Explanatory Notes Relating to the Income Tax Act and Other Legislation

Published by

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

November 2022

Department of Finance Canada
Ministère des Finances Canada

Preface

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

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

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

Table of Contents

Clause in Legislation	Section Amended	Topic	Page
		Part 1 – Amendments to the Income Tax Act and Other Legislation	
Income Tax Act			
2	12	Inclusions	7
3	18	Deductions	8
4	40	General rules	10
5	56	Amounts to be included in income for the year	10
6	60	Other deductions	10
7	66	Resource expenses	11
8	66.1	Definitions	14
9	74.5	Sections 74.1 to 74.3 not applicable	14
10	75	Exceptions	15
11	87	Amalgamations	15
12	88	Winding-up	16
13	104	Reference to trust or estate	16
14	107	Other distributions	17
15	108	Trusts and their Beneficiaries	17
16	116	Exception – underused housing tax	18
17	118.05	First-time home buyers' tax credit	19
18	118.2	Medical Expenses	19
19	122.92	Multigenerational Home Renovation Tax Credit	20
20	123.6	Additional Tax on Banks and Life Insurers	26
21	125	Business limit reduction	28
22	127	Investment tax credit	29
23	128.1	Changes in Residence	37
24	132	Mutual Fund Trusts	37
25	132.2	General	43
26	138	Insurance Corporations	44
27	138.1	Rules relating to segregated funds	55
28	142.51	Definitions	56
29	146	Registered Retirement Savings Plans	57
30	146.3	Registered Retirement Income Funds	58
31	146.6	First Home Savings Account	58
32	148	Life Insurance Policies	72
33	149	Miscellaneous exemptions	73
34	149.1	Qualified Donees	73
35	150	Returns	75
36	152	Assessment	78
37	153	Payment of Tax	79
38	160	Tax liability re property transferred not at arm's length	79
39	160.01	Definitions	82

40	160.2	Joint and several liability – FHSA	85
41	161	General	85
42	163	False statement or omission – trust return	85
43	181	Prescribed expressions	86
44	181.3	Capital of a financial institution	87
45	190	Definitions	90
46	190.1	Deduction	91
47	190.13	Capital	91
48	191.5	Canada Recovery Dividend	92
49	204.6	Tax payable	95
50	207.01	Definitions	97
51	207.021	Tax payable on excess FHSA amount	100
52	207.06	Waiver of tax payable	102
53	212	Tax on income from Canada of non-resident persons	102
54	231.1	Information gathering	107
55	241	Certain qualified donees	109
56	245	Definitions	110
57	248	Interpretation	111
58	253.1	Investments in limited partnerships	111

Canada Deposit Insurance Corporation Act

59	5	First home savings account	112

Excise Tax Act

60	98	Inspection	112
61	285.03	Avoidance planning	113
62	288	Inspection	116
63	298	Period for assessment	117
64	325	Tax liability re transfers not at arm’s length	117

Air Travellers Security Charge Act

65	70	Inspection	120

Excise Act, 2001

66	260	Inspection	121
67	297	Liability re transfers not at arm’s length	122

Greenhouse Gas Pollution Pricing Act

68	141	Inspection	124
69	161	Charge liability – transfers not at arm’s length	125

Income Tax Regulations

70	100	Interpretation	128
71	103	Non-Periodic Payments	129
72	204.2	Additional Reporting – Trusts	129
73	205	Date returns to be filed	130

74	205.1	Electronic filing	131
75	209	Distribution of taxpayers' portion of returns	131
76	219	Information returns – FHSA	132
77	309.1	Income from participating life insurance businesses	133
78	1400	Insurance Business Policy Reserves	133
79	1402	Non-Life and Life Insurance Businesses	136
80	1404	Life Insurance Policy Reserves	137
81	1405	Life Insurance Policy Reserves	139
82	1406	Life Insurance Policy Reserves	139
83	1407	Life Insurance Policy Reserves	139
84	1408	Insurance Businesses	139
85	2400	Insurers	141
86	2401	Designation rules	154
87	4802	Master trust	155
88	4900	Qualified investments for registered plans	155
89	5202	Interpretation	156
90	8600	Taxable Capital Employed in Canada	156
91	8605	Taxable Capital Employed in Canada	158
92	Schedule II	Deduction for Depreciation	160

Part 1 – Amendments to Income Tax Act and Other Legislation

Amendments to the *Income Tax Act* (the "Act" or "ITA")

Clause 2

Flipped property – deemed business

ITA
12(12)

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

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

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

Definition of "flipped property"

ITA
12(13)

Subsection 12(13) provides the definition "flipped property", which is relevant for new subsections 12(12) and (14).

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

- is located in Canada;
- would not be inventory of the taxpayer if the definition "inventory" was read without reference to new subsection 12(12) (this prevents circularity and ensures that only a property that would otherwise be a capital property is subject to the rules in subsections (12) and (14)); and
- was owned by the taxpayer for less than 365 consecutive days prior to the disposition of the property.

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

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

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

Flipped property – loss denial

ITA
12(14)

New subsection 12(14) provides that a taxpayer's loss from a business in respect of a flipped property, if any, is deemed to be nil. Accordingly, a taxpayer cannot realize a business loss solely because of a capital property being considered a flipped property and deemed to be inventory under subsection 12(12).

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

Clause 3

Fees – individual savings plans

ITA
18(1)(u)

Paragraph 18(1)(u) of the Act provides that no amount is deductible by a taxpayer on account of payments made for services (such as administration fees and investment counselling fees) in respect of a retirement savings plan, retirement income fund or TFSA under which the taxpayer is the annuitant or holder.

Consequential on the introduction of new section 146.6, which provides the general tax framework applicable to first home savings accounts (FHSAs), paragraph 18(1)(u) is amended to extend the prohibition on the deductibility of fees so that it applies to the payment of fees in respect of a FHSA of which the taxpayer is the holder.

This amendment comes into force on April 1, 2023.

Application of subsection (9) to insurers

ITA
18(9.02)

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

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

This amendment applies to taxation years that begin after 2022.

Limitation

ITA
18(11)(k)

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

Paragraph 18(11)(k) is added to extend the prohibition on interest deductibility to money borrowed by an individual to make a contribution to a FHSA. This change is consequential on the introduction of new section 146.6, which contains the general framework applicable to FHSAs.

This amendment comes into force on April 1, 2023.

Clause 4

Limitations

ITA
40(2)(g)

Subsection 40(2) sets out a number of specific rules relating to the determination of a taxpayer's gain or loss for a taxation year. Clause 40(2)(g)(iv)(A) denies a capital loss arising from the disposition of property by a taxpayer to a trust governed by a RRIF, a TFSA and certain other registered plans under which the taxpayer is the beneficiary or holder.

Clause 40(2)(g)(iv)(A) is amended to extend the stop-loss rule so that it applies to the disposition of property by a taxpayer to a trust governed by a first home savings account (FHSA) under which the taxpayer is the holder. This change is consequential on the introduction of new section 146.6, which provides the general tax framework applicable to FHSAs.

This amendment comes into force on April 1, 2023.

Clause 5

First home savings account

ITA
56(1)(z.6)

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

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

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

This amendment comes into force on April 1, 2023.

Clause 6

Premium or payment – FHSA, RRSP or RRIF

ITA
60(i)

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

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

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

This amendment comes into force on April 1, 2023.

Clause 7

Resource expenses

ITA
66

Section 66 provides rules in respect of resource expenses.

Canadian exploration expenses to flow-through shareholder

ITA
66(12.6)

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

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

ITA
66(12.6)(a)

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

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

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

ITA
66(12.6)(b.2)

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

- a Canadian renewable and conservation expense (defined in section 1219 of the Regulations), or
- related to a “mineral resource” (defined in subsection 248(1)) that is a base or precious metal deposit, or a mineral deposit in respect of which
  - the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,
  - the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or
  - the principal mineral extracted is silica that is extracted from sandstone or quartzite.

This amendment applies on Royal Assent.

Canadian development expenses to flow-through shareholder

ITA
66(12.62)

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

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

ITA
66(12.62)(a)

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

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

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

ITA
66(12.62)(b.2)

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

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

This amendment applies on Royal Assent.

Clause 8

Definitions

ITA
66.1(6)

“cumulative Canadian exploration expense”

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

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

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

Clause 9

Sections 74.1 to 74.3 not applicable

ITA
74.5(12)

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

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

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

This amendment comes into force on April 1, 2023.

Clause 10

Exceptions

ITA
75(3)

Subsection 75(3) exempts a number of trusts from the attribution rule in subsection 75(2), under which any income or loss from trust property held by certain reversionary trusts can be attributed for tax purposes to the persons from whom the property was received. Paragraph 75(3)(a) exempts certain trusts governed by registered plans, such as registered retirement savings plans and TFSAs.

Paragraph 75(3)(a) is amended to add trusts governed by first home savings accounts (FHSAs) to the list of exempt trusts. For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on April 1, 2023.

Clause 11

Rules applicable

ITA
87(2)

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

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

This amendment applies to the 2022 and subsequent taxation years.

Clause 12

Winding-up

ITA
88(1)

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

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

This amendment applies to the 2022 and subsequent taxation years.

Clause 13

Reference to trust or estate

ITA
104(1)

Subsection 104(1) of the Act provides a rule under which a reference to a trust or estate is read in the Act as a reference to the trustee or the executor, administrator, heir or other legal representative having ownership or control over trust property.

Subsection 104(1) provides that, except for the purposes of certain specified provisions, references in the Act to trusts are considered not to include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as “bare trusts”. Trusts described in paragraphs (a) to (e.1) of the definition “trust” in subsection 108(1) are expressly not affected by this exclusion.

Consequential on the introduction of new subsection 150(1.3), subsection 104(1) is amended to provide that the exclusion of bare trusts from references in the Act to trusts does not apply for the purposes of section 150.

This amendment applies to taxation years that end after December 30, 2023.

Clause 14

Other distributions

ITA
107(2.1)(c)

Subsection 107(2.1) sets out rules that apply on a distribution of property by a trust (other than a personal trust or a prescribed trust) in satisfaction of all or part of a beneficiary's capital interest in the trust, including on a redemption of a beneficiary's units. Generally, paragraph 107(2.1)(c) reduces a redeeming beneficiary's proceeds of disposition for the redeemed units by the amount of any capital gain realized by the trust on the transfer of its property to the redeeming beneficiary. This reduction in the redeeming beneficiary's proceeds of disposition reduces the amount of capital gain realized by the beneficiary on its redeemed units; however, this may also affect the tax position of the trust. If the trust is a mutual fund trust, the reduction in proceeds will affect the benefit that the trust may otherwise realize from the capital gains refund mechanism in section 132 and will also affect calculations made for the purposes of new subsection 132(5.31). Consequently, paragraph 107(2.1)(c) is amended to ensure that it does not apply in the case of a trust that is a mutual fund trust.

This amendment applies to taxation years that begin after December 15, 2021.

Clause 15

Section 108 provides definitions and rules that apply for the purposes of subdivision k of Division B of Part I of the Act, which deals with the taxation of trusts and their beneficiaries.

Definitions

ITA
108(1)

"trust"

For the purposes of the 21-year deemed disposition rule and other specified measures, subsection 108(1) defines "trust" to exclude certain trusts. Under paragraph (a) of the definition, trusts governed by registered retirement savings plans, TFSAs and a number of other special income plans are among those trusts excluded for these purposes.

Paragraph (a) of the definition is amended to add to the list of exclusions a trust governed by a first home savings account (FHSA). For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on April 1, 2023.

Credits – Multigenerational Home Renovation Tax Credit

ITA
108(1.1)

Subsection 108(1) defines a testamentary trust as being a trust that arises on and as a consequence of the death of an individual, except where certain events occur that cause the trust to be re-characterized as an inter-vivos trust. One of these exceptions is where a contribution is made to an otherwise testamentary trust. Subsection 108(1.1) excludes certain expenditures made by a beneficiary of a testamentary trust from being considered a contribution to the trust.

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

This amendment comes into force on January 1, 2023.

Clause 16

ITA
116

Section 116 of the Income Tax Act provides procedures for collecting tax when non-residents dispose of certain properties. A non-resident person may obtain a certificate of compliance in respect of a disposition, or proposed disposition, if the required tax on the capital gain is paid. Absent this certificate, the purchaser is required to withhold a portion of the proceeds as tax on behalf of the non-resident person.

