

Legislative Proposals Relating to the Income Tax Act

Excessive Interest and Financing Expenses Limitation

1 (1) Subsection 12(1) of the *Income Tax Act* is amended by adding the following after paragraph (l.1):

Partnership – interest and financing expenses add back

(l.2) the amount determined by the formula

$$A \times B$$

where

A is the total of all amounts each of which is an amount determined under paragraph (h) of the description of A in the definition *interest and financing expenses* in subsection 18.2(1) in respect of the taxpayer for the taxation year, and

B is

(i) if the taxpayer is an *excluded entity* for the year (as defined in subsection 18.2(1)), nil, and

(ii) in any other case, the proportion determined under the first formula in subsection 18.2(2) in respect of the taxpayer for the year;

(2) Subsection 12(2.02) of the Act is replaced by the following:

Source of income

(2.02) For the purposes of this Act, if a particular amount is included in computing the income of a taxpayer for a taxation year because of paragraph (1)(l.1) or (l.2) and the particular amount is in respect of another amount that is deductible by a partnership in computing its income from a particular source or from sources in a particular place, the particular amount is deemed to be from the particular source or from sources in the particular place, as the case may be.

(3) Subsections (1) and (2) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) and (2) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection (1) or 3(1) to the taxpayer.

2 (1) The portion of subsection 18(4) of the Act before paragraph (a) is replaced by the following:

Limitation on deduction of interest

(4) Notwithstanding any other provision of this Act (other than subsection (8)), in computing the income for a taxation year of a corporation or a trust from a business (other than the Canadian banking business of an authorized foreign bank) or property, no deduction shall be made in respect of that proportion of any amount that would, in the absence of this subsection and section 18.2, be deductible in computing that income in respect of interest paid or payable by it on outstanding debts to specified non-residents that

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

3 (1) The Act is amended by adding the following after section 18.1:

Definitions

18.2 (1) The following definitions apply in this section and section 18.21.

absorbed capacity of a taxpayer for a taxation year means the lesser of

(a) the taxpayer's cumulative unused excess capacity for the year, determined as if the taxpayer's absorbed capacity for the year were nil, and

(b) the amount determined by the formula

$$A - (B + C)$$

where

A is the taxpayer's interest and financing expenses for the year,

B is

(i) if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection, and

(ii) in any other case, the amount determined by the formula

$$D \times E$$

where

D is the taxpayer's ratio of permissible expenses for the year, and

E is the taxpayer's adjusted taxable income for the year, and

C is the taxpayer's interest and financing revenues for the year. (*capacité absorbée*)

adjusted taxable income of a taxpayer for a taxation year means the amount determined by the formula

$$A + B - C$$

where

A is the positive or negative amount determined by the formula

$$D - E$$

where

D is

(a) if the taxpayer is non-resident, the taxpayer's taxable income earned in Canada for the year (determined without regard to subsection (2) and paragraph 12(1)(l.2)), and

(b) in any other case, the taxpayer's taxable income for the year (determined without regard to subsection (2), paragraph 12(1)(l.2) and clause 95(2)(f.11)(ii)(D)), and

E is the total of

(a) the taxpayer's non-capital loss for the year (determined without regard to subsection (2), paragraph 12(1)(l.2) and clause 95(2)(f.11)(ii)(D)), and

(b) the total of all amounts each of which is, in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year — or a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member, at the end of an affiliate taxation year ending in a fiscal period of the partnership — an amount determined by the formula

$$V \times W/X$$

where

V is the lesser of

(i) the affiliate's foreign accrual property loss (determined without regard to clause 95(2)(f.11)(ii)(D)) for the affiliate taxation year, and

(ii) the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year exceeds the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

W is the amount that is included in the taxpayer's interest and financing expenses for the year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year,

X is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year;

B is the total of all amounts (other than an amount that can reasonably be considered to be in respect of exempt interest and financing expenses) each of which is

(a) the taxpayer's interest and financing expenses for the year,

(b) an amount deducted by the taxpayer in computing its income for the year under paragraph 20(1)(a), paragraph 59.1(a), subsection 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2), 66.7(1), (2), (2.3), (3), (4) or (5), other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

(c) an amount deducted by the taxpayer in computing its income for the year under subsection 20(16), other than any portion of that amount that is described in paragraph (d) of the description of A in the definition *interest and financing expenses*,

(d) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the following formula

$$F \times G/H - I$$

where

F is the total of all amounts, each of which is an amount deducted by the partnership under paragraph 20(1)(a) or subsection 20(16) in computing its income or loss from the source, or the source in a particular place, for the fiscal period, other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

G is the taxpayer's share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period,

H is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, and

I is the portion of an amount referred to in the description of F that can reasonably be considered to not be deductible in computing the taxpayer's income for the year, or to not be included in computing the taxpayer's non-capital loss for the year, because of subsection 96(2.1);

(e) the portion of an amount deducted under paragraph 111(1)(e) for the year, in respect of a partnership of which the taxpayer is a member, that can reasonably be considered to be attributable to an amount referred to in the description of I in paragraph (d) in respect of a fiscal period of the partnership ending in a preceding taxation year of the taxpayer,

(f) an amount deducted by the taxpayer under paragraph 110(1)(k) or 111(1)(a.1) in computing its taxable income for the year,

- (g)** an amount deducted by the taxpayer under subsection 104(6) in computing its income for the year, except to the extent of any portion of the amount that has been designated under subsection 104(19) for the year,
- (h)** an amount determined by the formula

$$J \times K/L$$

where

- J** is the amount deducted by the taxpayer under paragraph 111(1)(a) in computing its taxable income for the year, in respect of the taxpayer's non-capital loss for another taxation year (referred to in this paragraph as the "taxpayer loss year"),
- K** is the lesser of
 - (i)** the non-capital loss for the taxpayer loss year, and
 - (ii)** the amount determined by the formula

$$Y - Z - Z.1$$

where

- Y** is the total of all amounts, each of which is an amount that is
 - (A)** the interest and financing expenses of the taxpayer for the taxpayer loss year, determined without regard to any amount or portion of an amount that is not deductible because of subsection (2) or clause 95(2)(f.11)(ii)(D), or
 - (B)** described in any of paragraphs (b) to (g) or (i) of the description of B for the taxpayer loss year,
- Z** is the total of all amounts, each of which is an amount
 - (A)** described in any of paragraphs (a) to (f), (h) or (j) of the description of C for the taxpayer loss year,
 - (B)** included in the income of the taxpayer for the taxpayer loss year by reason of paragraph 12(1)(l.2), and
- Z.1** is the total of all amounts, each of which is an amount determined by the formula

$$Z.2 \times Z.3/Z.4$$

where

- Z.2** is the lesser of
 - (A)** the foreign accrual property loss, for an affiliate taxation year, of a corporation (referred to throughout the description of Z.1 as the "affiliate") that, at the end of the affiliate taxation year, is a controlled foreign affiliate of the taxpayer, or is a controlled foreign affiliate of a partnership of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, and
 - (B)** the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)) exceeds the total of all amounts, each of which is
 - (I)** the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year, or
 - (II)** an amount included under subclause 95(2)(f.11)(ii)(D)(II) in respect of the affiliate for the affiliate taxation year,
- Z.3** is the amount that is included in the taxpayer's interest and financing expenses for the taxpayer loss year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

- Z.4** is the affiliate’s relevant affiliate interest and financing expenses for the affiliate taxation year; and
- L** is the non-capital loss for the taxpayer loss year; or
- (i)** in respect of a corporation (referred to in this paragraph as the “affiliate”) that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year – or that is a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, at the end of an affiliate taxation year ending in a fiscal period of the partnership – the additional amount that would be included in the taxpayer’s income, either under subsection 91(1) or because an amount would be included in the income of a partnership under that subsection, in respect of the affiliate’s foreign accrual property income for the affiliate taxation year, if the affiliate’s foreign accrual property income for the affiliate taxation year were increased by the amount determined by the formula

$$M \times N/O$$

where

M is the amount that, in computing the foreign accrual property income of the affiliate for the affiliate taxation year, is the prescribed amount for the description of F in the definition *foreign accrual property income* in subsection 95(1), in respect of a foreign accrual property loss of the affiliate for another affiliate taxation year (referred to in this paragraph as the “affiliate loss year”),

N is the lesser of

- (i)** the affiliate’s foreign accrual property loss for the affiliate loss year, and
- (ii)** the amount by which the affiliate’s relevant affiliate interest and financing expenses for the affiliate loss year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)), exceeds the total of all amounts, each of which is
 - (A)** the affiliate’s relevant affiliate interest and financing revenues for the affiliate loss year, or
 - (B)** an amount included under subclause 95(2)(f.11)(D)(II) in respect of the affiliate for the affiliate loss year, and

O is the affiliate’s foreign accrual property loss for the affiliate loss year; and

C is the total of all amounts each of which is

- (a)** the taxpayer’s interest and financing revenues for the year,
- (b)** an amount included under subsection 13(1) in computing the taxpayer’s income for the year,
- (c)** in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the following formula,

$$P \times Q/R$$

where

P is an amount that is included by the partnership under subsection 13(1) in computing its income or loss from the source, or the source in a particular place, for the fiscal period,

Q is the taxpayer’s share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, and

R is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period;

(d) an amount included under subsection 59(1) or (3.2) or paragraph 59.1(b) in computing the taxpayer’s income for the year,

(e) in the case of a corporation

- (i)** 100/28 of the total of the amounts that would be deductible by it under subsection 126(1) from its tax for the year otherwise payable under this Part if those amounts were determined without reference to sections 123.3 and 123.4, or

(ii) the amount determined by multiplying the total of the amounts that would be deductible by it under subsection 126(2) from its tax for the year otherwise payable under this Part, if those amounts were determined without reference to section 123.4, by the relevant factor for the year,

(f) in the case of a trust, the amount determined by the following formula

$$S \times (1/(T \times U))$$

where

S is the total of the amounts deductible by it under subsection 126(1) or (2) from its tax for the year otherwise payable under this Part for the year,

T is the percentage (expressed as a decimal fraction) referred to in paragraph 122(1)(a) in respect of the year, and

U is 1 plus the percentage (expressed as a decimal fraction) referred to in subsection 120(1) in respect of the year,

(g) an amount included under section 110.5 in computing the taxpayer's taxable income for the year,

(h) an amount included under subsection 104(13) in computing the taxpayer's income for the year, except to the extent of any portion of the amount that

