greater of

- the amount otherwise determined under subparagraph 160(1)(e)(i) without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds either
  - the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, or
  - if the consideration is in a form that is cancelled or extinguished during the above-noted period, subclause (B)(I) provide a continuity rule that applies where there is substituted property and subclause (B)(II) provides that otherwise the amount determined for B is nil.

The reference to nil in subclause (B)(II) of the description of B in the formula in (5)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

The amendments come into force on April 19, 2021.

**Clause 2**

ITA
160.01(1)

New section 160.01 introduces a penalty for section 160 avoidance planning.

New subsection 160.01(1) provides definitions that apply for the purpose of new section 160.01. The terms defined for this purpose are “gross entitlements”, “person”, “planning activity”, “section 160 avoidance planning”, “section 160 avoidance transaction”, “tax attribute”, “tax attribute transaction”, “tax benefit”, “transferee” and “transferor”.

“Gross entitlements” has the same meaning as in subsection 163.2(1) and means all amounts to which the person (or another person not dealing at arm’s length with the person) is entitled to receive or obtain in respect of section 160 avoidance planning. This is defined broadly and includes entitlements before or after the particular time and entitlements that are absolute or contingent, The definition “gross entitlements” is relevant for the purpose of computing a penalty under new subsection 160.01(2) for engaging in section 160 avoidance planning.

“Planning activity” has the same meaning as in subsection 163.2(1) and generally includes organizing or creating an arrangement, entity, plan or scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.

“Section 160 avoidance planning” is the planning activity in respect of which the penalty in new subsection 160.01(2) applies. This is planning activity that involves the removal of property of a taxpayer with the intention of rendering all or a portion of a current or future tax liability debt of the taxpayer uncollectible, while attempting to circumvent the application of section 160 and the joint and several, and solidary liability in respect of that tax debt.

“Section 160 avoidance transaction” is relevant for the definition “section 160 avoidance planning”. A section 160 avoidance transaction is a transaction or series of transactions, in respect of which the conditions in paragraph (a) or (b) of the definition are met.

Paragraph (a) refers to the conditions in paragraphs (5)(a) and (b). For more information see the commentary on those paragraphs. Paragraph (b) is relevant where subsection (5) applied to the transaction. In that case, it looks to whether the amount determined under subparagraph 160(5)(c)(ii) exceeds the amount determined under subparagraph 160(5)(c)(i).

“Tax attribute” is relevant for the definition “tax attribute transaction”. The definition is intended to capture anything that is commonly understood to be a tax attribute. A tax attribute means a balance, pool or other amount determined under the Act that is or may be relevant in computing income or in determining a taxpayer's liability for tax under the Act in any taxation year. The definition specifically includes

- a capital loss, non-capital loss, restricted farm loss, farm loss and limited partnership loss;
- an amount that is deductible in computing the person’s income;
- any balance of undeducted outlays, expenses or other amounts;
- paid-up capital in respect of a share of any class of the capital stock of a corporation;
- cost or capital cost of a property;
- an amount deductible from an amount otherwise payable under the Act; and
- an amount that is deemed to have been remitted as an amount payable under the Act.

Note that this list is inclusive and essentially provides examples of tax attributes without limiting or restricting the definition.

“Tax attribute transaction” is a transaction commonly utilized in planning activity that attempts to circumvent the application of section 160, and render all or part of a person’s tax liability uncollectible. Such a transaction means a transaction or series of transactions in which a tax attribute is used, directly or indirectly, to provide a tax benefit for the transferor or transferee. The tax attribute could be of a person that dealt at arm’s length with a transferor or transferee of property immediately before the transaction or series of transactions. Continuity rules are provided that apply in the case of an amalgamation under section 87.

“Tax benefit” has the same meaning as in subsection 163.2(1) and means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

“Transferee” refers to “transferee” as used in subsections 160(1) and (5).

“Transferor” refers to “transferor” as used in subsections 160(1) and (5).

ITA
160.01(2)

New subsection 160.01(2) provides for a penalty for a person who engages in, participates in, assents to or acquiesces in planning activity that they know is section 160 avoidance planning, or would reasonably be expected to know is subsection 160 avoidance planning, but for circumstances amounting to gross negligence. The penalty is equal to the lesser of

- 50% of the joint and several, or solidary, liability payable under this Act (determined without reference to subsection 160.01(2)), which was sought to be avoided through the planning; and

- the total of $100,000 and the person's gross entitlements at the time at which the notice of assessment of the penalty is sent to the person in respect of the planning.

This new penalty applies in respect of transactions, or series of transactions, that occur on or after April 19, 2021.

ITA
160.01(3)

New subsection 160.01(3) is similar to subsection 163.2(9). Subsection 160.01(3) provides that the penalty in subsection 160.01(2) does not apply to a person solely because the person provided clerical services or secretarial services with respect to section 160 avoidance planning.

The amendments come into force on April 19, 2021.

## Taxation of Veterans' and Active Service Members' Benefits

**Clause 1**

ITA
81(1)(d.2)

Section 81 of the Act lists various amounts that are not included in computing a taxpayer's income. New paragraph 81(1)(d.2) specifically excludes from the computation of a taxpayer's income certain benefits for Canadian Forces members, veterans, their spouses or common-law partners or surviving spouses or common-law partners. These are the total of all amounts received or enjoyed by a taxpayer or the taxpayer's spouse or common-law partner in the year on account of:

- benefits provided under the Veterans Health Care Regulations,
- benefits provided in respect of Rehabilitation Services and Vocational Assistance under Part 2 of the Veterans Well-being Act, and
- benefits provided to a member of the Canadian Forces under the Compensation and Benefit Instructions for the Canadian Forces that are any of a:
  - home modifications benefit,
  - home modifications move benefit,
  - vehicle modifications benefit,
  - home assistance benefit,
  - attendant care benefit,
  - caregiver benefit, or
  - spousal education upgrade benefit.

This amendment comes into force on January 1, 2018.

**Clause 2**

ITA
81(1)(d.2)

Paragraph 81(1)(d.2) specifically excludes from the computation of a taxpayer's income certain benefits for Canadian Forces members, veterans, their spouses or common-law partners or surviving spouses or common-law partners.

Paragraph (d.2) is amended to include benefits provided to a member of the Canadian Forces under the Canadian Armed Forces Self-Development Program as education expense reimbursements for ill and injured regular force members.

This amendment comes into force on January 1, 2021.