New subsection 116(8) relates to the administration and enforcement of the Underused Housing Tax Act. This new subsection allows the Minister of National Revenue to decline to issue a certificate under subsection 116(2), (4) or (5.2) in respect of a property that is residential property, as defined in section 2 of the Underused Housing Tax Act, if any of the circumstances described in paragraphs (a) to (c) apply. Paragraphs (a) to (c) generally describe situations where the Minister is not satisfied that the non-resident person has been compliant with their obligations under the Underused Housing Tax Act in respect of a residential property, such as the requirement to file an annual return in respect of the property or to remit tax or other amounts owing under that Act.

This amendment comes into force on Royal Assent.

Clause 17

First-time home buyers' tax credit

ITA
118.05(3)

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

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

This amendment applies to the 2022 and subsequent taxation years.

Clause 18

Medical Expenses

ITA
118.2(2)(v)

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

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

This measure applies to the 2022 and subsequent taxation years.

Surrogacy Expenses

ITA
118.2(2.21)

In Canada, while it is illegal to pay consideration to surrogate mothers or donors, they may receive reimbursement from intended parents of certain out-of-pocket expenses,

including some medical expenses. Under current tax rules, reimbursements by the intended parents of medical expenses with respect to surrogate mothers or donors are not currently eligible to be claimed as medical expenses.

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

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

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

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

This measure applies to the 2022 and subsequent taxation years.

Clause 19

Multigenerational Home Renovation Tax Credit

ITA
122.92

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

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

Definitions

ITA
122.92(1)

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

“eligible dwelling”

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

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

- by the qualifying individual, and
- by a qualifying relation of the qualifying individual.

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

“eligible individual”

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

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

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

“individual”

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

“qualifying expenditure”

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

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

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

a) for annual, recurring or routine repair or maintenance;
b) to acquire a household appliance;
c) to acquire an electronic home-entertainment device;
d) that are costs for housekeeping, security monitoring, gardening, outdoor maintenance or similar services;
e) for financing costs in respect of the qualifying renovation;
f) for goods or services provided by a person not dealing at arm’s length with the qualifying individual or the eligible individual, unless the person is registered for the purposes of the Goods and Services Tax; and
g) to the extent that the outlay or expense can reasonably be considered to have been reimbursed.

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

“qualifying individual”

A “qualifying individual” is an individual who is

- 65 years or older at the end of the renovation period taxation year; or
- an adult person in respect of whom an amount is deductible under subsection 118.3(1) of the Act (generally referred to as the “disability tax credit”) in computing tax payable for a renovation period taxation year, or would be so

entitled if the restriction for attendant care in paragraph 118.3(1)(c) were disregarded.

“qualifying relation”

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

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

“qualifying renovation”

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

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

“renovation period”

A “renovation period” means a period in respect of a qualifying renovation

- that begins at the time that the first qualifying expenditure is made or incurred in respect of the qualifying renovation; and
- ends at the time of completion of the qualifying renovation.

“renovation period taxation year”

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

“secondary unit”

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

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

Qualifying Expenditure Rules

ITA
122.92(2)

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

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

Deemed overpayment

ITA
122.92(3)

New subsection 122.92(3) of the Act provides for the calculation of a refundable Multigenerational Home Renovation Tax Credit that may be claimed by an eligible individual who is a resident of Canada. The credit is determined as the appropriate percentage (currently defined in subsection 248(1) as 15%) of the portion of qualifying expenditures incurred by the individual in respect of a qualifying renovation ending in the taxation year. Subject to additional limits set out under subsection 122.92(4), the total qualifying expenditures that can be claimed by an individual cannot exceed $50,000.

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

Limits

ITA
122.92(4)

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

- a qualifying individual is entitled to one qualifying renovation in their lifetime; and

- a maximum of $50,000 of qualifying expenditures may be claimed by all taxpayers in respect of the same qualifying renovation.

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

Effect of Bankruptcy

ITA
122.92(5)

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

Special rules in the event of death

ITA
122.92(6)

New subsection 122.92(6) of the Act provides special rules that apply where an individual dies during a calendar year in order to preserve access to the Multigenerational Home Renovation Tax Credit. Specifically, if an eligible individual or qualifying individual dies during a calendar year, that deceased individual is deemed to be:

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

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

Clause 20

Additional Tax on Banks and Life Insurers

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

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

Definition

ITA
123.6(1)

New subsection 123.6(1) contains the definition of “bank or life insurer group member” that applies for purposes of section 123.6.

“bank or life insurer group member”

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

Additional tax payable

ITA
123.6(2)

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

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

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

Variable B determines the amount of the $100 million income deduction (for the purposes of these technical notes, referred to as the "income deduction") that the corporation is entitled to.

If a corporation is not related to any other bank or life insurer group member at the end of the taxation year, the corporation is entitled to the full income deduction applied against its taxable income when determining the amount of the additional tax payable.

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

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

Related group

ITA
123.6(3)

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

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

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

Allocation by Minister

ITA
123.6(4)

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

request, the Minister may determine the allocation of the income deduction among the related group members for a taxation year.

Allocation

ITA
123.6(5)

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

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

Anti-avoidance

ITA
123.6(6)

New subsection 123.6(6) introduces an anti-avoidance rule to address certain tax planning that may reduce or eliminate a corporation's additional tax payable under section 123.6.

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

Clause 21

Business limit reduction

ITA
125(5.1)(a)

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

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

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

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

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

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

Clause 22

Investment tax credit

ITA
127(5)(a)

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

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

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

the taxpayer's tax otherwise payable under Part I for the year exceeds the amount determined under subparagraph (i).

Subparagraph 127(5)(a)(i) is amended to ensure that the taxpayer's investment tax credit at the end of the year in respect of the taxpayer's flow-through critical mineral mining expenditure (as newly defined in subsection 127(9)) for the year or a preceding taxation year may also be deducted in computing the taxpayer's tax payable for the year.

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

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

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

Definitions

ITA
127(9)

"critical mineral"

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

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

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

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

“flow-through critical mineral mining expenditure”

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph (e) of the definition “flow-through critical mineral mining expenditure” provides that the expense must be certified, in prescribed manner and form, by a “qualified professional engineer or professional geoscientist” (as newly defined in subsection 127(9)) as an expense that will be incurred pursuant to an exploration plan that primarily targets critical minerals. The certification must be made at or within the 12 months before the time that the agreement that is described in subsection 66(12.6) is made. The qualified professional engineer or professional geoscientist must act reasonably in their professional capacity, in completing the certification. This condition is

intended to protect both individual taxpayers (who may invest in flow-through shares on the understanding that their investment will be eligible for the CMETC) and the integrity of the Canadian income tax system.

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

Example:

XYZ Corporation is engaging in exploration activities that purport to be primarily targeting copper and makes mineral claims in three separate areas on the Canadian Shield geological formation: Area 1, Area 2, and Area 3. Copper is defined as a "critical mineral" for the purposes of subsection 127(9) of the Act. Satisfying the standard of care applicable to a professional engineer or professional geoscientist, and acting in accordance with the professional standards set by the relevant professional regulator, a "qualified professional engineer or professional geoscientist" certifies the exploration activities as eligible for the CMETC. Three months after certification, XYZ Corporation issues shares pursuant to flow-through share agreements under which its investors claim the CMETC on XYZ Corporation's CEE incurred to explore for copper.

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

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

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

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

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

"flow-through mining expenditure"

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

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

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

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

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

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

claims for the CMETC with the expectation that, even if such claims are denied, the METC can be claimed as a fallback.

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

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

“investment tax credit”

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

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

“qualified professional engineer or professional geoscientist”

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

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

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

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

Paragraph (d) of the definition “qualified professional engineer or professional geoscientist” provides a minimum professional registration and good standing requirement. Specifically, the professional engineer or professional geoscientist must be registered and in good standing with a professional association regulating the profession of engineering or geoscience in the jurisdiction where the property under exploration is located, unless the jurisdiction where the property is located does not regulate the profession of engineering or geoscience. If a professional association regulating the profession of engineering or geoscience does not exist in the jurisdiction where the property under exploration is located, the professional engineer or professional geoscientist must be registered and in good standing with an association regulating the profession in another Canadian jurisdiction.

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

Investment tax credit

ITA
127(11.1)(c.21)

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

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

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

Clause 23

Definitions

ITA
128.1(10)

"excluded right or interest"

Generally, an "excluded right or interest" as defined in subsection 128.1(10) is exempted from section 128.1 deemed disposition rules when an individual immigrates to or emigrates from Canada. Paragraph (a) of the definition refers to rights under, or an interest in, a trust governed by certain deferred income plans.

Paragraph (a) of the definition is amended to add a reference to trusts governed by a first home savings account (FHSA). This will ensure that a holder of a FHSA who immigrates to or emigrates from Canada will not be treated as having disposed of their rights under the trust. For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on April 1, 2023.

Clause 24

Definitions

ITA
132(4)

Section 132 of the Act contains special rules relating to the taxation of mutual fund trusts. Subsection 132(4) provides definitions for the purposes of section 132. The new definition "net asset value" is added in subsection 132(4). The "net asset value" of a mutual fund trust has the same meaning as in National Instrument 81-102 Investment Funds of the Canadian Securities Administrators, as amended from time to time. This new definition is relevant for new subsection 132(5.31).

This amendment applies to taxation years that begin after December 15, 2021.

Allocation to redeemers

ITA
132(5.3)

Subsection 132(5.3) limits the deduction of certain amounts allocated to beneficiaries that have redeemed units of a mutual fund trust. The opening portion of subsection 132(5.3) sets out the conditions for the application of these rules. In particular, one of these conditions is that the trust has paid or made payable to a beneficiary an amount, on a redemption by that beneficiary of a unit of the trust, that was not included in the beneficiary's proceeds on the redemption. That amount is referred to in subsection 132(5.3) as the "allocated amount".

Subsection 132(5.3) is amended to provide that the reference to "allocated amount" also applies for the purpose of new subsection 132(5.31), which deals with exchange traded funds ("ETFs") and funds that offer both listed and unlisted units ("combined funds"). For information regarding the application of this methodology to ETFs and combined funds, please refer to the commentary under new subsection 132(5.31).

This amendment applies to taxation years that begins after December 15, 2021.

Allocations by ETFs

ITA
132(5.31)

New subsection 132(5.31) introduces rules to limit the deduction by a mutual fund trust of certain amounts allocated to its beneficiaries that have redeemed units where the mutual fund trust is an exchange traded fund (in these notes, referred to as an "ETF") or a fund that offers both listed and unlisted units (in these notes, referred to as a "combined fund").

The opening portion of paragraph 132(5.31)(a) provides that the new rule for ETFs applies only when all of the units offered in the taxation year by a trust that is a mutual fund trust are listed on a designated stock exchange in Canada and are in continuous distribution (in these notes, referred as "ETF units"). In such case, paragraph 132(5.3)(b) does not apply. Instead paragraph 132(5.31)(a) applies to the trust. This new provision denies the mutual fund trust a deduction in computing its income for a taxation year to the extent that the total allocated amounts paid out of the mutual fund trust's net taxable capital gains exceed a portion of those gains, as determined by the formula:

$$A – (B / (C + B) \times D).$$

Variable A is the portion of the total allocated amount for the taxation year in respect of redemptions by beneficiaries of the trust that would be, without reference to subsection 104(6), an amount paid out of the mutual fund trust's taxable capital gains.

Variable B is the lesser of two amounts. The first amount in subparagraph (i) is the total amount paid for redemptions of ETF units in the taxation year. The second amount in subparagraph (ii) is the greater of the amount determined for Variable C and the net asset value of the trust at the end of the immediately preceding taxation year.

Variable C is the net asset value of the trust at the end of the taxation year, and

Variable D is the amount that would be, without reference to subsection 104(6), the trust's net taxable capital gains for the taxation year.

In the case of each of Variable B and C, the term "net asset value" of the trust has the meaning set out in the definition "net asset value" in subsection 132(4).

Example – Over-Allocation of Taxable Capital Gains by an ETF:

A trust that is an ETF has a net asset value of $800 at the end of its current taxation year. The net asset value of the trust was $700 at the end of the immediately preceding taxation year. The trust disposed of assets during the taxation year resulting in net taxable capital gains for the year of $100. In the same taxation year, some beneficiaries of the trust redeemed their units and the trust paid a total of $500 to these beneficiaries on such redemptions. Using allocations to redeemers, the trust treats $200 of the $500 paid on redemptions as the total allocated amount, so that $100 is the portion of the total allocated amount that is paid out of the taxable capital gains of the trust.