(i) has been designated under subsection 104(19) for the year, or

(ii) gives rise to a deduction under paragraph 94.2(3)(a) in computing the foreign accrual property income for an affiliate taxation year of an entity that is a controlled foreign affiliate of the taxpayer at the end of the affiliate taxation year,

(i) an amount of the taxpayer's taxable income for the year that is not, because of an Act of Parliament, subject to tax under this Part, or

(j) the amount that would be the taxpayer's income or loss for the year, or that would be the taxpayer's share of the income or loss of a partnership of which the taxpayer is a member, if the taxpayer or partnership had no income other than income that can reasonably be considered to be earned by a borrower (within the meaning of the definition *exempt interest and financing expenses*) in respect of a borrowing (within the meaning of the definition *exempt interest and financing expenses*) that results in exempt interest and financing expenses of the borrower. (*revenu imposable rajusté*)

affiliate taxation year of a controlled foreign affiliate of a taxpayer means the period for which the accounts of the affiliate have been ordinarily made up, but no such period may exceed 53 weeks. (*année d'imposition de la société affiliée*)

aggregate participating percentage has the same meaning as in subsection 91(1.3). (*pourcentage de participation total*)

cumulative unused excess capacity of a taxpayer for a particular taxation year means the total of all amounts each of which is

(a) the excess capacity of the taxpayer for the particular year, or

(b) the excess capacity of the taxpayer for any of the three immediately preceding taxation years, if the taxpayer's excess capacity for each of those years is determined according to the following rules:

(i) if the taxpayer has an amount of transferred capacity for any taxation year (referred to in this definition as the "transfer year") preceding the particular year,

(A) there are to be reductions to the taxpayer's excess capacity for the transfer year and the three taxation years immediately preceding the transfer year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the total of all amounts each of which is an amount of transferred capacity of the taxpayer for the transfer year (referred to in this definition as the "total transferred capacity amount"), and

(B) the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

(I) the taxpayer's excess capacity for the particular relevant year, determined taking into consideration any reductions to that excess capacity under

1 this subparagraph, in respect of amounts of transferred capacity for years preceding the transfer year, and

2 subparagraph (ii), in respect of amounts of absorbed capacity for the transfer year and any years preceding the transfer year, and

(II) the amount, if any, by which the total transferred capacity amount for the transfer year exceeds the reductions, under this subparagraph in respect of that total transferred capacity amount, to the taxpayer's excess capacity for any relevant years preceding the particular relevant year; and

(ii) if the taxpayer has an amount of absorbed capacity for a taxation year (referred to in this definition as the "absorbed capacity year"),

(A) there are to be reductions to the taxpayer's excess capacity for the three taxation years immediately preceding the absorbed capacity year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the amount of absorbed capacity for the absorbed capacity year, and

(B) the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

(I) the taxpayer's excess capacity for the particular relevant year, determined taking into account any reductions to that excess capacity under

1 subparagraph (i), in respect of amounts of transferred capacity for years preceding the absorbed capacity year, and

2 this subparagraph, in respect of amounts of absorbed capacity for years preceding the absorbed capacity year, and

(II) the amount, if any, by which the amount of absorbed capacity for the absorbed capacity year exceeds the reductions under this subparagraph in respect of that amount of absorbed capacity to the taxpayer's excess capacity for the relevant years preceding the particular relevant year. (*capacité excédentaire cumulative inutilisée*)

eligible group entity, in respect of a taxpayer resident in Canada, at any time, means a corporation, or a trust, resident in Canada

(a) that is, at that time, related to the taxpayer;

(b) that would, at that time, be affiliated with the taxpayer if section 251.1 were read without reference to the definition *controlled* in subsection 251.1(3);

(c) that is a trust in respect of which the taxpayer's share of the income or capital depends, at any time, on the exercise by any person of, or the failure of any person to exercise, any discretionary power; or

(d) that is a beneficiary of the taxpayer, if the taxpayer is a trust, whose share of the income or capital of the taxpayer depends, at any time, on the exercise by any person of, or the failure of any person to exercise, any discretionary power (other than a beneficiary that is a registered charity, or a non-profit organization, with whom the taxpayer deals at arm's length). (*entité admissible du groupe*)

excess capacity of a taxpayer for a taxation year means

(a) if subsection 18.21(2) applies in respect of the taxpayer for the year, nil; and

(b) in any other case, the amount determined by the formula

$$A - B - C$$

where

A is the amount determined by the formula

$$D \times E + F$$

where

D is the ratio of permissible expenses of the taxpayer for the year,

E is the adjusted taxable income of the taxpayer for the year, and

F is the amount determined by the formula

$$G - H \times I$$

where

G is the interest and financing revenues of the taxpayer for the year,

H is the ratio of permissible expenses of the taxpayer for the year, and

I is the lesser of

(i) the amount by which the interest and financing revenues of the taxpayer for the year exceed the interest and financing expenses of the taxpayer for the year, and

(ii) either

(A) if the adjusted taxable income of the taxpayer for the year would, in the absence of section 257, be a negative amount, the absolute value of the negative amount, or

(B) in any other case, nil,

B is the interest and financing expenses of the taxpayer for the year, and

C is the amount deductible by the taxpayer under paragraph 111(1)(a.1) in the year. (*capacité excédentaire*)

excluded entity for a particular taxation year means

(a) a corporation that is throughout the particular year a Canadian-controlled private corporation in respect of which the amount determined for C in paragraph 125(5.1)(a) for the year is less than \$50,000,000;

(b) a particular taxpayer resident in Canada, if \$1,000,000 is not less than the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is the interest and financing expenses or the exempt interest and financing expenses of

(i) the particular taxpayer for the particular taxation year, or

(ii) another taxpayer resident in Canada for a taxation year (referred to in this subparagraph as the “relevant taxation year”) ending in the particular taxation year, if the other taxpayer is an eligible group entity in respect of the particular taxpayer at the end of the relevant taxation year, and

B is the amount that would be determined for A if

(i) the reference in the description of A to “the interest and financing expenses or the exempt interest and financing expenses” were read as a reference to “the interest and financing revenues”, and

(ii) the interest and financing revenues of a financial institution group entity were excluded; or

(c) a taxpayer resident in Canada in respect of which the following conditions are met:

(i) all or substantially all of the businesses, undertakings and activities of

(A) the taxpayer are, throughout the particular year, carried on in Canada, and

(B) each eligible group entity in respect of the taxpayer are, throughout the eligible group entity's taxation year that ends in the particular year, carried on in Canada,

(ii) throughout the year, it is the case that

$$A \geq B$$

where

A is \$5,000,000

B is the greater of

(A) the total of all amounts, each of which is the amount at which the shares of the capital stock of a foreign affiliate of the taxpayer, or an eligible group entity in respect of the taxpayer, would be valued for the purpose of the balance sheet of the taxpayer or the eligible group entity if that balance sheet were prepared in accordance with generally accepted accounting principles used in Canada, or

(B) the total of all amounts, each of which is the fair market value of all property of a foreign affiliate of the taxpayer or of an eligible group entity in respect of the taxpayer;

(iii) no person or partnership is, at any time in the particular year,

(A) a **specified shareholder** or a **specified beneficiary** (both as defined in subsection 18(5)) of the taxpayer, or of any eligible group entity in respect of the taxpayer, that is not resident in Canada, or

(B) a partnership more than 50% of the fair market value of all interests in which can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by non-resident persons, if the property of the partnership includes,

(I) if the taxpayer or the eligible group entity in respect of the taxpayer is a corporation, shares, or a right to acquire shares, of the capital stock of the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with shares, or rights to acquire shares, held by persons or partnerships with whom the partnership does not deal at arm's length,

1 provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or

2 have 25% or more of the fair market value of all capital stock in the corporation, or

(II) if the taxpayer or the eligible group entity in respect of the taxpayer is a trust, an interest, or a right to acquire an interest, as a beneficiary in the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with interests, or rights to acquire interests, held by persons or partnerships with whom the partnership does not deal at arm's length, has 25% or more of the fair market value of all interests as a beneficiary in the trust, and

(iv) all or substantially all of the interest and financing expenses of the taxpayer and of any eligible group entity in respect of the taxpayer for the particular year are paid or payable to persons or partnerships that are not, at any time in the particular year, tax-indifferent investors that do not deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer. (*entité exclue*)

excluded interest, for a taxation year or fiscal period, means an amount of interest or a lease financing amount, if

- (a)** the amount is paid in, or payable in or in respect of, the year or period by a corporation or partnership (in this definition referred to as the “payer”) to another corporation or partnership (in this definition referred to as the “payee”) in respect of a debt or a lease in respect of a particular property;
- (b)** throughout the period during which the amount accrued (in this definition referred to as the “relevant period”)
 - (i)** if the amount is interest, the debt is owed by the payer to the payee, or
 - (ii)** if the amount is a lease financing amount, the lease is between the payer and payee;
- (c)** where the payer is not a financial institution group entity, the payee is not a financial institution group entity;
- (d)** throughout the relevant period and at the time of payment
 - (i)** each of the payer and payee is
 - (A)** a taxable Canadian corporation, or
 - (B)** a partnership, no member of which is a natural person, a trust or a corporation that is not a taxable Canadian corporation, and
 - (ii)** one of the following conditions is met:
 - (A)** if the payee is a partnership, all the members of the payee (other than another partnership) are eligible group entities in respect of
 - (I)** if the payer is a partnership, each member of the payer (other than another partnership), or
 - (II)** in any other case, the payer, or
 - (B)** if the payee is not a partnership, the payee is an eligible group entity in respect of
 - (I)** if the payer is a partnership, each member of the payer (other than another partnership), or
 - (II)** in any other case, the payer; and
- (e)** the payer — or, if the payer is a partnership, each member of the payer — and the payee — or, if the payee is a partnership, each member of the payee — file with the Minister, in respect of the year or period of both the payer and the payee, a joint election in writing in prescribed manner under this paragraph that
 - (i)** specifies
 - (A)** the amount of the interest or lease financing amount,
 - (B)** if the amount is interest, the amounts outstanding, at the beginning and end of the relevant period, as or on account of the debt in respect of which this paragraph applies, and
 - (C)** if the amount is a lease financing amount, the fair market value of the particular property at the time the lease began, and
 - (ii)** is filed on or before the earliest of the filing-due date of
 - (A)** the payer for its year,
 - (B)** the payee for its year, and
 - (C)** if the payer or the payee is a partnership, any member of the payer or payee for the member’s taxation year that includes the end of the fiscal period of the payer or the payee, as the case may be. (*intérêts exclus*)

excluded lease for a taxation year of a taxpayer means a lease

- (a) to which the rules in subsection 16.1(1) apply;
- (b) that would not be considered to be a lease for a term of more than one year for purposes of paragraph (b) of the definition *specified leasing property* in subsection 1100(1.11) of the *Income Tax Regulations*; or
- (c) that is in respect of property
 - (i) that would not be considered, at the time the lease was entered into, to have a fair market value in excess of \$25,000 for purposes of paragraph (c) of that definition, or
 - (ii) that would be considered, at all times in the taxation year, exempt property for purposes of subsection 1100(1.13) of the *Income Tax Regulations*. (*bail exclu*)

exempt interest and financing expenses of a taxpayer for a taxation year means the total of all amounts, each of which would, if the description of A in the definition *interest and financing expenses* were read without reference to “exempt interest and financing expenses”, be included in interest and financing expenses of the taxpayer for that year, and that is incurred in respect of a borrowing or other financing (referred to in this definition as the “borrowing”) of the taxpayer or a partnership of which the taxpayer is a member (referred to in this definition as the “borrower”), if