Using the formula referred to above, Variable B would be the lesser of the total amount paid for redemptions in the taxation year, which would be $500, and the greater of the net asset value of the trust at the end of the year and at the end of the immediately preceding taxation year, which would be $800 (the greater of $800 and $700). Accordingly, Variable B would be $500. Variable C would be the net asset value of the trust at the end of the current taxation year, which is $800. Variable D would be the trust's net taxable capital gains for the year, which is $100. If Variable A is $100, the formula would provide as follows:

$$\$100 – (\$500 / (\$800 + \$500) \text{ x } \$100) = \$61.54$$

In sum, new paragraph 132(5.31) would apply so that the trust would be able to claim a deduction of $38.46 in respect of the $100 of taxable capital gains included in the total allocated amount.

Allocations by combined funds

New paragraph 132(5.31)(b) provides for a situation in which a mutual fund trust has a class or series of units that are ETF units and also has another class or series of units that is not both listed and in continuous distribution (in these notes, referred to as "non-ETF

units”). In such a case, there are separate rules that apply to the mutual fund trust for redemptions of ETF units and for redemptions of non-ETF units.

For redemptions of ETF units, the rule in existing paragraph 132(5.3)(b) would not apply. Instead, under new subparagraph 132(5.31)(b)(i), the portion of the allocated amounts for which a deduction by the trust is denied is determined by reference to a modified version of the formula in paragraph 132(5.31)(a). For this purpose, the variables in that formula are modified in order to take into account only the portion of each of the net asset value of the trust, and the net taxable capital gains of the trust, that is referable to the ETF units. The portion of the trust’s net taxable capital gains referable to the ETF units is determined by dividing the portion of the net asset value of the trust that is referable to the ETF units by the total net asset value of the trust, in each case, at the end of the taxation year. This is set out in the formula E / F × G.

Variable E is the portion of the net asset value of the trust at the end of the taxation year that is referable to the ETF units,

Variable F is the net asset value of the trust at the end of the taxation year; and

Variable G is the amount that would be, without reference to subsection 104(6), the trust’s net taxable capital gains for the taxation year.

For redemptions of non-ETF units, existing paragraph 132(5.3)(b) applies in respect of each such redemption. In effect, this provision limits the allocated amount that may be deducted by the trust with respect to each redemption to one-half of the gain that would otherwise be realized by the redeeming beneficiary, but for the allocated amount. For information regarding the application of this rule to non-ETF units, please refer to the commentary on subsection 132(5.3).

However, in addition to this existing limitation on the deductibility of an allocated amount on each redemption of a non-ETF unit, new subparagraph 132(5.31)(b)(ii) provides that the total of the allocated amounts for which the trust is allowed to claim a deduction in respect of non-ETF units for the taxation year cannot exceed a portion of the net taxable capital gains of the trust for that taxation year. This portion is determined by dividing the net asset value of the trust that is referable to the non-ETF units by the total net asset value of the trust, in each case, at the end of the taxation year, and multiplying the result by the amount of the net taxable capital gains of the trust for the taxation year.

This is set out in the formula H / I × J.

Variable H is the portion of the net asset value of the trust at the end of the taxation year that is referable to the non-ETF units,

Variable I is the net asset value of the trust at the end of the taxation year, and

Variable J is the amount that would be, without reference to subsection 104(6), the trust's net taxable capital gains for the taxation year.

Example – Mutual Fund Trust with ETF Units and Non-ETF Units (Combined Fund):

Mutual Fund Trust has ETF units having a net asset value of $400 and non-ETF units having a net asset value of $600, for a total net asset value of $1,000, at the end of its current taxation year. At the end of the immediately preceding taxation year, the net asset value referable to the ETF units was $300 and the net asset value referable to the non-ETF units was $500 for a total net asset value of $800. Mutual Fund Trust realizes net capital gains of $600, giving rise to net taxable capital gains of $300, in the current taxation year. During the taxation year, Mutual Fund Trust pays $100 to beneficiaries on the redemption of their ETF units, and $400 to beneficiaries on the redemption of their non-ETF units. Mutual Fund Trust proposes to allocate to redeemers of ETF units a total allocated amount of $100, of which $50 would be paid out of the taxable capital gains of the trust. Mutual Fund Trust has determined that, with respect to redemptions of non-ETF units, out of a total of $400 of allocated amounts for the year, Mutual Fund Trust would be permitted to deduct $200 under paragraph 132(5.3)(b).

With respect to the redemptions of ETF units, the following would result:

The formula in new paragraph 132(5.31)(a), when adapted in accordance with new subparagraph 132(5.31)(b)(i) for application to the redemption of ETF units by Mutual Fund Trust, will deny a deduction of any excess allocated amount in respect of these redemptions determined as follows:

$$A – (B / (C + B) \times D)$$

where

Variable A would be the amount that Mutual Fund Trust proposes to allocate to the redeeming ETF beneficiaries out of its taxable capital gains, in this example $50. If A exceeds the amount determined by the remainder of the formula, such excess amount would not be deductible by Mutual Fund Trust.

Variable B is the lesser of

- (i) the total amount paid by Mutual Fund Trust for redemptions of ETF units, which is $100, and
- (ii) the greater of
  - (A) the net asset value of the trust assets referable to the ETF units at the end of the taxation year, which is $400, and
  - (B) the net asset value of the trust assets referable to the ETF units at the end of the immediately preceding taxation year, which is $300;

Accordingly, variable B is $100;

Variable C is the net asset value of the Mutual Fund Trust that is referable to the ETF units, at the end of the taxation year, which is $400; and

Variable D is a portion of Mutual Fund Trust's net taxable capital gains for the taxation year determined by dividing the net asset value of the trust's assets referable to the ETF units, which is $400, by the total net asset value of the trust's assets, which is $1,000, at the end of the taxation year, resulting in a portion of 0.40. Thus the portion of Mutual Fund Trust's net taxable capital gains would be 0.40 x $300, so that variable D would be $120.

In the result, the formula would apply as follows:

A – (B / (C + B) × D), which is $50 – ($100 / ($400 + $100) x $120) = $26.

Accordingly, Mutual Fund Trust would be denied a deduction for $26 of the portion of the allocated amount paid out of its net taxable capital gains.
With respect to redemptions of the non-ETF units of Mutual Fund Trust, there are two potential limitations on the deductibility of allocated amounts. For each redemption, the formula in existing paragraph 132(5.3)(b) will limit the deduction by Mutual Fund Trust of an allocated amount. Mutual Fund Trust has determined that, with respect to redemptions of non-ETF units, for which it has in total paid redemption amounts of $400 in the year, it may allocate a total of $400 out of the Mutual Fund Trust's capital gains and would be permitted to deduct a total of $200 as being paid out of its taxable capital gains.

In addition to this limitation, new subparagraph 132(5.31)(b)(ii) provides that, for a taxation year, Mutual Fund Trust will not be permitted to deduct allocated amounts paid out of its net taxable capital gains to the extent that the total of such allocated amounts is greater than the amount that could be regarded as the portion of the total net taxable capital gains referable to the non-ETF units.

This is determined by the formula H / I × J.

Variable H is the portion of the net asset value of Mutual Fund Trust at the end of the taxation year that is referable to the non-ETF units, which is $600,

Variable I is the net asset value of Mutual Fund Trust at the end of the taxation year, which is $1,000, and

Variable J is the amount of Mutual Fund Trust's net taxable capital gains for the taxation year, which is $300.

Under this formula, the deduction claimed by Mutual Fund Trust in respect of allocated amounts for the redemptions of non-ETF units may not exceed $600 / $1,000 × $300, or

$180. Accordingly, notwithstanding that, under subparagraph 132(5.3)(b) Mutual Fund Trust would have been allowed to deduct a total of $200 in respect of allocated amounts in respect of redemptions of non-ETF units, new subparagraph 132(5.31)(b)(ii) limits this deduction to $180.

In sum, Mutual Fund Trust would be able to use allocations to redeemers to deduct $204 of its $300 of net taxable capital gains for the year.

These amendments apply to taxation years that begin after December 15, 2021.

Clause 25

General

ITA
132.2(3)(o)

Subsection 132.2(3) sets out rules that apply to each mutual fund trust or each mutual fund corporation undergoing a qualifying exchange.

Consequential on the introduction of subsection 132(5.31) that provides for rules to limit certain deductions by a mutual fund trust, new paragraph 132.2(3)(o) applies to a mutual fund trust undergoing a qualifying exchange. The paragraph requires that, for the taxation year of the fund that includes the transfer time, certain amounts be calculated as if the taxation year ended immediately before the transfer time.

Where all the units offered by a mutual fund trust are listed on a designated stock exchange in Canada, subparagraph 132.2(3)(o)(i) applies to amounts determined for Variables B, C and D in paragraph 132(5.31)(a).

Where the mutual fund trust offers both listed and unlisted units, subparagraph 132.2(3)(o)(ii) addresses the portion of the fund that is referable to each type of units. For the portion of the fund referable to the listed units, clause 132.2(3)(o)(ii)(A) applies to amounts determined for Variables B and C for the purposes of subparagraph 132(5.31)(b)(i) and clause 132.2(3)(o)(ii)(B) applies to the amounts determined for Variable D, E, F and G in clause 132(5.31)(b)(i)(C).

For the portion of the fund referable to the unlisted units, clause 132.2(3)(o)(ii)(C) applies to the amounts determined for Variables H, I and J in subparagraph 132(5.31)(b)(ii).

This amendment applies to taxation years that begin after December 15, 2021.

Clause 26

Insurance Corporations

ITA
138

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

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

Deductions allowed in computing income

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

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

Subparagraph 138(3)(a)(i) permits a life insurer to deduct in computing its income for a taxation year such amount as is allowed by regulation as a policy reserve in respect of its life insurance policies. Subparagraph 138(3)(a)(i) is amended consequential on the introduction of IFRS 17 to clarify that the policy reserve is in respect of the groups of life insurance contracts in Canada (as defined in subsection 138(12)) of the life insurer at the end of the year as determined under the new standard.

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

Amounts included in computing income

ITA
138(4)(b)

Subsection 138(4) requires a life insurer to include certain amounts in computing its income from carrying on a life insurance business in Canada under Part I for a taxation year. Paragraph 138(4)(b) require a life insurer to include in income the amount prescribed by subsection 1404(2) of the Regulations to be the "negative policy reserves" in respect of the insurer's life insurance policies. Paragraph 138(4)(b) is amended consequential on the introduction of IFRS 17 to clarify that the amount prescribed is in respect of the groups of life insurance contracts in Canada (as defined in subsection 138(12)) of the life insurer determined under the new standard.

Computation of income where insurance business is transferred

ITA
138(11.92)

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

Definitions

ITA
138(12)

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

“contractual service margin”

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

For purposes of this definition, the "contractual service margin" is the positive amount determined for a group of insurance contracts of an insurer, or the positive or negative amount for a group of reinsurance contracts held by an insurer, at the end of the insurer's taxation year. The contractual service margin for any given group of contracts (whether a group of insurance contracts or reinsurance contracts) is defined as the greater of two amounts. The first is the amount of the contractual service margin that is reported as at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority" in this section and new subsection 138(12.3)). The second amount is the contractual service margin for the group as determined at the end of that particular taxation year according to IFRS 17 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to amounts described in subparagraphs (a)(i) to (iii) of the definition *liability for remaining coverage* (for further information, see the commentary on that definition in this subsection). These include certain projected amounts, amounts payable that are deductible for the taxation year, or a preceding year (such as commissions payable) and amounts receivable (such as premiums receivable) to the extent such amounts have been included in income for the taxation year, or a previous taxation year, under Part I.

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

“group of insurance contracts”

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

The definition "group of insurance contracts" is introduced in order to ensure that references to group of contracts are tied to the new standard. Specifically, under this definition, a reference to a group of insurance contracts refers to a group of one or more

insurance contracts that have been grouped in a manner consistent with IFRS 17 and that has been (or would be) reported as such to the insurer's relevant authority (as defined in subsection 138(12)). This definition also provides that, for greater certainty, a group of insurance contracts also includes a group (determined in accordance with IFRS 17 and reported as such to the insurer's relevant authority) composed of reinsurance contracts under which the reinsurer has assumed reinsurance risk.