- (a) the borrower entered into an agreement with a public sector authority to design, build and finance, or to design, build, finance, maintain and operate, real or immovable property owned by a public sector authority;
- (b) the borrowing was entered into by the borrower in respect of the agreement;
- (c) it can reasonably be considered that all or substantially all of the amount is directly or indirectly borne by the public sector authority; and
- (d) the amount was paid or payable to persons that deal at arm’s length with the borrower (other than any person or partnership that is, or does not deal at arm’s length with, a person or partnership that has a direct or indirect equity interest (within the meaning of subsection 18.21(1)) in the borrower). (*dépenses d’intérêts et de financement exonérées*)

financial institution group entity, for a taxation year, means a taxpayer that at any time in the year is

- (a) a bank;
- (b) a credit union;
- (c) an insurance corporation;
- (d) authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public;
- (e) an entity whose principal business consists of one or more of
 - (i) the lending of money to persons with whom the entity deals at arm’s length
 - (ii) the purchasing of debt obligations issued by persons with whom the entity deals at arm’s length, or
 - (iii) activities which principally give rise to amounts described in paragraphs (a) to (d) of variable A in the definition *interest and financing revenues* and are principally conducted with persons with whom the entity deals at arm’s length;
- (f) an entity that is
 - (i) an eligible group entity in respect of an entity described in any of paragraphs (a) to (e), and

(ii) authorized under provincial securities laws to engage in, and primarily engages in, the business of

(A) dealing in securities, or

(B) providing portfolio management, investment advice, fund administration or fund management; or

(g) a particular entity that is an eligible group entity in respect of any entity described in any of paragraphs (a) to (f) if all or substantially all of the activities of the particular entity are ancillary to the activities or business carried on by one or more entities described in paragraphs (a) to (f). (*entité du groupe d'institutions financières*)

fixed interest commercial trust at any time means a trust resident in Canada, if at that time

(a) the only beneficiaries that may for any reason receive, at or after that time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold fixed interests (as defined in subsection 94(1)) in the trust; and

(b) any of the conditions in clauses (h)(ii)(A) to (C) in the definition *exempt foreign trust* in subsection 94(1) is met. (*fiducie commerciale à participation fixe*)

foreign accrual property loss of a foreign affiliate for an affiliate taxation year has the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*. (*perte étrangère accumulée, relative à des biens*)

insurance holding corporation, for a taxation year, means a particular corporation if, throughout the year, the fair market value of the capital stock of the particular corporation is primarily attributable to any combination of shares or indebtedness of one or more insurance corporations that are subsidiary wholly-owned corporations (within the meaning of subsection 87(4.1)) of the particular corporation. (*société de portefeuille d'assurance*)

interest and financing expenses of a taxpayer for a particular taxation year means the amount determined by the formula

A – B

where

A is the total of all amounts (other than an amount that is included in exempt interest and financing expenses), each of which is

(a) an amount that

(i) is paid in, or payable in or in respect of, a year as, on account of, in lieu of payment of or in satisfaction of, interest (other than excluded interest for the particular year or an amount that is deemed to be interest under subsection 137(4.1)),

(ii) would, in the absence of this section, be deductible (other than under a provision referred to in subparagraph (c)(i)) by the taxpayer in computing its income for the particular year, and

(iii) is not described in any other paragraph in this definition;

(b) an amount that, in the absence of this section and on the assumption that it is not deductible under another provision of this Act (other than any of the provisions referred to in subparagraph (c)(i)), would be deductible in computing the taxpayer's income for the particular year under any of subparagraphs 20(1)(e)(ii) to (ii.2) and paragraphs 20(1)(e.1), (e.2) and (f);

(c) the portion of an amount, if

(i) the amount, in the absence of this section, would be deductible in computing the taxpayer's income for the particular year and is claimed by the taxpayer under paragraph 20(1)(a) or subsections 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2), 66.7(1), (2), (2.3), (3), (4), or (5), and

(ii) the portion can reasonably be considered to be attributable to an amount paid or payable on or after February 4, 2022 that either

(A) is described in subparagraph (a)(i), or

- (B)** would otherwise have been deductible in a taxation year under a provision referred to in paragraph (b), but for the application of another provision of this Act;
- (d)** the portion of an amount that would, in the absence of this section, be deductible in computing the taxpayer's income for the particular year under subsection 20(16), to the extent that the portion can reasonably be considered to be described in subparagraph (c)(ii);
- (e)** an amount that is paid or payable by the taxpayer in a year or that is a loss or a capital loss of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement, if the following conditions are met:
- (i)** the amount would, in the absence of this section
 - (A)** be deductible (other than under subparagraph 20(1)(e)(i)) in computing the taxpayer's income for the particular year, or
 - (B)** in the case of a capital loss, reduce the amount determined under paragraph 3(b) in respect of the taxpayer or be deductible in computing the taxpayer's taxable income for the particular year (except to the extent it has already been included under this paragraph for a previous year),
 - (ii)** the agreement or arrangement is entered into as or in relation to a borrowing or other financing that the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer enters into, whether currently or in the future, and absolutely or contingently, and
 - (iii)** the amount can reasonably be considered to increase (or be part of) the cost of funding with respect to the borrowing or other financing (including as a result of any hedge of the cost of funding or of the borrowing or other financing) of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer,
- (f)** a particular amount that
- (i)** is in respect of an agreement or arrangement that gives rise to, or can reasonably be expected to give rise to, an amount that
 - (A)** is included in computing a taxpayer's interest and financing expenses for a taxation year under paragraph (e), or
 - (B)** reduces the taxpayer's interest and financing expenses for a taxation year under the description of B,
 - (ii)** would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year,
 - (iii)** is not deductible under any of the provisions listed in paragraph (b), and
 - (iv)** is an expense or fee payable under the agreement or arrangement or an expense that is incurred in contemplation of, in the course of entering into or in relation to, the agreement or arrangement;
- (g)** a lease financing amount (other than in respect of an excluded lease for the particular year) that
- (i)** would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year, and
 - (ii)** is not excluded interest for the particular year,
- (h)** in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

$$C \times D/E - F - G$$

where

- C** is the total of all amounts, each of which is an amount that
- (i)** is deductible by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period, and that would be described in any of paragraphs (a) to (g) if the references to the taxpayer were read as references to the partnership, or

(ii) would be included under paragraph (j) in determining the interest and financing expenses of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section,

D is the taxpayer's share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period,

E is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period,

F is the amount, if any, included in computing the taxpayer's income under paragraph 12(1)(l.1) in respect of the amount referred to in the description of C, and

G is the portion of an amount determined for C that can reasonably be considered to not be deductible in computing the taxpayer's income for the particular year, and to not be included in computing the taxpayer's non-capital loss for the particular year, because of subsection 96(2.1);

(i) the portion of an amount that, in the absence of this section, would be deductible in computing the taxpayer's taxable income for the particular year and is claimed by the taxpayer under paragraph 111(1)(e) in respect of a partnership of which the taxpayer is a member that can reasonably be considered to be attributable to an amount referred to in the description of G in paragraph (h) in respect of a fiscal period of the partnership ending in another taxation year of the taxpayer; or

(j) in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the particular year, an amount determined by the formula

$$H \times I$$

where

H is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

I is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year; and

B is the total of all amounts, each of which is

(a) an amount received or receivable (other than as a dividend or in respect of exempt interest and financing expenses) by the taxpayer in a year, or a gain of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement to the extent that

(i) the amount is included in computing the taxpayer's income for the particular year,

(ii) the agreement or arrangement is entered into in relation to a borrowing or other financing of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer to hedge the cost of funding or the borrowing or other financing, and

(iii) the amount can reasonably be considered to reduce the cost of funding with respect to the borrowing or other financing of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, or

(b) in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

$$J \times K/L$$

where

J is an amount that would be described in paragraph (a) if

(i) the references to the taxpayer in that paragraph were read as references to the partnership, and

(ii) the reference in subparagraph (a)(i) to "the taxpayer's income for the particular year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period",

K is the taxpayer's share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, and

- L** is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period. (*dépenses d'intérêts et de financement*)

interest and financing revenues of a taxpayer for a taxation year means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts (other than any amount included under B of the definition *interest and financing expenses*), each of which is

(a) an amount received or receivable as, on account of, in lieu of payment or in satisfaction of, interest (other than excluded interest for the year, an amount that is deemed to be interest under subsection 137(4.1) or any amount described in any other paragraph in this definition) that is included in computing the taxpayer's income for the year,

(b) an amount that is included in computing the taxpayer's income for the year because of subsection 12(9) or section 17.1 (other than any amount described in any other paragraph in this definition),

(c) a fee or similar amount in respect of a guarantee, or similar credit support, provided by the taxpayer for the payment of any amount on a debt obligation owing by another person or partnership that is included in computing the taxpayer's income for the year (other than any amount described in any other paragraph in this definition),

(d) an amount received or receivable (other than as a dividend) by the taxpayer in the year, or a gain of the taxpayer for the year, as the case may be, under or as a result of an agreement or arrangement, if the following conditions are met:

(i) the amount is included in computing the taxpayer's income for the year,

(ii) the agreement or arrangement is entered into as or in relation to a loan or other financing owing to or provided by the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, and

(iii) the amount can reasonably be considered to increase (or be part of) the return of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer with respect to the loan or other financing (including as a result of any hedge of the return or of the loan or other financing);

(e) a lease financing amount (other than in respect of a lease that would be an excluded lease for the year, if the definition *excluded lease* were read without regard to its paragraph (a)) that

(i) is included in computing the taxpayer's income for the year, and

(ii) is not excluded interest for the year,

(f) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the following formula:

$$C \times D/E$$

where

C is the total of all amounts, each of which is an amount that

(i) is included by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period and that would be described in paragraphs (a) to (e) if the references to the taxpayer were read as references to the partnership, or

(ii) would be included under paragraph (g) in determining the interest and financing revenues of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section,

D is the taxpayer's share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, and

E is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, or

(g) in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year, an amount determined by the formula

$$F \times G - H$$

where

F is the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

G is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year, and

H is an amount that is deducted under subsection 91(4) in computing the taxpayer's income for any taxation year in respect of foreign accrual tax (within the meaning of subsection 95(1)) applicable to an amount that is included in the taxpayer's income under subsection 91(1) in respect of the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year; and

B is the total of all amounts, each of which is

(a) an amount paid or payable by the taxpayer in a year, or a loss or a capital loss of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement, to the extent that

(i) the amount

(A) is deductible in computing the taxpayer's income for the year, or

(B) in the case of a capital loss, reduces the amount determined under paragraph 3(b) in respect of the taxpayer or is deductible in computing the taxpayer's taxable income for the year (except to the extent it has already been taken into account in determining an amount under this paragraph for a previous year);

(ii) the agreement or arrangement is entered into in relation to a loan or other financing owing to or provided by the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, to hedge the return in respect of the loan or other financing, and

(iii) the amount can reasonably be considered to reduce the return of the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, in respect of the loan or other financing, or

(b) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

$$I \times J/K$$

where

I is an amount that would be described in paragraph (a) if

(i) the references to the taxpayer in that paragraph were read as references to the partnership, and

(ii) the reference in subparagraph (a)(i) to "the taxpayer's income for the year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period",

J is the taxpayer's share of the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period, and

K is the income or loss of the partnership from the source, or the source in a particular place, for the fiscal period. (*revenus d'intérêts et de financement*)

lease financing amount means an amount that is the portion of a particular payment in respect of a particular lease entered into by a taxpayer that would be considered to be on account of interest if

(a) the lessee had received a loan at the time the particular lease began and in a principal amount equal to the fair market value at that time of the property that is the subject of the particular lease;

(b) interest had been charged on the principal amount of the loan outstanding from time to time at the rate — determined in accordance with section 4302 of the *Income Tax Regulations* — in effect at the time described in paragraph (a), compounded semi-annually not in advance; and

(c) the particular payment was a blended payment of principal and interest, calculated in accordance with paragraph (b), on the loan applied firstly on account of interest on principal, secondly on account of interest on unpaid interest, and thirdly on account of principal. (*montant du crédit-bail*)

public sector authority means His Majesty in right of Canada, His Majesty in right of a province, an entity referred to in any of paragraphs 149(1)(c) to (d.6) or a registered charity that is a *school authority, public college, university, or hospital authority* (each having the same meaning as in subsection 123(1) of the *Excise Tax Act*). (*administration du secteur public*)

ratio of permissible expenses of a taxpayer for a taxation year means the percentage that is

(a) if the taxpayer's taxation year begins on or after October 1, 2023, and before January 1, 2024, 40%, other than for the purpose of determining the taxpayer's cumulative unused excess capacity for any taxation year that begins on or after January 1, 2024, and

(b) if the taxpayer's taxation year begins on or after January 1, 2024, and for the purposes referred to in paragraph (a) for which 40% is not the applicable percentage, 30%. (*ratio des dépenses admissibles*)

received capacity of a taxpayer that is a transferee for a taxation year, means an amount of received capacity of the taxpayer for the year under subsection (4). (*capacité reçue*)

relevant affiliate interest and financing expenses of a controlled foreign affiliate of a taxpayer for an affiliate taxation year means the total of all amounts, each of which would be the affiliate's interest and financing expenses (determined without regard to paragraph (j) of the description of A in the definition *interest and financing expenses*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if

(a) the references in the definition *interest and financing expenses* to "in the absence of this section" were read as references to "in the absence of clause 95(2)(f.11)(ii)(D)"; and

(b) clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*dépenses d'intérêts et de financement de la société affiliée pertinentes*)

relevant affiliate interest and financing revenues of a controlled foreign affiliate of a taxpayer for an affiliate taxation year means the total of all amounts (other than, for greater certainty, an amount included in computing the affiliate's income or loss from an active business under paragraph 95(2)(a) or (2.44)(b)), each of which would be the affiliate's interest and financing revenues (determined without regard to paragraph (g) of the description of A in the definition *interest and financing revenues*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*revenus d'intérêts et de financement de la société affiliée pertinents*)

special purpose loss corporation, for a taxation year, means a particular corporation that

(a) is, at any time in the year, an eligible group entity in respect of an insurance holding corporation; and

(b) is formed or exists in whole or in part for the purpose of generating a loss of the particular corporation that is intended to be utilized by an eligible group entity in respect of the particular corporation. (*société à usage déterminé ayant subi des pertes*)

specified participating percentage of a taxpayer in respect of a controlled foreign affiliate of the taxpayer for an affiliate taxation year, means the percentage that would be the taxpayer's aggregate participating percentage, determined without regard to clause 95(2)(f.11)(ii)(D), in respect of the affiliate for the affiliate taxation year, if the definition *participating percentage* in subsection 95(1) were read without reference to

(a) its paragraph (a); and

(b) the portion of its paragraph (b) before its subparagraph (b)(i). (*pourcentage de participation déterminé*)

taxpayer does not include a natural person or a partnership. (*contribuable*)

transaction includes an arrangement or event. (*opération*)

transferred capacity of a taxpayer that is a transferor for a taxation year, means an amount of transferred capacity of the taxpayer for the year under subsection (4). (*capacité transférée*)

Excessive interest and financing expenses limitation

(2) Notwithstanding any other provision of this Act, in computing the income for a taxation year of a taxpayer (other than an excluded entity for the year) from a business or property or the taxable income of the taxpayer for the year, no deduction shall be made in respect of any amount that is described in any of paragraphs (a) to (g) or (i) of the description of A in the definition *interest and financing expenses* in subsection (1) that would, in the absence of this section, be deductible in computing that income or taxable income to the extent of the proportion of that amount that is determined by the formula:

$$(A - (B + C + D + E))/F$$

where

A is the taxpayer's interest and financing expenses for the year,

B is

(a) if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection; and

(b) in any other case, the amount determined by the formula

$$G \times H$$

where

G is the taxpayer's ratio of permissible expenses for the year, and

H is the taxpayer's adjusted taxable income for the year,

C is the taxpayer's interest and financing revenues for the year,

D is the amount by which the total of all amounts each of which is an amount of received capacity of the taxpayer for the year, as determined under subsection (4), exceeds the total amount deductible under paragraph 111(1)(a.1) for the year,

E is the amount of the taxpayer's absorbed capacity for the year, and

F is

(a) if no amount is included in the taxpayer's interest and financing expenses for the year under paragraph (j) of the description of A of that definition, or under paragraph (h) of the description of A of that definition in respect of a controlled foreign affiliate of a partnership of which the taxpayer is a member, the amount determined for A in that definition for the taxpayer for the year; or

(b) in any other case, the amount that would be determined for A in the definition *interest and financing expenses* for the taxpayer for the year if the reference to "the affiliate's interest and financing expenses" in the definition *relevant affiliate interest and financing expenses* were read as a reference to "an amount determined for A in the definition *interest and financing expenses* for the affiliate".

Amount deemed deducted

(3) All or any portion, of a particular amount described in paragraph (c) or (d) of the description of A in the definition *interest and financing expenses*, that would, in the absence of subsection (2), have been deducted in computing the income of a taxpayer for a taxation year but that is not deductible because of subsection (2), is deemed to have been

deductible and to have been deducted in the year for purposes of determining, in respect of any taxpayer at any time, such of the following amounts to which the particular amount relates

- (a)** *total depreciation* allowed for property of a prescribed class, as defined in subsection 13(21);
- (b)** the amount the taxpayer may deduct under subsection 66(4);
- (c)** *cumulative Canadian exploration expense*, as defined in subsection 66.1(6);
- (d)** *cumulative Canadian development expense*, as defined in subsection 66.2(5);
- (e)** *cumulative foreign resource expense* in respect of a country, as defined in subsection 66.21(1);
- (f)** *cumulative Canadian oil and gas property expense*, as defined in subsection 66.4(5); or
- (g)** the amount the taxpayer may deduct under subsections 66.7(1), (2), (2.3), (3), (4) or (5).