"group of life insurance contracts"

The definition "group of life insurance contracts" of an insurer is introduced in order to ensure that references to group of life insurance contracts are tied to the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17"). Specifically, under this definition, a reference to a group of life insurance contracts refers to a group of one or more life insurance contracts that have been grouped in a manner consistent with IFRS 17 and that has been (or would be) reported as such to the insurer's relevant authority (as defined in subsection 138(12)). This definition is relevant for the definition "group of life insurance contracts in Canada" (also defined in this subsection) and is also carving out groups not included in computing an insurer's non-life insurance reserves under Division I of Part XIV of the *Regulations*.

This definition also provides that, for greater certainty, a group of life insurance contracts also includes a group (determined in accordance with IFRS 17 and reported as such to the insurer's relevant authority) composed of reinsurance contracts under which the reinsurer has assumed reinsurance risk.

"group of life insurance contracts in Canada"

A "group of life insurance contracts in Canada" of an insurer is defined as a group of life insurance contracts (for further information on what constitutes a group of life insurance contracts, see the commentary for the definition "group of life insurance contracts" in this subsection) whereby, in addition, each insurance contract in the group meets certain conditions. Specifically, a group of life insurance contracts in Canada of an insurer is a group of life insurance contracts that only includes life insurance contracts issued or effected by the insurer on the life of a person resident in Canada at the time the policy was issued or effected. The contractual service margin, liability for remaining coverage and liability for incurred claims, relevant for the computation of a life insurer's reserves under Division 4 of Part XIV of the *Regulations*, are computed in reference to an insurer's groups of life insurance contracts in Canada.

"group of reinsurance contracts"

The definition "group of reinsurance contracts" held by an insurer is introduced in order to ensure that references to a group of reinsurance contracts held by an insurer (where the risks under its insurance contracts are ceded), are tied to the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after

January 1, 2023 (known as "IFRS 17"). Specifically, under this definition, a reference to a group of reinsurance contracts held by an insurer refers to a group of one or more reinsurance contracts that have been grouped in a manner consistent with IFRS 17 and that has been (or would be) reported as such to the insurer's relevant authority (as defined in subsection 138(12)).

“group of segregated fund policies”

A "group of segregated fund policies" is defined as a group of insurance contracts (for further information on what constitutes a group of insurance contracts, see the commentary for the definition “group of insurance contracts” in this subsection) whereby each insurance contract in the group is a “segregated fund policy” as described in paragraph 138.1(1)(a).

“liability for incurred claims”

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

For purposes of this definition, the "liability for incurred claims" is an amount determined for a group of insurance contracts of an insurer at the end of the insurer's taxation year. The liability for incurred claims for a group of insurance contracts is defined as the positive or negative number of the lesser of two amounts. The first is the amount of the liability for incurred claims that is reported as at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority” in this section and new subsection 138(12.3)). The second is the amount of the liability for incurred claims for the group as determined at the end of that particular taxation year according to IFRS 17 effective for years that begin on or after January 1, 2023 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to amounts described in subparagraphs (a)(i) to (iii) of the definition *liability for remaining coverage* (for further information, see the commentary on that definition in this subsection). These include certain projected amounts, amounts payable that are deductible for the taxation year, or a preceding year and amounts receivable to the extent such amounts have been included in income for the taxation year, or a previous taxation year, under Part I.

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

“liability for remaining coverage”

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

For purposes of this definition, the "liability for remaining coverage" is an amount determined for a group of insurance contracts of an insurer at the end of the insurer's taxation year. The liability for remaining coverage for a group of insurance contracts is defined as the positive or negative number of the lesser of two amounts. The first is the amount of the liability for remaining coverage that is reported as at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority" in this section and new subsection 138(12.3)). The second is the amount of the liability for remaining coverage for the group as determined at the end of that particular taxation year according to the IFRS 17 standard effective for years that begin on or after January 1, 2023 using reasonable assumptions.

The determination of either of these two amounts for purposes of this definition is without reference to certain amounts described in subparagraphs (a)(i) to (iii). Subparagraph (a)(i) excludes from the determination of liability for remaining coverage for a group of insurance contracts of an insurer at the end of a taxation year certain projected amounts including:

- projected income and capital taxes (other than the tax payable under Part XII.3 of the Act),
- projected premium taxes that are not deductible under Part I,
- all other projected amounts that are not deductible in computing income under Part I in respect of a subsequent taxation year, and
- projected cash flows in respect of funds withheld by the insurer.

Subparagraph (a)(ii) provides that liability for remaining coverage is also determined without reference to amounts payable that are deductible for the taxation year, or a preceding year (such as commissions payable). Finally, subparagraph (a)(iii) provide that these amounts are determined without reference to amounts receivable (such as premiums receivable) to the extent such amount have been included in income for the taxation year, or a previous taxation year, under Part I. The latter two subparagraphs ensure that amounts already deductible or included in computing an insurer’s income under Part I do not also create a second deduction or inclusion on determining the insurer’s reserves.

The liability for remaining coverage for a group of insurance contracts of an insurer at the end of a taxation year may only be one amount, which is the lesser of the amount

reported, or amount determined consistent with IFRS 17 standard, at the end of that taxation year.

“policyholders’ liabilities”

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

The policyholders' liabilities reported is, in general, the amount reported in the insurer's non-consolidated balance sheet as at the end of the year to the insurer's relevant authority (defined in this subsection) (see commentary in subsection 138(12.3) for further details).

“reinsurance contract held amount”

The definition "reinsurance contract held amount" incorporates into subsection 138(12) the IFRS 17 concept that provides that reinsurance contracts have to be accounted for separately from the underlying insurance policies.

For purposes of this definition, the "reinsurance contract held amount" is an amount determined for a group of reinsurance contracts held by an insurer at the end of the insurer's taxation year. The reinsurance contract held amount for any given group of reinsurance contracts is defined as the positive or negative number of the lesser of two amounts. The first is the amount of reinsurance contract held assets that is reported as at the end of that particular taxation year. In general, an amount reported in respect of the group means the amount reported to the insurer's relevant authority (for more information, see the commentary on the definition "relevant authority" in this section and on new subsection 138(12.3)). The second amount is the amount of reinsurance contract held assets for the group as determined at the end of that particular taxation year in accordance with IFRS 17 applicable for years beginning on or after January 1, 2023 and using reasonable assumptions. Reinsurance contract held assets, in general, refer to the present value of future cash flows of the group of reinsurance contracts held by the insurer.

The determination of either of these two amounts for purposes of this definition is without reference to amounts described in subparagraphs (a)(i) to (iii) of the definition *liability for remaining coverage* (for further information, see the commentary on that definition in this subsection). These include certain projected amounts, amounts payable that are deductible for the taxation year, or a preceding year and amounts receivable to the extent such amounts have been included in income for the taxation year, or a previous taxation year, under Part I.

The reinsurance contract held amount for a group of reinsurance contracts held by an insurer at the end of a taxation year may only be one amount, which is the lesser of the

amount reported, or amount determined consistent with IFRS 17 standard, at the end of that taxation year.

“relevant authority”

The definition "relevant authority" in subsection 1408(1) of the Regulations is added to subsection 138(12) to apply for purposes of section 138 consequential on the introduction of new subsection 138(12.3). Under subsection 138(12.3), the interpretation of what is reported, or what would be reported for purposes of this and other sections, requires a reference to an insurer's relevant authority.

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

“base year”, “deposit accounting insurance policy”, “excluded policy”, “reserve transition amount” and “transition year”

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

Subsection 138(12) is amended in order that these transition rules apply in a similar manner to the adoption of the new International Financial Reporting Standard for insurance contracts effective for years beginning on or after January 1, 2023 (known as "IFRS 17"). As the definitions are amended to apply to the new accounting standard in substantially the same manner as those rules applies to 2006 and 2011 accounting changes, to avoid repetition the description below highlights the differences in those rules.

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

The second change is to make these rules apply both to an insurer's life insurance business and non-life insurance business. This requires replacing references to a life insurer, or a life insurance business, in these definitions, with references to an insurer, or insurance business. Furthermore, as part of this change, the definition "reserve transition amount" in subsection 138(12) is amended to add new variables B and D which provide the portion of the reserve transition amount that is in respect of a reserve from an

insurance business other than a life insurance business. Variables A and C replace variables A and B respectively to provide the portion of the reserve transition amount that is in respect of a reserve from a life insurance business (the definition is also amended to update certain references).

Thirdly, the definition "reserve transition amount" is amended in order that these transitional rules apply for insurers (life and non-life) that have negative reserves in their base year (which is the taxation year immediately preceding the transition year). This is done through the introduction of variables E and G, which apply to an insurer with negative reserves from a life insurance business, and variables F and H which apply to an insurer with negative reserves from a non-life insurance business.

Finally, the definitions "deposit accounting insurance policy" and "excluded policy" are amended to update references to accounting standards in those definitions to IFRS 17 references.

For more information, see the commentary for subsections 138(16)-(26).

Assets and liabilities

ITA
138(12.1)

New subsection 138(12.1) provides interpretive guidance for using balance sheet items in determining the amount of the “contractual service margin”, “liability for remaining coverage” and “liability for incurred claims” for a group of insurance contracts of an insurer, and the amount of the “contractual service margin” and “reinsurance contract held amount” for a group of reinsurance contracts held by an insurer, as those terms are defined in subsection 138(12).

Paragraph (a) provides rules for determining amounts for a group of insurance contracts of an insurer (this also includes a “group of life insurance contracts” and a “group of life insurance contracts in Canada”). Specifically, in determining the amount of the “contractual service margin”, “liability for remaining coverage”, and “liability for incurred claims” for a group of insurance contracts of an insurer, an amount reported as a liability on the insurer’s balance sheet is a positive amount, and an amount reported as an asset is a negative amount.

Paragraph (b) provides rules for determining amounts for a group of reinsurance contracts held by an insurer. Specifically, in determining the “contractual service margin” and “reinsurance contract held amount” of a group of reinsurance contracts held by an insurer, an amount reported as an asset on the insurer’s balance sheet is a positive amount, and an amount reported as a liability is a negative amount.

IFRS reference

ITA
138(12.2)

New subsection 138(12.2) provides that any reference in section 138 to International Financial Reporting Standards refer to the International Financial Reporting Standards adopted by the Accounting Standards Board in Canada effective for years that begin on or after January 1, 2023 (known as "IFRS"). The application of this subsection includes definitions introduced in subsection 138(12) such as "contractual service margin", "liability for remaining coverage", "liability for incurred claims" and "reinsurance contract held amount".

Amount reported

ITA
138(12.3)

New subsection 138(12.3) provides rules for how an amount that is, or would be, reported is meant to be interpreted for purposes of subsections (12) and 138.1(1) of the Act and Parts XIV, XXIV and LXXXVI of the Regulations.

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

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

Paragraph (c) provides that if paragraphs (a) and (b) do not apply, and the insurer is subject to the supervision of a relevant authority (even if the insurer is not required to report at the end of the taxation year), the amount reported (or that would be reported) is the amount that is reported (or that would be reported) as at the end of the taxation year in a non-consolidated balance sheet that is prepared in a manner consistent with the requirements that would have applied had reporting to the insurer's relevant authority (as defined in subsection 138(12)) been required at the end of the taxation year).

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

ITA
138(16) to (26)

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

Section 138 is amended in order that these transition rules apply in a similar manner to the adoption of the new International Financial Reporting Standard for insurance contracts effective for years beginning on or after January 1, 2023 (known as "IFRS 17"). These rules are amended in order that the new accounting standard apply in substantially the same manner as those rules applied to the 2006 and 2011 accounting changes. In general, this involves making these rules apply both to an insurer's life insurance business and non-life insurance business by replacing reference to a life insurer, or a life insurance business, with references to an insurer, or insurance business throughout subsections 138(16) to (25).

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

IFRS transition – reversals

ITA
138(17.1)

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

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

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

New paragraph (b) is introduced to require that, in computing an insurer's reserve transition amount for a non-life insurance business for purposes of the five-year transition period in respect of IFRS 17 set out in subsections (18) and (19), the following

adjustments are made in computing the amounts for element D of the formula contained in the definition "reserve transition amount" in subsection 138(12):

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

New paragraph (c) provides the equivalent rule to paragraph (a) for an insurer with a life insurance business in respect of which the insurer has a negative reserve, providing that in such cases excluded policies are ignored in calculating variable G of an insurer for its base year for purposes of the five-year transition period.

New paragraph (d) provides the equivalent rule to paragraphs (a) and (c) for an insurer with a non-life insurance business in respect of which the insurer has a negative reserve, providing that in such cases excluded policies are ignored in calculating variable H of an insurer for its base year for purposes of the five-year transition period.

These amendments apply to taxation years that begin after 2022.

Clause 27

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

Rules relating to segregated funds

ITA
138.1(1)

The preamble to subsection 138.1(1) defines a "segregated fund" as a specified group of properties in respect of which an insurer's life insurance policies reserves vary depending on that specified group's fair market value. The reference to a segregated fund is also relevant in determining whether a policy is a "segregated fund policy", which is defined for purposes of computing an insurer's reserves (under Part XIV) or investment income (under Part XXIV).

The preamble to this subsection is amended to add the condition that in order to be a segregated fund, the specified group of properties must also be specifically reported (as interpreted in subsection 138(12.3)) to the relevant authority as a segregated fund (see the commentary to subsection 138(12.3) for a further discussion of the interpretation of reported).

This amendment applies to taxation years that begin after 2022.

Non-application of subsections (1) to (6)

ITA
138.1(7)

Subsection 138.1(7) ensures that where a segregated fund policy is issued as or under certain plans (e.g., a registered retirement savings plan or TFSA), the policyholder will not be required to include in income those amounts which are deemed to become payable out of the income of the related segregated fund trust to the policyholder under subsection 138.1(1).

Subsection 138.1(7) is amended to extend its application to a segregated fund policy that is issued as a first home savings account (FHSA). This will ensure that such a FHSA does not give rise to any income in the hands of the holder of the FHSA. For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on April 1, 2023.

Clause 28

ITA
142.51(1) to (12)

Section 142.51 provides transitional rules for financial institutions as a result of changes to accounting rules that applied to taxation years that began on or after October 1, 2006 for certain kinds of mark-to-market properties. These rules are amended in order to provide a transition to insurers in respect of the same property for taxation years that begin on or after January 1, 2023.

These amendments involve replacing the effective date in the definition "transition year" from the first taxation year that begins after September 2006 to the first taxation year that begins after 2022. Section 142.51 is also amended to replace the reference to financial institutions with a reference to insurers. Finally, subsection 142.51(10) dealing with a continuation of a partnership, and any other reference to partnerships in section 142.51, is repealed as these rules are not relevant to insurers.

Ceasing to be mark-to-market property

ITA
142.51(13) and (13.1)

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

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

These amendments apply to taxation years that begin after 2022.

Clause 29

Transfer of funds

ITA
146(16)

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

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

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

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

This amendment comes into force on April 1, 2023.

Clause 30

Acceptance of fund for registration

ITA
146.3(2)(f)

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

Paragraph 146.3(2)(f) is amended as a consequence of the introduction of rules applicable to first home savings accounts (FHSAs). New subparagraph 146.3(2)(f)(x) will permit transfers in accordance with subsection 146.6(7) to a RRIF from a FHSA under which the RRIF annuitant is the holder.

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

This amendment comes into force on April 1, 2023.

Clause 31

First Home Savings Account

ITA
146.6

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

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

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

Definitions

ITA
146.6(1)

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

“annual FHSA limit”

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

Ordinarily, an individual may contribute, or transfer from an RRSP, a combined maximum of $8,000 in a year. However, for deduction purposes, amounts transferred from an RRSP to a FHSA are not deductible as FHSA contributions (this is because amounts contributed to an RRSP would generally already have been deductible in accordance with RRSP rules). Accordingly, for the purpose of calculating an individual’s annual FHSA limit, the $8,000 maximum amount is first reduced by transfers from RRSPs made during the year (or RRSP transfers from previous years to the extent that the transfers exceeded the available maximum annual FHSA limit in previous years).

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

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

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

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

A is the total contributions made to a FHSA in the year by a taxpayer, excluding contributions made after a qualifying withdrawal;

B is generally the amount by which the contributions made to a FHSA in the preceding year (reduced by designated amounts) exceeded the annual FHSA limit for the preceding year; and

C is an amount withdrawn in the year as a designated amount to correct an excess FHSA amount. This amount is removed from the annual FHSA limit, effectively reversing an overcontribution that resulted from a contribution (excluding transfers from RRSPs) to a FHSA.

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

D is the FHSA carryforward for the year (see the additional commentary related to that definition);

E is the total of all amounts transferred to a FHSA from an RRSP at any time during or before the particular taxation year;

F is the sum of amounts, one for each preceding taxation year, determined as follows:

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

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

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

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

"beneficiary"

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

"first home savings account or FHSA"

"First home savings account or FHSA" is defined as an arrangement that has been registered with the Minister of National Revenue and has not ceased to be a FHSA pursuant to subsection 146.6(16).

“FHSA carryforward”

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

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

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

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

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

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

“holder”

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

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

The definition “holder” is used throughout section 146.6, subsection 207.01(1), and other parts of the Act where it is necessary to refer to the individual that a FHSA belongs to. The definition “qualifying individual” determines who may be a “holder” of a FHSA. If an individual is designated as a survivor and is not a qualifying individual they must transfer or withdraw funds from the FHSA under subsection 146.6(13). For more information see the commentary for the definition “qualifying individual” in subsection 146.6(1) and subsection 146.6(13).

“issuer”

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

“maximum participation period”

An individual’s “maximum participation period” sets out the time period during which an individual may have a FHSA.

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

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

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

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

- the definition “annual FHSA limit”,
- the definition of “FHSA carryforward”,
- the qualifying arrangement conditions in subsection 146.6(2), and
- determining when an arrangement ceases to be a FHSA in subsection 146.6(16).

For more information see the commentary on the relevant subsections and definitions.

“non-qualified investment”

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

“qualified investment”

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

“qualifying arrangement”

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

Paragraph (a) requires that the arrangement be entered into after March 2023, and that it be between a “qualifying individual” (see commentary on that definition for more information) and an “issuer”.

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

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

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

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

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

“qualifying home”

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

“qualifying individual”

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

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

“qualifying withdrawal”

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

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

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

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

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

“survivor”

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

An individual who is the holder of a FHSA may provide for a survivor to become the holder of the FHSA upon the individual's death. For more information about successor holders, see the commentary on new subsection 146.6(13).

Qualifying arrangement conditions

ITA
146.6(2)

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

The conditions in subsection 146.6(2) are also relevant for the purposes of subsection 146.6(16) and (17), which provide that an arrangement ceases to be a FHSA at any time that it ceases to be administered in accordance with the conditions in subsection 146.6(2).

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

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

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

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

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

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

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

Paragraph 146.6(2)(h) requires that arrangements issued by depositaries include provisions that stipulate that such issuers have no right of offset in respect of property held under a FHSA (i.e., a depositary cannot seize assets held in a FHSA to satisfy another debt the FHSA holder owes to the depositary).

Paragraph 146.6(2)(i) requires that the arrangement comply with prescribed conditions. While no specific conditions are anticipated at this time, this provision could allow additional conditions to be added through regulation, as necessary.

Trust not taxable

ITA
146.6(3)

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

Paragraph (c) provides that the FHSA trust's income from carrying on a business or in respect of a non-qualified investment is to be calculated without reference to subsection 104(6). Subsection 104(6) generally permits a trust to deduct, in computing its income for a taxation year, any income payable to a beneficiary in the year under the trust.

If an arrangement that governs a trust ceases to be a FHSA at any time, the trust loses its tax-exempt status. See the commentary on new subsections 146.6(16) and (17).

Carrying on a business

ITA
146.6(4)

Where a trust governed by a FHSA (a 'FHSA trust') is liable for tax under 146.6(3) on income from carrying on a business, subsection 159(1) provides that the legal representative (i.e., the FHSA trustee) of the FHSA trust is jointly liable with the FHSA trust to pay the tax.

New subsection 146.6(4) is added to extend joint and several liability for the tax on income earned from carrying on a business by a FHSA trust to the FHSA holder. In addition, it limits the joint and several liability of the FHSA issuer for this tax to the amount of property in the trust at any particular time, plus the amount of any property distributed from the trust between the sending of the notice of assessment in respect of the tax and the particular time.

FHSA deduction

ITA
146.6(5)

Subsection 146.6(5) provides that an individual may deduct in computing their income for a taxation year an amount not exceeding the lesser of two amounts. The first amount, calculated in paragraph 146.6(5)(a) is the individual's total undeducted "annual FHSA limit" for the year and all preceding taxation years. The second amount, determined under paragraph 146.6(5)(b) is the lifetime limit of $40,000 (reduced by amounts transferred from an RRSP to a FHSA).

For more information see the commentary on the definition of "annual FHSA limit" in subsection 146.6(1).

Withdrawals included in income

ITA
146.6(6)

New subsection 146.6(6) of the Act generally provides that amounts received by an individual from a FHSA are to be included in the income of the individual in the year. However, there are three exceptions: qualifying withdrawals, a designated amount as defined in subsection 207.01(1), and amounts otherwise included in income.

Paragraph 146.6(6)(a) allows for the individual to make a tax-free withdrawal from a FHSA to purchase their first home as a qualifying withdrawal. For more information on the requirements to make a qualifying withdrawal see the commentary on the definition of "qualifying withdrawal" in subsection 146.6(1).

Paragraph 146.6(6)(b) allows an individual to make a non-taxable withdrawal (i.e., a designated amount) of excess FHSA amounts in order to correct an overcontribution. For more information on the requirements to make a designated amount withdrawal see the commentary on the definition of "designated amount" in subsection 207.01(1).

Paragraph 146.6(6)(c) provides that amounts already included in computing the income of the individual are excluded to avoid double taxation.

Transfer of amounts

ITA
146.6(7)

New subsection 146.6(7) provides conditions relating to the transfer of an amount from a FHSA to certain other registered vehicles. If those conditions are satisfied, new subsection 146.6(8) allows the transfer to be made on a tax-free basis.

Paragraph 146.6(7)(a) sets out the following individuals on whose behalf an amount may be transferred:

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

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

In the case where the holder (or deceased holder) has an excess FHSA amount (as defined in subsection 207.01(1) of the Act), and except where the transfer is between FHSAs of the same holder, paragraph 146.6(7)(c) limits the transfer to an amount equal to the value of the property of all FHSAs held by the individual that is the holder of the transferor FHSA less the excess FHSA amount of that individual (expressed as formula A – B in paragraph (c)).

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

Tax-free transfer

ITA
146.6(8)

New subsection 146.6(8) provides for a tax-free transfer of an amount out of a FHSA if the transfer satisfies the conditions in subsection 146.6(7). Specifically, subsection 146.6(8) provides that such an amount transferred on behalf of an individual shall not be included in computing the individual's income and that no taxpayer may claim a deduction in respect of the amount.

Taxable transfer

ITA
146.6(9)

Subsection 146.6(9) provides rules that apply where an amount is transferred on behalf of an individual from a FHSA to a FHSA, RRSP or RRIF otherwise than in accordance with subsection 146.6(7). In this case, the amount so transferred is deemed to have been paid from the FHSA directly to the holder of the FHSA and to have been contributed to the transferee plan by the individual who is holder or annuitant of the transferee plan (including a deemed transfer to an RRSP in the case that the amount had been transferred to a RRIF), as applicable. As a consequence, the amount is included in the FHSA holder's income and the rules with respect to the deductibility of contributions to a FHSA or RRSP will apply. In addition, the special tax under Part X.1 on excess contributions to an RRSP may be payable.

Apportionment of transferred amount

ITA
146.6(10)

Subsection 146.6(10) provides that where an amount is transferred from a FHSA to a FHSA, RRSP or RRIF and not all of the amount complies with subsection 146.6(7), subsection 146.6(8) will apply to the portion that meets the subsection 146.6(7) conditions and subsection 146.6(9) will apply with respect to the remainder. For example, if the formula in paragraph 146.6(7)(c) applies to the transfer and if the amount transferred exceeds that formula amount (i.e., if an “excess FHSA amount” has been transferred), then the excess will be included in the income of the holder of the transferor FHSA and deemed to be a contribution to the plan that received that amount.

Security for a loan

ITA
146.6(11)

New subsection 146.6(11) prevents a FHSA from being used as security for a loan. It requires the holder of a FHSA to include in their income the fair market value of any property of the FHSA that is pledged as security for a loan.