Transfer of cumulative unused excess capacity

(4) For the purposes of this section, a taxpayer and another taxpayer (referred to in this section as the “transferor” and the “transferee”, respectively) may jointly elect in prescribed form to designate an amount equal to all or a portion of the transferor’s cumulative unused excess capacity, and that amount is an amount of transferred capacity of the transferor for a taxation year and an amount of received capacity of the transferee for a taxation year, if

- (a)** the taxation year of the transferor ends in the taxation year of the transferee;
- (b)** each of the transferor and the transferee is
 - (i)** a taxable Canadian corporation or a fixed interest commercial trust throughout its taxation year, and
 - (ii)** an eligible group entity in respect of the other at the end of its taxation year;
- (c)** where the transferor is a financial institution group entity or an insurance holding corporation for its taxation year, the transferee is, for its taxation year,
 - (i)** a financial institution group entity,
 - (ii)** an insurance holding corporation, or
 - (iii)** a special purpose loss corporation;
- (d)** the election or amended election
 - (i)** specifies the amount of the transferred capacity, and
 - (ii)** is filed with the Minister
 - (A)** on or before the later of the filing-due date of
 - (I)** the transferor for its taxation year, and
 - (II)** the transferee for its taxation year, or
 - (B)** on or before the day that is 90 days after the day of sending of
 - (I)** a notice of assessment of tax payable under this Part by the transferor or the transferee for their respective taxation years, or

(II) a notification that no tax is payable under this Part by the transferor or the transferee for their respective taxation years;

(e) the total of all amounts each of which would, if this subsection were read without reference to this paragraph, be an amount of transferred capacity of the transferor for its taxation year in respect of any transferee, does not exceed the transferor's cumulative unused excess capacity for the year;

(f) if the transferee is an insurance holding corporation and the transferor is a financial institution group entity, the following condition is met:

$$A \geq B$$

where

A is the total of all amounts, each of which is an amount that is included in computing the income of the insurance holding corporation for its taxation year in respect of excluded interest, the payer of which is a financial institution group entity or a special purpose loss corporation for the taxation year of the payer in which the interest is payable, and

B is the total of all amounts, each of which would, in the absence of this paragraph, be an amount of

(i) received capacity of the insurance holding corporation for its taxation year, and

(ii) transferred capacity of a financial institution group entity for one of its taxation years;

(g) if the transferee is a special purpose loss corporation and the transferor is a financial institution group entity, the following condition is met:

$$C \geq D$$

where

C is the total of all amounts, each of which is an amount that

(i) would, in the absence of this section, be deductible in computing the income of the special purpose loss corporation for its taxation year,

(ii) is paid or payable to an insurance holding corporation,

(iii) meets the conditions of paragraphs (a) to (d) of the definition *excluded interest*, and

(iv) gives rise to a loss that is intended to be utilized solely by a financial institution group entity, and

D is the total of all amounts, each of which would, in the absence of this paragraph, be an amount of

(i) received capacity of the special purpose loss corporation for its taxation year, and

(ii) transferred capacity of a financial institution group entity for one of its taxation years;

(h) an amended election has not been filed in accordance with this section;

(i) where the election is an amended election,

(i) the following conditions are met:

(A) in the absence of any assessment, the condition in paragraph (e) would be met in respect of a prior election under this subsection made by the transferor and transferee for their respective taxation years, and

(B) subsection (9) does not apply to a tax benefit in respect of a prior election for the taxation year of the transferor or transferee, or

(ii) the Minister grants permission to amend the prior election under subsection (5); and

(j) the transferee files an information return in accordance with subsection (6) for the calendar year in which the transferee's taxation year ends.

Late or amended election

(5) The Minister may extend the time for making an election, or grant permission to amend an election, under subsection (4) if

- (a)** the transferor and the transferee demonstrate to the satisfaction of the Minister that
 - (i)** the transferor, the transferee and each other eligible group entity in respect of the transferor and transferee made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and
 - (ii)** the election or amended election, as the case may be, is filed as soon as circumstances permit; and
- (b)** in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made or amended.

Summary – cumulative unused excess capacity transfers

(6) If one or more elections are filed under subsection (4), in which amounts are designated as received capacity of a particular transferee for a taxation year ending in a calendar year, the particular transferee shall file with the Minister for the calendar year an information return in prescribed form within six months after the end of the calendar year in respect of

- (a)** each such election; and
- (b)** each election filed under subsection (4) for a taxation year ending in the calendar year, by any other transferee that is an eligible group entity in respect of the particular transferee at the end of the other transferee's taxation year.

Summary – filing by designated filer

(7) For the purposes of this section, if any taxpayer is required to file an information return for a calendar year under subsection (6), the taxpayer is deemed to have filed the information return if

- (a)** an information return under subsection (6) is filed for the calendar year by any other taxpayer (referred to in this subsection as the “designated filer” in respect of the taxpayer for the year) that is an eligible group entity in respect of the taxpayer at the end of the taxpayer's taxation year ending in the calendar year; and
- (b)** the taxpayer jointly elects, with each other transferee described in paragraph (6)(b), to designate under this paragraph the designated filer to be a designated filer in respect of the taxpayer and each other transferee for the calendar year.

Assessment

(8) If an election or an amended election has been made under subsection (4), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

Anti-avoidance – group status

(9) If, at any time, a particular taxpayer becomes or ceases to be an eligible group entity, in respect of another taxpayer, or a financial institution group entity and it may reasonably be considered, having regard to all the circumstances, that one of the main purposes of the particular taxpayer becoming or ceasing to be an eligible group entity, in respect of the other taxpayer, or a financial institution group entity is to enable any taxpayer to obtain a tax benefit (within the meaning of subsection 245(1)), the particular taxpayer is deemed not to have become, or to remain, as the case may be, an eligible group entity, in respect of the other taxpayer, or a financial institution group entity, as the case may be, at that time.

Benefits conferred

(10) For the purposes of this Part, if a transferor and a transferee file an election (including an amended election) under subsection (4), no benefit is considered to have been conferred on the transferee as a consequence of the election.

Consideration for election

(11) For the purposes of this Part, if property is acquired at any time by a transferor as consideration for filing an election or amended election with a transferee under subsection (4)

- (a)** where the property was owned by the transferee immediately before that time,
 - (i)** the transferee is deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and
 - (ii)** no amount may be deducted in computing the transferee's income as a consequence of the transfer of the property, except any amount arising as a consequence of subparagraph (i);
- (b)** the cost at which the property was acquired by the transferor at that time is deemed to be equal to the fair market value of the property at that time; and
- (c)** the transferor is not required to add an amount in computing income solely because of the acquisition at that time of the property.

Partnerships

(12) For the purposes of this section,

- (a)** a person or partnership that is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership; and
- (b)** a person's share of the income or loss of a partnership includes the person's direct or indirect, through one or more other partnerships, share of that income or loss.

Anti-avoidance – interest and financing revenues and expenses

(13) A particular amount that would, in the absence of this subsection, be included under the description of A of the definition *interest and financing revenues*, or the description of B of the definition *interest and financing expenses*, in computing the income or loss of a taxpayer for a taxation year, must not be so included, if

- (a)** an amount in respect of the particular amount is deductible in computing the foreign accrual property income of a corporation that is a foreign affiliate, but not a controlled foreign affiliate, of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer;
- (b)** the particular amount is received or receivable, directly or indirectly and in whole or in part, by the taxpayer, or a partnership of which it is a member, from
 - (i)** a person that does not deal at arm's length with the taxpayer and that is
 - (A)** an excluded entity,
 - (B)** a natural person, or
 - (C)** if the taxpayer is not a financial institution group entity or an insurance holding corporation, a financial institution group entity; or
 - (ii)** a partnership of which a person described in subparagraph (i) is a member; or
- (c)** one of the main purposes of a transaction or series of transactions is to include the particular amount under the description of A of the definition *interest and financing revenues*, or the description of B of the definition *interest and financing expenses*, in computing the income or loss of the taxpayer for a taxation year and
 - (i)** the transaction or series results in an amount that

(A) is not included in the description of B of the definition *interest and financing revenues*, or the description of A of the definition *interest and financing expenses*, in computing the income or loss of the taxpayer, or of a person not dealing at arm's length with the taxpayer, for a taxation year, and

(B) is deductible in computing the income or loss for a taxation year of the taxpayer or a person or partnership not dealing at arm's length with the taxpayer, or

(ii) it can reasonably be considered that, in the absence of the transaction or series, the particular amount or an amount for which the particular amount was substituted

(A) would have been included in computing the income or loss for a taxation year (other than as a dividend) of the taxpayer, or a person or partnership not dealing at arm's length with the taxpayer, and

(B) would not have been included under the description of A of the definition *interest and financing revenues*, or the description of B of the definition *interest and financing expenses*, in computing the income or loss of the taxpayer or a person not dealing at arm's length with the taxpayer.

Anti-avoidance — excluded entity

(14) For the purposes of subparagraph (c)(iv) of the definition *excluded entity*, a person or partnership is deemed to be a tax-indifferent investor that does not deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer throughout a taxation year of the taxpayer if

(a) any portion of the interest and financing expenses of the taxpayer for the year is paid or payable by the taxpayer or any eligible group entity in respect of the taxpayer to the person or partnership as part of a transaction or series of transactions; and

(b) it can reasonably be considered that one of the main purposes of the transaction or series is to avoid that portion of the interest and financing expenses being paid or payable to a tax-indifferent investor that does not deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer.

Deemed eligible group entities

(15) If two taxpayers are eligible group entities in respect of a third taxpayer, they are deemed to be eligible group entities in respect of each other.

Eligible group entities — related

(16) For the purposes of paragraph (a) of the definition *eligible group entity* in subsection (1)

(a) despite subsection 104(1), a reference to a person that is a trust does not include a reference to the trustee or other persons that own or control the trust property; and

(b) a corporation of a trust is deemed not to be related to a taxpayer where the corporation or trust would, but for this paragraph, be related to the taxpayer solely because the taxpayer is controlled by His Majesty in right of Canada or a province.

Eligible group entities — affiliated

(17) For the purposes of paragraph (b) of the definition *eligible group entity* in subsection (1), a corporation or a trust is deemed not to be affiliated with a taxpayer where that corporation or trust would, but for this subsection, be affiliated with the taxpayer solely because

(a) the taxpayer is controlled by His Majesty in right of Canada or a province; or

(b) if the corporation or trust is a registered charity or a non-profit organization with whom the taxpayer deals at arm's length, the corporation or trust is a *majority-interest beneficiary* (within the meaning of subsection 251.1(3)) of the taxpayer.

Group ratio – definitions

18.21 (1) The following definitions apply in this section.

acceptable accounting standards means International Financial Reporting Standards and the generally accepted accounting principles of

- (a) Canada;
- (b) Australia;
- (c) Brazil;
- (d) member states of the European Union;
- (e) member states of the European Economic Area;
- (f) Hong Kong (China);
- (g) Japan;
- (h) Mexico;
- (i) New Zealand;
- (j) the People’s Republic of China;
- (k) the Republic of India;
- (l) the Republic of Korea;
- (m) Singapore;
- (n) Switzerland;
- (o) the United Kingdom; and
- (p) the United States. (*principes comptables acceptables*)

consolidated financial statements means financial statements prepared in accordance with a relevant acceptable accounting standard in which the assets, liabilities, income, expenses and cash flows of two or more entities are presented as those of a single economic entity and, for greater certainty, the financial statements include the notes to the financial statements. (*états financiers consolidés*)

consolidated group means two or more entities (each referred to in this section as a “member of the consolidated group”), including an ultimate parent, in respect of which consolidated financial statements are required to be prepared for financial reporting purposes or that would be so required if the entities were subject to International Financial Reporting Standards. For these purposes, an equity-accounted entity is not considered to be a member of the consolidated group. (*groupe consolidé*)

equity-accounted entity means an entity the net income or loss of which is included in the consolidated financial statements of a consolidated group under the equity method of accounting. (*entité comptabilisée à la valeur de consolidation*)

equity interest means any of the following:

- (a) a share of the capital stock of a corporation;
- (b) an interest as a beneficiary under a trust;

- (c) an interest as a member of a partnership; or
- (d) any similar interest in respect of any entity. (*participation au capital*)

fair value amount means any amount reflected in the net income or net loss reported in the consolidated financial statements of a consolidated group for a relevant period where

- (a) the carrying value of any asset or liability of the consolidated group is measured using the fair value method of accounting; and
- (b) the amount reflects a change in the carrying value of the asset or liability during the relevant period and is included in either variable C or H in the definition *group adjusted net book income*. (*montant de la juste valeur*)

group adjusted net book income, of a consolidated group for a relevant period, means the amount determined by the formula

$$A - B$$

where

A is the amount determined by the formula

$$C + D + E + F + G$$

where

- C** is the amount, if any, of net income reported in the consolidated financial statements of the group for the period,
- D** is the amount, if any, of income tax expense reported in those statements,
- E** is the amount that would be the specified interest expense of the group for the period if the definition *specified interest expense* were read without reference to paragraph (b) of the description of A,
- F** is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of
 - (a) a depreciation or amortization expense in respect of an asset,
 - (b) a charge in respect of the impairment or write-off of an asset referred to in paragraph (a),
 - (c) a loss on the disposal of an asset referred to in paragraph (a),
 - (d) if an election is made under subsection (4) and the net fair value amount for the period is negative, the net fair value amount, or
 - (e) an expense, charge, deduction or loss that is similar to any of those referred to in paragraphs (a) to (d), and
- G** is the total of all amounts referred to in the description of D or F that are included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss, and

B is the amount determined by the formula

$$H + I + J + K + L + M + N$$

where

- H** is the amount, if any, of net loss reported in those statements,
- I** is the amount, if any, of income tax recoverable reported in those statements,
- J** is the specified interest income of the group for the period,
- K** if an election is made under subsection (4) and the net fair value amount for the period is positive, the net fair value amount,

- L** is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of a gain on the disposal of an asset referred to in paragraph (a) of the description of F, to the extent that the sale proceeds do not exceed the original cost of the asset,
- M** is the total of all amounts referred to in the description of I, K or L that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss, and
- N** is the total of all amounts, each of which is the portion of net income reported in those statements that can reasonably be considered to be earned by a borrower (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) in respect of a borrowing (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) that results in exempt interest and financing expenses of the borrower. (*bénéfice net comptable rajusté du groupe*)

group net interest expense, of a consolidated group for a relevant period, means the amount determined by the formula

$$A - B$$

where

A is the amount determined by the formula

$$C - D$$

where

C is the specified interest expense of the group for the period, and

D is the specified interest income of the group for the period, and

B is the total of all amounts each of which is an amount determined, in respect of a specified non-member of the group, by the formula

$$E - F$$

where

E is the portion of the amount of the specified interest expense of the group for the period that is paid or payable to the specified non-member, and

F is the portion of the amount of the specified interest income of the group for the period that is received or receivable from the specified non-member. (*dépenses nettes d'intérêts du groupe*)

group ratio, of a consolidated group for a relevant period, means

(a) except where paragraph (b) applies, the percentage determined by the formula

$$A/B$$

where

A is the group net interest expense of the consolidated group for the relevant period, and

B is the group adjusted net book income of the consolidated group for the relevant period; and

(b) if the group adjusted net book income of the consolidated group for the relevant period is nil, nil. (*ratio de groupe*)

net fair value amount means the positive or negative amount that is the total of all amounts, each of which is a positive or negative fair value amount in the consolidated financial statements of the consolidated group for a relevant period. (*montant de la juste valeur net*)

relevant period means a period in respect of which the consolidated financial statements of a consolidated group are presented. (*période pertinente*)

specified interest expense, of a consolidated group for a relevant period, means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts (other than amounts that are included in exempt interest and financing expenses), each of which is

(a) an amount of interest expense used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period;

(b) an amount of capitalized interest used in determining the amounts reported in those statements;

(c) the amount of a guarantee fee, standby charge, arrangement fee or similar fee paid or payable that is used in determining the amounts reported in those statements and that is not included in paragraph (a) or (b); or

(d) an amount referred to in any of paragraphs (a) to (c) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss, and

B is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to (d) of the description of A. (*dépenses d'intérêts déterminées*)

specified interest income, of a consolidated group for a relevant period, means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

(a) an amount of interest income used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period;

(b) the amount of a guarantee fee, standby charge, arrangement fee or similar fee received or receivable that is used in determining the amounts reported in those statements and that is not included in paragraph (a); or

(c) an amount referred to in paragraph (a) or (b) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that income or loss, and

B is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to (c) of the description of A. (*revenus d'intérêts déterminés*)

specified non-member, of a consolidated group for a relevant period, means a particular person or partnership that is not a member of the consolidated group and that, at any time in the period,

(a) does not deal at arm's length with a member of the group;

(b) alone or together with persons or partnerships with whom the particular person or partnership does not deal at arm's length owns, or has the right to acquire, one or more equity interests in a member of the group that

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the member, if the member is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the member; or

(c) is a person or partnership in respect of which a member of the group – alone or together with persons or partnerships with whom the member does not deal at arm's length – owns, or has the right to acquire, one or more equity interests in the particular person or partnership that

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the particular person, if the particular person is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the particular person or partnership. (*non-membre déterminé*)

ultimate parent means a particular entity if

(a) it holds directly or indirectly an interest in one or more other entities in respect of which it is required to prepare consolidated financial statements for financial reporting purposes, or would be so required if it was subject to International Financial Reporting Standards; and

(b) no other entity holds, directly or indirectly, in that particular entity an interest that is described in paragraph (a). (*mère ultime*)

Allocated group ratio amount

(2) A taxpayer and each corporation or trust that is, throughout the relevant period, an eligible group entity in respect of that taxpayer and a member of the same consolidated group as the taxpayer (the taxpayer and each of the corporations or trusts being referred to in this subsection and subsection (4) as a “Canadian group member”) may jointly elect in respect of their taxation years ending in the relevant period (each referred to in this subsection and subsection (4) as a “relevant taxation year”) to allocate amounts in respect of each relevant taxation year and the amount allocated to a member for a relevant taxation year is the amount determined in respect of that member for that relevant taxation year for the purposes of this section and subsection 18.2(2), if

(a) the consolidated financial statements of the consolidated group for the relevant period are audited financial statements;

(b) the election or amended election

(i) specifies the amount allocated to each Canadian group member for each relevant taxation year, and

(ii) is filed with the Minister on or before

(A) the latest filing-due date of a Canadian group member for a relevant taxation year, or

(B) the day that is 90 days after the sending of

(I) a notice of assessment of tax payable under this Part by a Canadian group member for a relevant taxation year, or

(II) a notification that no tax is payable under this Part by a Canadian group member for a relevant taxation year;

(c) the total of all amounts, each of which is an amount allocated to a Canadian group member for a relevant taxation year, does not exceed the least of

(i) unless the group ratio of the consolidated group for the relevant period is nil, the total of all amounts in respect of a member each of which is determined by the formula

$$A \times B$$

where

A is the group ratio of the consolidated group for the relevant period, and

B is the adjusted taxable income of the member for each relevant taxation year,

(ii) the group net interest expense of the consolidated group in respect of the relevant period, and

(iii) the total of all amounts, each of which would, in the absence of section 257, be the adjusted taxable income of a member for each relevant taxation year;

- (d) an amended election has not been filed in accordance with this section; and
- (e) where the election is an amended election,
 - (i) the following conditions are met:
 - (A) in the absence of any assessment, the condition in paragraph (c) would be met in respect of a prior election under this subsection made by the Canadian group members for a relevant taxation year under this subsection, and
 - (B) subsection 18.2(9) does not apply to a tax benefit in respect of a prior election for the relevant period, or
 - (ii) the Minister grants permission to amend the prior election under subsection (3).

Late or amended election

(3) The Minister may extend the time for making an election or grant permission to amend or revoke an election under subsection (2) if

- (a) the Canadian group members demonstrate to the satisfaction of the Minister that
 - (i) they made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and
 - (ii) the election or amended election, as the case may be, is filed as soon as circumstances permit; and
- (b) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made, amended or revoked.

Fair value adjustments — election

(4) For the purposes of calculating group adjusted net book income, the following rules apply:

- (a) no net fair value amount may be included in the calculation for any relevant period unless the Canadian group members jointly elect, for the first relevant taxation year in respect of which the Canadian group members jointly elect under subsection (2), to include net fair value amounts in calculating group adjusted net book income for the relevant period in which the first relevant taxation year ends;
- (b) if an election to include net fair value amounts in the calculation is not made in the first relevant taxation year, each Canadian group member is deemed not to have so elected in that taxation year and any subsequent taxation year; and
- (c) if an election to include net fair value amounts in the calculation is made in the first relevant taxation year, each Canadian group member is deemed to have so elected in that taxation year and any subsequent taxation year.

Assessment

(5) If an election or amended election has been made under subsection (2), the Minister shall, notwithstanding subsection 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

Use of accounting terms

(6) For the purposes of the definitions *consolidated financial statements*, *consolidated group*, *equity-accounted entity*, *fair value amount*, *group adjusted net book income*, *specified interest expense*, *specified interest income* and *ultimate parent* in subsection (1),

- (a) subject to paragraph (b), any term not otherwise defined shall have its meaning for financial reporting purposes under the relevant acceptable accounting standards; and

(b) the term “dividend” as used in the definitions *specified interest expense* and *specified interest income* in subsection (1) shall have its meaning otherwise applicable for the purposes of this Act.

Single member group

(7) For the purposes of this section, if a taxpayer is not a member of a consolidated group for a relevant period,

- (a) the taxpayer is deemed to be an eligible group entity in respect of itself;
- (b) the taxpayer is deemed to be
 - (i) a member of a consolidated group that comprises only itself, and
 - (ii) the ultimate parent of the group; and
- (c) the taxpayer’s financial statements are deemed to be consolidated financial statements.