Recovery of property used as security

ITA
146.6(12)

New subsection 146.6(12) allows a taxpayer to claim a deduction from income for the taxation year that includes the time that FHSA property ceases to be pledged as security

for a loan. The amount that may be claimed is the amount included in the taxpayer's income as a result of the application of subsection 146.6(11), less certain net losses sustained by the trust governed by the FHSA as a result of the property being used as security for the loan.

Successor holder

ITA
146.6(13)

New subsection 146.6(13) of the Act permits the holder's survivor (i.e., the surviving spouse or common-law partner), if they are designated as a successor holder and are a qualifying individual (as defined in subsection 146.6(1)), to choose to keep the deceased holder's FHSA or to transfer the FHSA's assets to a RRSP or RRIF by the end of the year following death. If the survivor chooses to keep the deceased holder's FHSA, the survivor is deemed to enter into a new qualifying arrangement in respect of the FHSA immediately after the time of death.

If the survivor is not a qualifying individual, then paragraph 146.6(13)(b) prohibits the survivor from becoming a successor holder, and the survivor must either transfer the FHSA property (to an RRSP or RRIF of the survivor) or receive a taxable distribution from the deceased holder's FHSA.

Distribution on death

ITA
146.6(14)

New subsection 146.6(14) of the Act requires that, after the death of the holder, any individual (including the estate of the holder) who receives a distribution from the FHSA shall include the amount in computing their income for the year. Note that an election made in accordance with subsection 146.6(15) may in some cases shift the tax liability from the holder's estate to a beneficiary of the estate if conditions in that subsection are met.

Deemed transfer or distribution

ITA
146.6(15)

New subsection 146.6(15) of the Act deals with situations in which an amount paid from a deceased holder's FHSA to the holder's estate would have been eligible for a tax-free transfer under subsection 146.6(7) to a survivor (spouse or common-law partner), or would have been taxable to a beneficiary if the amount had been paid directly to the beneficiary from the FHSA, to the extent that the recipient has a beneficial interest under the deceased holder's estate.

New paragraph 146.6(15)(a) allows the legal representative of a deceased holder's estate and the survivor to jointly designate (via a prescribed form) to have the FHSA proceeds that were paid to the estate treated as having been transferred from the FHSA of the deceased holder to a FHSA, RRSP or RRIF of the survivor, subject to meeting the conditions in subsections 146.6(7) to (10) that apply to such transfers.

Alternatively, new paragraph 146.6(15)(b) allows the legal representative of a deceased holder's estate and the survivor to jointly designate (via a prescribed form) to have the FHSA proceeds that were paid to the estate treated as having been paid directly to the survivor as a beneficiary. In that case, the amount is included in the survivor's income for the year in which the survivor received the payment, as required by subsection 146.6(14).

New paragraph 146.6(15)(c) deems the amount received by the legal representative (the estate) from the FHSA to be reduced for the purposes of subsection 146.6(14). As a result, the legal representative does not need to include the amount received in computing the income of the estate to the extent that the amount has been designated by either paragraphs 146.6(15)(a) or 146.6(15)(b).

Arrangement ceasing to be a FHSA

ITA
146.6(16)

New subsection 146.6(16) of the Act sets out the circumstances under which a FHSA will cease to be a FHSA. The FHSA will cease to be a FHSA at the earliest of the following times listed in paragraph (a):

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

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

Rules applicable on FHSA cessation

ITA
146.6(17)

New subsection 146.6(17) of the Act outlines the consequences of an arrangement ceasing to be a FHSA.

Paragraph 146.6(17)(a) specifies that subsection 146.6(3) stops applying to the arrangement. As a result, the former FHSA is no longer exempt from tax on its income.

If the holder of the FHSA is not deceased at the time the arrangement ceases to be an FHSA, paragraph 146.6(17)(b) requires that the holder of the arrangement include in their income for the taxation year an amount equal to the fair market value of all property of the FHSA immediately before the cessation of FHSA status.

If the last holder of the FHSA is deceased at the time the arrangement ceases to be an FHSA, paragraph 146.6(17)(c) requires that each beneficiary of the FHSA include in their income for the taxation year a proportionate share of the fair market value of all property of the FHSA immediately before the cessation of FHSA status (i.e., proportionate to their share of death benefits as designated by the deceased individual). Where no individual or qualified donee is entitled to the property of the FHSA, the deceased individual's estate would be considered the beneficiary and an amount would be included in the estate's income.

Regulations

ITA
146.6(18)

New subsection 146.6(18) allows the Governor in Council to make regulations requiring issuers to file information returns relating to FHSAs. In this regard, new section 219 of the Regulations requires FHSA issuers to make annual information returns and other information returns.

Clause 32

Amounts included in computing policy holder's income

ITA
148(1)

Subsection 148(1) requires the inclusion in income of certain amounts from the disposition of a life insurance policy. These rules do not apply to certain types of life insurance policies, including a policy that is, or is issued pursuant to, an RRSP, a RRIF or a TFSA.

Subsection 148(1) is amended, consequential on the introduction of new section 146.6 pertaining to first home savings accounts (FHSAs), to add a new paragraph 148(1)(b.4) to provide an exception for a life insurance policy that is, or is issued pursuant to, a FHSA. For more information on the rules that apply to FHSAs, see the commentary on new section 146.6.

This amendment comes into force on April 1, 2023.

Clause 33

Miscellaneous exemptions

ITA
149(1)

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

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

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

This amendment comes into force on April 1, 2023.

Clause 34

Definitions

ITA
149.1(1)

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

“disbursement quota”

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

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

The “prescribed amount” is determined under sections 3701 and 3702 of the *Regulations*.

The “disbursement quota” is amended to increase the disbursement quota rate from 3.5 per cent to 5 per cent for the portion of property not used in charitable activities or administration that exceeds $1 million.

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

Exclusions

ITA
149.1(1.1)

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

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

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

Revocation of registration of registered charity

ITA
149.1(4.1)(d)

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

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

Reduction

ITA
149.1(5)

Subsection 149.1(5) currently authorizes the Minister of National Revenue, upon application by a registered charity, to reduce the disbursement requirements of that

charity for a particular year by deeming a specified amount to be an amount expended by the charity in the year on charitable activities carried on by it.

Subsection (5) is amended to deem the amount specified by the Minister to reduce the disbursement quota instead. This amendment is intended to improve transparency with respect to charities that have a reduction to their disbursement quota, and to better reflect actual expenditures on charitable activities. The CRA will continue to be permitted to publicly disclose information related to charities that request a reduction to their disbursement quota under subsection 241(3.2).

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

Accumulation of property

ITA
149.1(8)

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

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

Clause 35

ITA
150

Section 150 of the Act provides rules for the filing of returns of income under the Act.

Section 150 is amended, as described in more detail below, as part of the introduction of new trust reporting requirements. In general terms, these amendments require trusts to file returns of income each year, unless the trust is subject to one of the exceptions listed in new subsection 150(1.2). The annual return of income for the trust will include certain prescribed information in respect of any person who

- is a trustee, beneficiary or settlor of the trust, or
- has the ability to exert influence over trustee decisions regarding the appointment of income or capital of the trust in the year.

Exception

ITA
150(1.1)

Subsection 150(1) stipulates the tax return requirements and the filing dates for different categories of taxpayers. Subsection 150(1.1) sets out exceptions to subsection 150(1), when the filing of a tax return is not required.

Subsection 150(1.1) is amended to make it subject to new subsection 150(1.2). Specifically, amended subsection 150(1.1) in effect now provides that the exceptions from filing a return outlined in that subsection do not apply to an express trust, or for civil law purposes a trust other than a trust that is established by law or by judgement, that is resident in Canada, unless the trust meets one of the exceptions outlined in new paragraphs 150(1.2)(a) to (o).

The amendment applies to taxation years that end after December 30, 2023.

Exception – trusts

ITA
150(1.2)

New subsection 150(1.2) provides for a limitation on the return-filing exceptions in subsection 150(1.1). In particular, by stipulating that subsection (1.1) does not apply, it causes subsection 150(1) to require tax return filing for a trust that is both

- resident in Canada (including trusts that are deemed resident in Canada under section 94), and
- an express trust (or for civil law purposes a trust other than a trust that is established by law or by judgement).

New subsection 150(1.2), however, also includes a number of exceptions to the requirement to file a return, which are listed in paragraphs (a) to (o). In addition, a trust that meets one of the exceptions listed in paragraphs 150(1.2)(a) to (o) is not required to provide the additional information set out in new section 204.2 of the Regulations. Trusts that are required to file a return, whether because of current filing requirements under subsection 150(1) or because of new subsection 150(1.2), will be required to provide the additional information outlined in new section 204.2 of the Regulations. For more information, please see the commentary on new section 204.2 of the Regulations.

The exceptions to the reporting requirements established through new subsection 150(1.2) are as follows:

- trusts that have been in existence for less than three months at the end of the year - this captures two possibilities: trusts that were created less than three months

before the end of the year and short-term trusts that existed for a period of less than three months (e.g., a trust created in June that is dissolved in July);
- trusts that hold assets with a total fair market value that does not exceed $50,000 throughout the year, where the only assets held by the trust throughout the year are one or more of
  - money,
  - certain government debt obligations,
  - a share, debt obligation or right listed on a designated stock exchange,
  - a share of the capital stock of a mutual fund corporation,
  - a unit of a mutual fund trust,
  - an interest in a related segregated fund (within the meaning assigned by paragraph 138.1(1)(a)), and
  - an interest, as a beneficiary under a trust, that is listed on a designated stock exchange;
- trusts that are required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client or clients (this provides an exception for a lawyer's general trust account, but not for specific client accounts);
- trusts that qualify as non-profit organizations or registered charities;
- mutual fund trusts, segregated funds and master trusts;
- a trust, all of the units of which are listed on a designated stock exchange;
- graduated rate estates;
- qualified disability trusts;
- employee life and health trusts;
- certain government funded trusts;
- trusts under or governed by a deferred profit sharing plan, pooled registered pension plan, registered disability savings plan, registered education savings plan, registered pension plan, registered retirement income fund, registered retirement savings plan, employee profit sharing plan, registered supplementary unemployment benefit plan or first home saving account; and
- cemetery care trusts and trusts governed by eligible funeral arrangements.

Subsection 150(1.2) applies to taxation years that end after December 30, 2023.

ITA
150(1.3)

New subsection 150(1.3) provides that, for the purposes of section 150, trusts include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as “bare trusts”.

This amendment, along with the consequential amendment in subsection 104(1) mean that bare trusts will be subject to the reporting requirements in this section and section 204.2 of the Regulations.

New subsection 150(1.3) applies to taxation years that end after December 30, 2023.

ITA
150(1.4)

Paragraph 150(1.2)(c) provides an exception to the trust reporting requirements for a lawyer's or notary's general trust account, but not for specific client accounts.

New subsection 150(1.4) provides that, for greater certainty, the trust reporting requirements do not require the disclosure of information that is subject to solicitor-client privilege.

New subsection 150(1.4) applies to taxation years that end after December 30, 2023.

Clause 36

Determination under subsection 245(2)

ITA
152(1.11)

Section 152 of the Act deals with assessments and determinations of losses by the Minister of National Revenue.

Subsection 152(1.11) allows determinations to be made by the Minister with respect to amounts, such as an adjustment to the adjusted cost base of a property and the paid-up capital of a share, as a consequence of the application of the general anti-avoidance rule (GAAR) in section 245. Where subsection 245(2) applies with respect to an avoidance transaction, such amounts may be determined as is reasonable in the circumstances in order to deny the tax benefit.

Consequential on amendments to the definition "tax benefit" in subsection 245(1), subsection 152(1.11) is amended to provide that a notice of determination can be issued with respect to a transaction to determine an amount that could, at a subsequent time, be relevant to the computation of tax. Such amounts, commonly referred to as "tax attributes," include loss carryforwards, the paid-up capital of a share, exempt surplus, undepreciated capital cost and the adjusted cost base of a property. Subsection 152(1.11) is also reorganized to remove the post-amble in the English version, and to add paragraphs (a) to (c) in the French version.

This amendment applies in respect of determinations made after April 6, 2022. Determinations made prior to that time remain binding in accordance with subsection 152(1.3) of the Act (subject to the taxpayer's rights of objection and appeal and any redetermination).

Assessment

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

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

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

Clause 37

Withholding

ITA
153(1)

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

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

Similarly, subparagraph 153(1)(v)(ii) requires withholding on payments out of an arrangement that ceased to be a FHSA by application of subsection 146.6(16).

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

This amendment comes into force on April 1, 2023.

Clause 38

Interpretation

ITA
160(0.1)

Section 160 contains rules regarding the joint and several, or solidary liability of a taxpayer for the income tax liability of another person who, when not dealing at arm's

length with the taxpayer, transferred property to the taxpayer for consideration less than its fair market value.

Consequential on the introduction of the section 160 anti-avoidance rules in new subsection 160(5) and the section 160 avoidance planning penalty in new section 160.01, section 160 is amended by adding new subsection 160(0.1). Subsection 160(0.1) provides that in sections 160 and 160.01, a transaction includes an arrangement or event. Please see the commentary in new subsection 160(5) and new section 160.01 for more information.

The amendment comes into force on April 19, 2021.

Tax liability re property transferred not at arm's length

ITA
160(1)

Consequential on other amendments to section 160, paragraphs 160(1)(d) and (e) of the French version are amended for clarity.

The amendment comes into force on April 19, 2021.

Anti-avoidance rules

ITA
160(5)

The amount that a taxpayer is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 160(1). The Minister may assess the taxpayer for such a liability under subsection 160(2).

Subsection 160(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the year of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 160(5) introduces new anti-avoidance rules to prevent planning which seeks to circumvent the application of section 160.

New paragraph 160(5)(a) addresses planning that attempts to circumvent the application of section 160 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of subsections 160(1) to (4), a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under this Act.

New paragraph 160(5)(b) addresses planning that attempts to circumvent the application of section 160 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the taxation year in which the property is transferred, or any preceding taxation year. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 160, regardless of whether the Minister has made an assessment under subsection 160(2) for that amount) is deemed to have become payable in the taxation year in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under the Act by the transferor or transferee.

New paragraph 160(5)(c) addresses planning that attempts to effectively avoid section 160 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 160, subparagraph 160(1)(e)(i) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the year in which the transfer took place, or any preceding taxation year. Subparagraph (1)(e)(i) limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (5)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 160, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series that includes the transfer of property.

For this purpose, paragraph (5)(c) deems the amount determined under subparagraph (1)(e)(i) to be the greater of

- the amount otherwise determined under subparagraph 160(1)(e)(i) without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds either
  - the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, or
  - if the consideration is in a form that is cancelled or extinguished during the above-noted period, subclause (B)(I) provide a continuity rule that applies where there is substituted property and subclause (B)(II) provides that otherwise the amount determined for B is nil.

The reference to nil in subclause (B)(II) of the description of B in the formula in (5)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

The amendment comes into force on April 19, 2021.

Clause 39

Definitions

ITA
160.01(1)

New section 160.01 introduces a penalty for section 160 avoidance planning.

New subsection 160.01(1) provides definitions that apply for the purpose of new section 160.01. The terms defined for this purpose are “gross entitlements”, “person”, “planning activity”, “section 160 avoidance planning”, “section 160 avoidance transaction”, “tax attribute”, “tax attribute transaction”, “tax benefit”, “transferee” and “transferor”.

“Gross entitlements” has the same meaning as in subsection 163.2(1) and means all amounts to which the person (or another person not dealing at arm’s length with the person) is entitled to receive or obtain in respect of section 160 avoidance planning. This is defined broadly and includes entitlements before or after the particular time and entitlements that are absolute or contingent, The definition “gross entitlements” is relevant for the purpose of computing a penalty under new subsection 160.01(2) for engaging in section 160 avoidance planning.

“Planning activity” has the same meaning as in subsection 163.2(1) and generally includes organizing or creating an arrangement, entity, plan or scheme. It also includes

participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.

“Section 160 avoidance planning” is the planning activity in respect of which the penalty in new subsection 160.01(2) applies. This is planning activity that involves the removal of property of a taxpayer with the intention of rendering all or a portion of a current or future tax liability debt of the taxpayer uncollectible, while attempting to circumvent the application of section 160 and the joint and several, and solidary liability in respect of that tax debt.

“Section 160 avoidance transaction” is relevant for the definition “section 160 avoidance planning”. A section 160 avoidance transaction is a transaction or series of transactions, in respect of which the conditions in paragraph (a) or (b) of the definition are met.

Paragraph (a) refers to the conditions in paragraphs (5)(a) and (b). For more information see the commentary on those paragraphs. Paragraph (b) is relevant where subsection (5) applied to the transaction. In that case, it looks to whether the amount determined under subparagraph 160(5)(c)(ii) exceeds the amount determined under subparagraph 160(5)(c)(i).

“Tax attribute” is relevant for the definition “tax attribute transaction”. The definition is intended to capture anything that is commonly understood to be a tax attribute. A tax attribute means a balance, pool or other amount determined under the Act that is or may be relevant in computing income or in determining a taxpayer's liability for tax under the Act in any taxation year. The definition specifically includes

- a capital loss, non-capital loss, restricted farm loss, farm loss and limited partnership loss;
- an amount that is deductible in computing the person’s income;
- any balance of undeducted outlays, expenses or other amounts;
- paid-up capital in respect of a share of any class of the capital stock of a corporation;
- cost or capital cost of a property;
- an amount deductible from an amount otherwise payable under the Act; and
- an amount that is deemed to have been remitted as an amount payable under the Act.

Note that this list is inclusive and essentially provides examples of tax attributes without limiting or restricting the definition.

“Tax attribute transaction” is a transaction commonly utilized in planning activity that attempts to circumvent the application of section 160, and render all or part of a person’s tax liability uncollectible. Such a transaction means a transaction or series of transactions in which a tax attribute is used, directly or indirectly, to provide a tax benefit for the transferor or transferee. The tax attribute could be of a person that dealt at arm’s length with a transferor or transferee of property immediately before the transaction or

series of transactions. Continuity rules are provided that apply in the case of an amalgamation under section 87.

“Tax benefit” has the same meaning as in subsection 163.2(1) and means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

“Transferee” refers to “transferee” as used in subsections 160(1) and (5).

“Transferor” refers to “transferor” as used in subsections 160(1) and (5).

Penalty

ITA
160.01(2)

New subsection 160.01(2) provides for a penalty for a person who engages in, participates in, assents to or acquiesces in planning activity that they know is section 160 avoidance planning, or would reasonably be expected to know is subsection 160 avoidance planning, but for circumstances amounting to gross negligence. The penalty is equal to the lesser of

- 50% of the joint and several, or solidary, liability payable under this Act (determined without reference to subsection 160.01(2)), which was sought to be avoided through the planning; and
- the total of $100,000 and the person’s gross entitlements at the time at which the notice of assessment of the penalty is sent to the person in respect of the planning.

This new penalty applies in respect of transactions, or series of transactions, that occur on or after April 19, 2021.

Clerical or secretarial services

ITA
160.01(3)

New subsection 160.01(3) is similar to subsection 163.2(9). Subsection 160.01(3) provides that the penalty in subsection 160.01(2) does not apply to a person solely because the person provided clerical services or secretarial services with respect to section 160 avoidance planning.

This new penalty applies in respect of transactions, or series of transactions, that occur on or after April 19, 2021.

Clause 40

Joint and several liability – FHSA

ITA 160.2(2.3)

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

Rules applicable

ITA 160.2(4)

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

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

These amendments come into force on April 1, 2023.

Clause 41

General

ITA
161(1)

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

This amendment applies to the 2022 and subsequent taxation years.

Clause 42

False statement or omission – trust return

ITA
163(5) and (6)

New subsection 150(1.2) of the Act and section 204.2 of the Regulations introduce reporting requirements for certain trusts to file a return of income and to provide additional information. New subsection 163(5) of the Act introduces a penalty for a failure to comply with these new reporting requirements, including the additional information requested in section 204.2 of the Regulations.

New subsection 163(5) imposes a penalty on any person or partnership that is subject to the reporting requirements in section 204.2 and that fails to file a return for a trust or that knowingly or under circumstances amounting to gross negligence either makes — or participates in, assents to or acquiesces in, the making of — a false statement or omission in the return.

In addition, the penalty applies if the person or partnership fails to comply with a demand by the Canada Revenue Agency under subsection 150(2) or 231.2(1) to file the return.

New subsection (6) sets out the amount of the penalty in respect of a trust for the purposes of subsection (5) as the greater of $2,500 and 5% of the highest total fair market value of all the property held by the trust in the year.

Subsections 163(5) and (6) apply to taxation years that end after December 30, 2023.

Clause 43

Part I.3 – Tax on Large Corporations

Prescribed expressions

ITA
181(2)

Subsection 181(2) prescribes certain definitions that apply to this Part. Subsection 181(2) is amended to also prescribe the terms “contractual service margin”, “group of insurance contracts”, “group of reinsurance contracts”, “policyholder’s liabilities” and “reinsurance contract held amount” in order that these definitions also apply for purposes of this Part. For more information, see the commentary on those listed definitions in subsection 138(12).

Clause 44

Capital of a financial institution

ITA
181.3

Section 181.3 provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of a financial institution for a taxation year (as defined in subsection 181(1)) for the purposes of the former large corporation tax. This section has wider application, applying for purposes of the reduction of the small business limit under paragraph 125(5.1) and for computing a corporation's expenditure limit to determine eligibility for an additional investment tax credit under subsection 127(10.1). Certain paragraphs in this section are amended to incorporate International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17") in computing the capital of financial institutions that are insurers. The section is also amended to repeal the deferred tax debit balance at the end of the taxation year deducted from an insurer's capital for the taxation year.

ITA
181.3(3)

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

ITA
181.3(3)(b)

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

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

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

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

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

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

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

ITA
181.3(3)(c)

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

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

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

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

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

Variable D is the total of all amounts each of which is the contractual service margin for a group of reinsurance contracts held by the insurer at the end of the taxation year, that is in respect of policies that relate to the three types of insurance described in variable C

(i.e., non-cancellable or guaranteed renewable accident and sickness insurance, mortgage insurance and title insurance).

- Subparagraph (i) of variable D provides that if the contractual service margin for a group of reinsurance contracts is exclusively in respect of non-cancellable or guaranteed renewable accident and sickness insurance, mortgage or title insurance risks described in variable C, the amount computed is the contractual service margin for that group.
- Subparagraph (ii) of variable D provides that if a portion of the contractual service margin of the group is in respect of the reinsurance of a risk under a policy other than one of those risks described in variable C, only that portion of the contractual service margin that is for the insurance policies in the group described in variable C are to be included.

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

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

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

ITA
181.3(3)(d)

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

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

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

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

These amendments apply to taxation years that begin after 2022.

Clause 45

Part VI – Tax on Capital of Financial Institutions

ITA
190

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

Definitions

ITA
190(1)

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

Clause 46

Deduction

ITA
190.1(3)

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

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

This amendment applies to the 2022 and subsequent taxation years.

Clause 47

Capital

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

ITA
190.13(b)

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

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

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

Variable B is the equivalent of old subparagraph 190.13(b)(ii) that adds certain amounts to the capital of a resident life insurer for a taxation year. Variable B is amended to include two new amounts that are not in existing subparagraph 190.13(b)(ii):

policyholders' liabilities (as defined in subsection 138(12)) and accumulated other comprehensive income, of the insurer at the end of the taxation year.

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

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

These amendments apply to taxation years that begin after 2022.

Clause 48

PART VI.2 – Canada Recovery Dividend

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

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

Definition

ITA
191.5(1)

New subsection 191.5(1) contains the definition of “bank or life insurer group member” that applies for purposes of section 191.5.

“bank or life insurer group member”

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

Tax payable

ITA
191.5(2)

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

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

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

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

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

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

Alternatively, if the corporation is related to another bank or life insurer group member at the end of the 2021 taxation year, the income deduction may be allocated among the related group members in accordance with subsection 191.5(7).

Multiple 2022 taxation years

ITA
191.5(3)

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

Multiple 2020 and 2021 taxation years

ITA
191.5(4)

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

Related group

ITA
191.5(5)

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

Allocation by Minister

ITA
191.5(6)

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

Allocation

ITA
191.5(7)

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

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

Return

ITA
191.5(8)

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

Instalments

ITA
191.5(9)

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

Administrative provisions

ITA
191.6

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

Clause 49

Tax payable

ITA
204.6(1)

A registered investment is a qualified investment for registered disability savings plans, registered education savings plans, registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and tax-free savings accounts (collectively, “registered plans”), as well as for other registered investments. Section 204.6 of the Act provides the manner of calculating the tax payable by a registered investment that holds property, at the end of any month, which is not a qualified investment for the type of registered plan in respect of which the registered investment is

registered. (A qualified investment is referred to in subsection 204.6(1) as a “prescribed investment”.) Subsection 204.6(1) imposes a monthly tax equal to 1% of the property’s fair market value at the time of acquisition.