Anti-avoidance — specified non-member

(8) A particular person or partnership that is not a member of a consolidated group for a relevant period is deemed to be a specified non-member in respect of the group for the period if a portion of the amount of the specified interest expense of the group is paid or payable by a member of the group to the particular person or partnership as part of a transaction or series of transactions where it can reasonably be considered that one of the main purposes of the transaction or series is to avoid the inclusion of that portion in the determination of the amount for E in the definition *group net interest expense* in subsection (1).

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023 except that

(a) subsection (1) also applies in respect of a taxation year of a taxpayer that begins before October 1, 2023 and ends after that day, if

- (i) any of the taxpayer’s three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and**
- (ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection (1) or 1(1) to the taxpayer or to increase an amount of excess capacity of any taxpayer determined under paragraphs (c) and (d);**

(b) paragraph (a) in the definition *ratio of permissible expenses* in subsection 18.2(1) of the Act is to be read, in respect of a taxpayer, as if its reference to “40%” were a reference to “30%” if

- (i) any taxation year of the taxpayer that begins on or after January 1, 2023 but before January 1, 2024 is, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and**
- (ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph (b) of that definition to the taxpayer;**

(c) for the purpose of determining the cumulative unused excess capacity of a taxpayer that is a corporation or a fixed interest commercial trust for a particular taxation year, the taxpayer’s excess capacity, for each of the three taxation years (in this paragraph and paragraph (d), each referred to as a “pre-regime year”) immediately preceding the first taxation year of the taxpayer in respect of which subsection (1) applies (referred to in this paragraph and paragraph (d) as the “first regime year” of the taxpayer), is deemed to be nil, unless

- (i) the taxpayer and each corporation or fixed interest commercial trust that is an eligible group entity in respect of the taxpayer at the end of the first regime year (referred to in this paragraph**

and paragraph (d) as an “eligible pre-regime group entity”) jointly elect in prescribed form to have paragraph (d) apply in respect of the taxpayer,

(ii) the election is filed with the Minister on or before the taxpayer’s filing-due date for its first regime year, and

(iii) in the election the taxpayer and the eligible pre-regime group entities allocate to the taxpayer or eligible pre-regime group entities in respect of the taxpayer, for the purpose of determining the taxpayer’s cumulative unused excess capacity for the particular taxation year and any other taxation year in which the taxpayer’s ratio of permissible expenses is the same as in the particular year, one or more portions of the group net excess capacity (within the meaning of subparagraph (d)(vi)) for the pre-regime years that is determined for that purpose; and

(d) if the conditions in subparagraphs (c)(i) to (iii) are satisfied, for the purpose of determining the taxpayer’s cumulative unused excess capacity for a particular taxation year and any other taxation year in which the taxpayer’s ratio of permissible expenses is the same as in the particular year, the taxpayer’s excess capacity for a pre-regime year (other than for the purposes of this paragraph) is determined in accordance with the following rules:

(i) for the purposes of this paragraph, the determination of whether a corporation or a fixed interest commercial trust is an eligible pre-regime group entity in respect of the taxpayer is to be made at the end of the taxpayer’s first regime year,

(ii) the “excess interest”, of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer, for a pre-regime year means the amount that would be determined for the pre-regime year under paragraph (b) of the definition *absorbed capacity*,

(iii) the “excess capacity otherwise determined” means the amount that would be the excess capacity of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year, if that amount were determined under the definition *excess capacity* in subsection 18.2(1),

(iv) for the purposes of this paragraph, if the taxpayer or an eligible pre-regime group entity in respect of the taxpayer was subject to a loss restriction event at the beginning of any of its pre-regime years, its excess capacity otherwise determined and excess interest for any pre-regime year that precedes that year are deemed to be nil,

(v) the “net excess capacity” of a taxpayer for its pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer for a pre-regime year,

(vi) the “group net excess capacity” for the pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer (other than a taxpayer or eligible pre-regime group entity that is a financial institution group entity at any time in the pre-regime years) for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer or an eligible pre-regime group entity (other than a taxpayer or eligible pre-regime group entity that is a financial institution group entity at any time in the pre-regime years) for a pre-regime year,

(vii) for the purposes of determining the excess capacity otherwise determined or the excess interest of the taxpayer or an eligible pre-regime group entity for a pre-regime year, the net excess capacity of the taxpayer or an eligible pre-regime group entity for its pre-regime years and the group net excess capacity for pre-regimes years,

(A) the ratio of permissible expenses is the same as the taxpayer’s ratio of permissible expenses for the particular year, and

(B) if it is the case that, in respect of a pre-regime year, the conditions in subsection 18.21(2) of the Act would be met in respect of the taxpayer and each eligible pre-regime group entity that is a member of the same consolidated group in respect of the year – if the reference in that subsection to the “filing–due date of a Canadian group member for the year” were read as a reference to the “filing–due date of any Canadian group member for its first regime year” – then that subsection applies in respect of the taxpayer and each such eligible pre-regime group entity for the pre-regime year,

(viii) the taxpayer’s excess capacity for a pre-regime year is deemed to be

(A) if the taxpayer’s net excess capacity for its pre-regime years is not a positive amount, nil, and

(B) in any other case, the lesser of

(I) the taxpayer’s excess capacity otherwise determined for the pre-regime year, and

(II) the portion, if any, of the group net excess capacity allocated to the taxpayer for the year in the joint election under paragraph (c), and

(ix) notwithstanding subparagraph (viii), the taxpayer’s excess capacity for each pre-regime year is deemed to be nil if

(A) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year in the joint election under paragraph (c) is greater than the group net excess capacity, or

(B) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer for a pre-regime year under the joint election is greater than the taxpayer’s net excess capacity for its pre-regime years.

4 (1) Paragraph 87(2.1)(a) of the Act is replaced by the following:

(a) determining the new corporation’s non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be, for any taxation year, and

(2) Subsection 87(2.1) of the Act is amended by adding the following after paragraph (a):

(a.1) determining, for any taxation year, the new corporation’s

(i) absorbed capacity, excess capacity and transferred capacity in determining its cumulative unused excess capacity for a taxation year, and

(ii) interest and financing expenses and interest and financing revenues in determining an amount under paragraph (h) in the description of B of the definition *adjusted taxable income* in subsection 18.2(1), and

(3) Paragraph 87(2.1)(b) of the Act is replaced by the following:

(b) determining the extent to which subsections 111(3) to 111(5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be,

(4) Paragraph 87(2.1)(d) of the Act is replaced by the following:

(d) the income of the new corporation (other than as a result of an amount of interest and financing expenses being deductible by the new corporation because of paragraph (a.1)) or any of its predecessors, or

(5) Subsections (1) and (3) apply in respect of amalgamations that occur on or after October 1, 2023.

(6) Subsections (2) and (4) apply in respect of amalgamations that occur in any taxation year.

5 (1) The portion of subsection 88(1.1) of the Act before paragraph (a) is replaced by the following:

Non-capital losses, etc., of subsidiary

(1.1) Where a Canadian corporation (in this subsection and subsection (1.11) referred to as the “subsidiary”) has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection and subsection (1.11) referred to as the “parent”) and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm’s length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on a particular business (in this subsection referred to as the “subsidiary’s loss business”) and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as the “subsidiary’s loss year”), and the portion of the restricted interest and financing expense of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the “subsidiary’s expense year”) that may reasonably be regarded as an expense or loss incurred by the subsidiary in the course of carrying on a particular business (in this subsection referred to as the “subsidiary’s expense business”) and any other portion of the restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, to the extent that it

(2) The portion of subsection 88(1.1) of the Act that follows paragraph (b) and precedes paragraph (c) is replaced by the following:

shall, for the purposes of this subsection, paragraphs 111(1)(a), (a.1), (c), (d) and (e), subsection 111(3) and Part IV,

(3) Subsection 88(1.1) of the Act is amended by deleting the “and” after paragraph (d) and by adding the following after paragraph (d.1):

(d.2) in the case of the portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in carrying on the subsidiary’s expense business, be deemed, for the taxation year of the parent in which the subsidiary’s expense year ended, to be a restricted interest and financing expense of the parent from carrying on the subsidiary’s expense business that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, and

(d.3) in the case of any other portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, be deemed, for the taxation year of the parent in which the subsidiary’s expense year ended, to be a restricted interest and financing expense of the parent that was incurred in respect of that other source and that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

(4) The portion of paragraph 88(1.1)(e) of the Act before subparagraph (i) is replaced by the following:

(e) if control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary’s non-capital loss, farm loss or restricted interest and financing expense for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary’s non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business, or restricted interest and financing expense as may reasonably be regarded as being the subsidiary’s expense or loss incurred in the course of carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year, is deductible only

(5) The portion of paragraph 88(1.1)(e) of the Act after subparagraph (ii) is replaced by the following:

and for the purpose of this paragraph, where this subsection applied to the winding-up of another corporation in respect of which the subsidiary was the parent and this paragraph applied in respect of losses and restricted interest and financing expenses of that other corporation, the subsidiary shall be deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses and restricted interest and financing expenses,

(6) Subsection 88(1.1) of the Act is amended by adding “and” at the end of paragraph (f) and the following after paragraph (f):

(g) any portion of a restricted interest and financing expense of the subsidiary that would otherwise be deemed by paragraph (d.2) or (d.3) to be a restricted interest and financing expense of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purpose of computing the parent’s taxable income for taxation years beginning after the commencement of the winding-up, to be a restricted interest and financing expense of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

(7) Section 88 of the Act is amended by adding the following after subsection (1.1):

Cumulative unused excess capacity of subsidiary

(1.11) If a subsidiary has been wound up in the circumstances described in subsection (1.1), the absorbed capacity, the excess capacity and any transferred capacity, of the subsidiary for any particular taxation year are – for the purpose of computing the cumulative unused excess capacity of the parent for any taxation year of the parent that commenced after the commencement of the winding up – deemed to be an amount of absorbed capacity, an amount of excess capacity and an amount of transferred capacity, respectively, of the parent for the taxation year of the parent in which the subsidiary’s particular taxation year ended.

(8) Subsections (1) to (7) apply in respect of windings-up that begin on or after October 1, 2023.

6 (1) The portion of subsection 91(1.2) of the Act before paragraph (a) is replaced by the following:

Deemed year-end

(1.2) If this subsection applies at a particular time in respect of a foreign affiliate of a particular taxpayer resident in Canada, then for the purposes of this section, sections 18.2 and 92 and clause 95(2)(f.11)(ii)(D),

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer’s three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

7 (1) Paragraph 92(1)(a) of the Act is replaced by the following:

(a) there shall be added in respect of that share any amount included in respect of that share under subsection 91(1) or (3) in computing the taxpayer’s income for the year or any preceding taxation year (or that would have been required to have been so included in computing the taxpayer’s income but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), except that, if the amount so included is greater than it otherwise would have been because of the application of clause 95(2)(f.11)(ii)(D), the amount added under this paragraph shall be the amount that would have been so included in the absence of that clause; and

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

8 (1) The portion of subsection 94.2(2) of the Act before paragraph (a) is replaced by the following:

(2) If this subsection applies at any time to a beneficiary under, or a particular person in respect of, a trust, then for the purposes of applying this section, section 18.2, subsections 91(1) to (4), paragraph 94.1(1)(a), section 95, the definition *restricted interest and financing expense* in subsection 111(8) and section 233.4 to the beneficiary under, and, if applicable, to the particular person in respect of, the trust

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

9 (1) Clause 95(2)(f.11)(ii)(A) of the Act is replaced by the following:

(A) this Act is to be read without reference to subsections 17(1), 18(4) and 18.2(2) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

(2) Subparagraph 95(2)(f.11)(ii) of the Act is amended by striking out "and" at the end of clause (B), adding "and" at the end of clause (C) and by adding the following after clause (C):

(D) if the foreign affiliate is a controlled foreign affiliate of the taxpayer at the end of the taxation year, and the taxpayer is not an excluded entity (as defined in subsection 18.2(1)) for its taxation year (referred to in this clause as the "taxpayer year") in which the taxation year ends,

(I) notwithstanding any other provision of this Act, no deduction shall be made in respect of any amount that is included in the affiliate's relevant affiliate interest and financing expenses (as defined in subsection 18.2(1)) for the taxation year, to the extent of the proportion of that amount that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year, and

(II) an amount is to be included, in determining the amount described in subparagraph (f)(ii) for the taxation year, that is equal to the amount that would be included under paragraph 12(1)(l.2) in determining the amount described in subparagraph (f)(ii) for the taxation year if

1 clause (A) were read without regard to its reference to subsection 18.2(2), and

2 the proportion that applied for purposes of subparagraph (ii) of the description of B in paragraph 12(1)(l.2) were the proportion that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year;

(3) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

10 (1) The portion of subsection 96(3) of the Act before paragraph (a) is replaced by the following:

Agreement or election of partnership members

(3) If a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 10.1(1), 13(4), (4.2) and (16), section 15.2, the definition *excluded interest* in subsection 18.2(1), subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5) and (9) to (11), section 80.04, subsections 86.1(2), 88(3.1), (3.3) and (3.5) and 90(3), the definition *relevant cost base* in subsection 95(4) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this Act were read without reference to this subsection, would be a valid agreement, designation or election,

(2) Subsection (1) applies in respect of taxation years that begin on or after October 1, 2023.

11 (1) Subsection 111(1) of the Act is amended by adding the following after paragraph (a):

Restricted interest and financing expenses

(a.1) restricted interest and financing expenses for taxation years preceding the year, but no amount is deductible for the year in respect of restricted interest and financing expenses except to the extent of the amount determined by the following formula:

$$A + B$$

where

A is the amount that would be the taxpayer's excess capacity for the year if the amount determined for C in paragraph (b) of the definition *excess capacity* in subsection 18.2(1) were nil, and

B is the total of all amounts, each of which is an amount of *received capacity* (as defined in subsection 18.2(1)) of the taxpayer for the year;

(2) The portion of subsection 111(3) of the Act before subparagraph (i.1) is replaced by the following:

Limitation on deductibility

(3) For the purposes of subsection (1),

(a) an amount in respect of a non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

(i) amounts deducted under this section in respect of that non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss in computing taxable income (or, in the case of a restricted interest and financing expense, in computing a non-capital loss) for taxation years preceding the particular taxation year,

(3) Paragraph 111(3)(a) of the Act is amended by striking out “and” at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) amounts claimed in respect of that limited partnership loss in computing taxable income for taxation years preceding the particular taxation year to the extent that subsection 18.2(2) denied a deduction in respect of those amounts for the preceding taxation year, and

(4) The portion of paragraph 111(3)(b) of the Act before subparagraph (ii) is replaced by the following:

(b) no amount is deductible in respect of a non-capital loss, restricted interest and financing expense, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

(i) in the case of a non-capital loss, the deductible non-capital losses,

(i.1) in the case of a restricted interest and financing expense, the restricted interest and financing expenses,

(5) The portion of paragraph 111(5)(a) of the Act before subparagraph (i) is replaced by the following:

Loss restriction event — certain losses and expenses

(5) If at any time a taxpayer is subject to a loss restriction event,

(a) no amount in respect of the taxpayer’s non-capital loss, restricted interest and financing expense or farm loss for a taxation year that ended before that time is deductible by the taxpayer for a taxation year that ends after that time, except that the portion of the taxpayer’s non-capital loss, restricted interest and financing expense or farm loss, as the case may be, for a taxation year that ended before that time as may reasonably be regarded as the taxpayer’s loss from carrying on a business or the taxpayer’s expense or loss incurred in the course of carrying on a business, as the case may be, and, if a business was carried on by the taxpayer in that year, the portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing the taxpayer’s taxable income for that year is deductible by the taxpayer for a particular taxation year that ends after that time

(6) The Act is amended by adding the following after subsection 111(5):

Loss restriction event – cumulative unused excess capacity

(5.01) If at any time a particular taxpayer is subject to a loss restriction event, the cumulative unused excess capacity of any taxpayer for any taxation year that ends after that time shall be determined without regard to any absorbed capacity, excess capacity or transferred capacity of the particular taxpayer for any taxation year that ended before that time.

(7) The definition *non-capital loss* in subsection 111(8) is amended by replacing paragraph (b) of the description of E with the following:

(b) an amount deducted under paragraph (1)(a.1) or (b) or section 110.6, or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (k), section 112 and subsections 113(1) and 138(6), in computing the taxpayer’s taxable income for the year, or

(8) Subsection 111(8) of the Act is amended by adding the following in alphabetical order:

restricted interest and financing expense of a taxpayer for a taxation year means the amount determined by the formula

$$A + B + C$$

where

A is the total of all amounts each of which is the portion of an amount that is not deductible in computing the income for the taxation year of the taxpayer from a business or property, or the taxable income of the taxpayer for the year, because of subsection 18.2(2),

B is the amount determined under paragraph 12(1)(l.2) in respect of the taxpayer for the taxation year, and

C is the total of all amounts, each of which is an amount determined by the formula

$$D \times E$$

where

D is the portion of an amount that is not deductible because of subclause 95(2)(f.11)(ii)(D)(I), or an amount that is included because of subclause 95(2)(f.11)(ii)(D)(II), in determining, in respect of the taxpayer for an affiliate taxation year (as defined in subsection 18.2(1)) of a controlled foreign affiliate of the taxpayer ending in the taxation year, an amount of the affiliate that is described in subparagraph 95(2)(f)(ii), and

E is the taxpayer's specified participating percentage (as defined in subsection 18.2(1)) in respect of the affiliate for the affiliate taxation year; (*dépense d'intérêts et de financement restreinte*)

(9) The portion of subsection 111(9) of the Act before paragraph (a) is replaced by the following:

Exception

(9) In this section, a taxpayer's non-capital loss, restricted interest and financing expense, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which the taxpayer was not resident in Canada shall be determined as if

(10) Subsections (1) to (9) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) to (8) also apply in respect of a taxation year of a taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

12 (1) Subsection 248(1) of the Act is amended by adding the following definitions in alphabetical order:

absorbed capacity has the same meaning as in subsection 18.2(1); (*capacité absorbée*)

cumulative unused excess capacity has the same meaning as in subsection 18.2(1); (*capacité excédentaire cumulative inutilisée*)

excess capacity has the same meaning as in subsection 18.2(1); (*capacité excédentaire*)

interest and financing expenses has the same meaning as in subsection 18.2(1), except for the purposes of the definition *economic profit* in subsection 126(7); (*dépenses d'intérêts et de financement*)

interest and financing revenues has the same meaning as in subsection 18.2(1); (*revenus d'intérêts et de financement*)

restricted interest and financing expense has the same meaning as in subsection 111(8); (*dépense d'intérêts et de financement restreinte*)

transferred capacity has the same meaning as in subsection 18.2(1); (*capacité transférée*)

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

13 (1) The definition *specified provision* in subsection 256.1(1) of the Act is replaced by the following:

specified provision means any of subsections 10(10) and 13(24), paragraph 37(1)(h), subsections 66(11.4) and (11.5), 66.7(10) and (11), 69(11) and 111(4), (5), (5.01), (5.1) and (5.3), paragraphs (j) and (k) of the definition *investment tax credit* in subsection 127(9), subsections 181.1(7) and 190.1(6) and any provision of similar effect. (*dispositions déterminées*)

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the reasons of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

14 (1) The portion of subsection 5903(5) of the *Income Tax Regulations* before paragraph (a) is replaced by the following

(5) For the purposes of this section, section 5903.1 and section 18.2 of the Act,

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

15 (1) Subparagraph (a)(iii) of the definition *earnings* in subsection 5907(1) of the Regulations is replaced by the following

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 18(4), 18.2(2), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

(2) Paragraph (b) of the definition *net earnings* in subsection 5907(1) of the Regulations is replaced by the following:

(b) in respect of foreign accrual property income is the amount that would be its foreign accrual property income for the year, if the formula in the definition *foreign accrual property income* in subsection 95(1) of the Act were read without reference to F and F.1 in that formula and the amount determined for E in that formula were the amount determined under paragraph (a) of the description of E in that formula and the Act were read without regard to its clause 95(2)(f.11)(ii)(D), minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of that income,

(3) Subclause (b)(i)(A)(I) of the definition *net loss* in subsection 5907(1) of the Regulations is replaced by the following:

(I) the amount that would be determined for D in the formula in the definition *foreign accrual property income* in subsection 95(1) of the Act for the year, if the Act were read without regard to its clause 95(2)(f.11)(ii)(D),

(4) Subsections (1) to (3) apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsections (1) to (3) also apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before October 1, 2023 and ends after that day if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of subsection 1(1) or 3(1) to the taxpayer.