Subsection 204.6(1) is amended to modify the formula for calculating the amount of tax payable by a registered investment. In general terms, the amended formula prorates the tax to the extent that the shares or units of the registered investment are held by investors that are registered plans or by other registered investments described in paragraphs 204.4(2)(b), (d) or (f). Shares or units held by widely-held registered investments (pooled funds, mutual fund trusts and mutual fund corporations) described in paragraphs 204.4(2)(a), (c) and (e) will not be taken into account in determining the amount of tax payable. Those widely-held registered investments are not themselves subject to qualified investment restrictions.

More specifically, the amount of tax payable is determined by the formula 0.01(A x B/C).

- Variable A is the fair market value of the property that is not a qualified investment at the time it was acquired by the taxpayer.
- Variable B is the total number of shares or units of the registered investment held by registered plans or by other registered investments (described in paragraphs 204.4(2)(b), (d) or (f)) at the end of the month.
- Variable C is the total number of issued and outstanding shares or units of the registered investment held by all investors at the end of the month.

The effect of the fraction B/C is that the 1% per month tax will be reduced based on the proportion of shares (or units, as the case may be) that are held by investors who are not themselves subject to qualified investment rules.

For example, assume that a registered investment acquires a non-qualified investment valued at $1,000,000 at acquisition and that 100 units of the registered investment are held by a trust described in 204.4(2)(d) and 400 units of the registered investment are held by a mutual fund trust as defined in 132(6). At the end of each month for which it holds the non-qualified investment, the registered investment would be liable to pay a tax equal to $2000 (i.e. 0.01 x $1,000,000 x 100/500).

This amendment applies to taxes calculated in respect of months after 2020. It also applies to a month before 2021 if

- no notice of assessment in respect of an amount payable for the month had been sent to the taxpayer before April 20, 2021, or
- if a notice of assessment was sent to the taxpayer before April 20, 2021 in respect of a month, the taxpayer had outstanding rights of objection or appeal in respect of the assessment on April 20, 2021.

Consequential on the introduction of tax rules that apply to first home savings accounts (FHSA), subsection 204.6(1) is further amended effective April 1, 2023 to add a

reference to FHSAs. Specifically, paragraph (a) of variable B is amended such that units or shares of the registered investment that are held by FHSAs are included for purposes of determining the proportion of the value of a non-qualified investment that is subject to the 1% per month tax.

For more information, see the commentary on new subsection 146.6 that applies to FHSAs and the commentary on the amendment to subsection 4900(5) of the Income Tax Regulations.

Clause 50

Definitions

ITA
207.01(1)

Part XI.01 of the Act contains anti-avoidance rules applicable to certain registered plans to help ensure that they do not provide excessive tax advantages unrelated to their respective basic objectives, and that they do not hold investments that are prohibited investments or that are not qualified investments for the particular plan.

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

These amendments come into force on April 1, 2023.

“controlling individual”

The definition “controlling individual” provides a common term for the holder of a TFSA, the holder of an RDSP, the annuitant of a RRIF or a RRSP, and the subscriber of an RESP for the purpose of the application of Part XI.01 of the Act. This definition is amended so that the common term also includes the holder of a FHSA among the registered plans that are subject to Part XI.01.

“designated amount”

The new definition “designated amount” is used in the formula in the definition “excess FHSA amount” to reduce an individual’s excess FHSA amount.

A “designated amount” provides an individual the ability to correct an overcontribution to a FHSA; either by returning an amount to an RRSP or reversing a direct contribution through a tax-free withdrawal. Amounts that are withdrawn tax-free cannot be deducted under subsection 146.6(5) (for more information see commentary on that subsection). A designated amount may be withdrawn from a FHSA tax-free under paragraph 146.6(6)(b).

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

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

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

“excess FHSA amount”

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

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

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

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

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

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

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

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

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

Variable E is the total withdrawals that are taxable under subsection 146.6(6) plus amounts deemed to be included in income under subsection 146.6(17) at the cessation of the FHSA, at or before the particular time.

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

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

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

"qualified investment"

The definition "qualified investment" in subsection 207.01(1) sets out the types of property a TFSA is permitted to hold. This definition is amended to add FHSAs. If a FHSA holds a property that is not a qualified investment, there are generally unfavourable tax consequences, in particular, there is a tax is equal to 50% of the fair market value of the property added under subsection 207.04(2).

"registered plan"

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

“registered plan strip”

A “registered plan strip” is generally a transaction or event that, contrary to the intent of the rules in the Act pertaining to registered plans, seeks to remove or devalue registered plan assets without an income inclusion for the controlling individual. The definition contains a list of transactions or events that are not considered to be a strip. A registered plan strip is included as paragraph (d) of the definition “advantage” under subsection 207.01(1) and is subject to tax on advantages under section 207.05.

This definition is amended in two ways. First, consequential on amendments to include FHSAs among the registered plans that are subject to Part XI.01 of the Act, paragraph (a) of the definition is amended to add income included under section 146.6. Second, the definition is amended by adding qualifying withdrawals (within the meaning of section 146.6) and designated amounts (defined in 207.01(1)) to the list of amounts that are not considered to be a strip.

“swap transaction”

A “swap transaction” is generally a transfer of property between a controlling individual of a registered plan (or a person with whom the controlling individual does not deal at arm's length) and a registered plan of the individual, with certain exceptions.

Consequential on amendments to include FHSAs among the registered plans that are subject to taxes under Part XI.01, the exceptions in paragraph (d) are expanded. Subparagraph (d)(i) is amended to define ‘swap transaction’ as excluding transfers between two plans of the controlling individual where each of the plans involved are RRSPs, RRIFs, or FHSAs.

Clause 51

Tax payable on excess FHSA amount

ITA
207.021

Section 207.021 imposes a special tax on an individual’s excess FHSA amount. The tax is imposed on a monthly basis and is equal to one per cent of the highest excess FHSA amount during each particular month. The tax applies until such time as the excess FHSA amount is eliminated. Subsection 207.07(1) sets the deadline for a person to file the relevant return and remit Part XI.01 taxes owing in respect of a calendar year as June 30th of the following year.

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

This amendment comes into force on April 1, 2023.

Survivor as successor holder

ITA
207.022

Where an individual's survivor becomes the successor holder of a FHSA of the deceased individual, and the deceased individual had an “excess FHSA amount” (i.e., overcontributions to FHSAs) immediately before death, new subsection 207.022 may treat the survivor as having made a FHSA contribution at the beginning of the month following the death. The amount of this deemed contribution will be the amount, if any, by which that excess FHSA amount exceeds the fair market value of all the properties held in connection with FHSAs that the deceased individual held and that the survivor did not become the successor holder of.

This provision reflects the fact that a certain portion of the individual's excess FHSA amount continues to be held in a tax-advantaged FHSA and, to the extent that the survivor does not have sufficient FHSA contribution room to absorb the amount, it should be subject to the 1% per month tax imposed under section 207.021.

Example 1

A deceased taxpayer had only one FHSA and an excess FHSA amount of $10,000. In the case where the surviving spouse becomes the successor holder of the FHSA, and because there are no other accounts that cease to be FHSAs at that time, the spouse is deemed to make a $10,000 FHSA contribution ($10,000 minus nil fair market value). The deemed contribution will reduce the spouse’s FHSA contribution room by $10,000 or potentially put the spouse in their own overcontribution position.

Example 2

A deceased taxpayer had $60,000 in one FHSA, $6,000 in another FHSA and an excess FHSA amount of $10,000. Assume that the survivor becomes the successor holder of the first FHSA but not the second. In that case, the survivor is deemed to have made a FHSA contribution equal to $4,000 ($10,000 excess minus the $6,000 fair market of the FHSA in respect of which the survivor is not the successor holder).

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

This amendment comes into force on April 1, 2023.

Clause 52

Waiver of tax payable

ITA
207.06(3)

New subsection 207.06(3) of the Act allows the Minister of National Revenue to waive all or part of any tax on an excess FHSA amount under section 207.021 provided that the Minister is satisfied that the liability arose because of reasonable error and the individual arranges, without delay, for an amount equivalent to the excess FHSA amount (plus any income reasonably attributable to it) to be withdrawn (or transferred to an RRSP, as the case may be).

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

This amendment comes into force on April 1, 2023.

Clause 53

Part XII of the Act imposes a 25% income tax, commonly referred to as a “non-resident withholding tax,” on certain payments to non-residents of Canada.

Tax on income from Canada of non-resident persons

ITA
212(1)

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

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

This amendment comes into force on April 1, 2023.

Interest Coupon Stripping

Part XIII of the Act generally imposes non-resident withholding tax on interest payments made by a Canadian resident to a non-resident with which it does not deal at arm’s length. The rate of non-resident withholding tax on interest is 25% where the payor and payee do not deal at arm’s length. However, this rate is generally reduced when interest is paid to a resident in a country with which Canada has a tax treaty.

New subsections 212(21) to (23) of the Act are introduced to ensure that non-resident withholding tax is not avoided through arrangements in which a non-resident lender sells its right to receive future interest payments, in respect of a loan made to a non-arm's length Canadian-resident borrower, to a person or partnership that is subject to a lower rate of non-resident withholding tax (commonly referred to as "interest coupon stripping" arrangements). The rules may also apply where the right to receive interest payments is transferred to a Canadian resident that is not subject to non-resident withholding tax.

These new rules ensure that the total non-resident withholding tax paid under an interest coupon stripping arrangement will be the same as if the arrangement had not been undertaken and the interest had instead been paid to the non-resident lender. Subsection 212(21) sets out the conditions for the application of the operative rule in subsection 212(22) and subsection 212(23) relates to an exception to these rules for publicly offered debt obligations.

These rules apply to interest that accrues on or after April 7, 2022, unless the interest meets both of the following conditions:

- it is in respect of a debt or other obligation incurred by the Canadian-resident borrower before April 7, 2022; and
- it is made to an interest coupon holder that deals at arm's length with the non-resident lender and that acquired the interest coupon as a consequence of an agreement or other arrangement entered into by the interest coupon holder, and evidenced in writing, before April 7, 2022.

For cases falling within the above exception, the measure would apply to interest that accrues on or after April 7, 2023.

ITA
212(21)

Subsection 212(21) contains two conditions that, when satisfied, trigger the application of the operative rule in subsection 212(22). The first condition, set out in paragraph 212(21)(a), assesses whether an interest coupon stripping arrangement exists. This condition will generally be satisfied if the taxpayer pays interest to a person or partnership (referred to in these rules as the "interest coupon holder") in respect of a debt or other obligation (except a "specified publicly offered debt obligation", as defined in subsection 212(23)) owed to a non-resident person that does not deal at arm's length with the taxpayer (referred to in these rules as the "non-arm's length creditor"). Under subparagraph 212(21)(a)(ii), a partnership with at least one non-resident partner can also be considered a non-arm's length creditor.

The second condition, set out in paragraph 212(21)(b), is intended to test whether the interest coupon stripping arrangement would, in the absence of new subsection 212(22), result in the avoidance of non-resident withholding tax. A taxpayer will generally satisfy this condition if the non-resident withholding tax that would be payable if the interest

were paid directly to the non-arm's length creditor is greater than the non-resident withholding tax payable in respect of the interest that is actually paid to the interest coupon holder. In other words, this condition will generally be satisfied if the amount of non-resident withholding tax on an interest payment would have been reduced by an interest coupon stripping arrangement in the absence of new subsection 212(22).

ITA
212(22)

Subsection 212(22) is the operative rule setting out the consequences, for the purpose of the non-resident withholding tax imposed by paragraph 212(1)(b), when the conditions in subsection 212(21) are satisfied.

If it applies, subsection 212(22) deems the taxpayer to pay interest for the purpose of paragraph 212(1)(b) to the non-resident creditor referred to in subsection 212(21) in an amount determined by the formula $A \times (B - C)/B$. This formula calculates an amount of deemed interest that will ensure that the total amount of non-resident withholding tax paid under the arrangement is the same as if the arrangement had not been carried out and the interest was instead paid directly to the non-arm's length creditor.

Variable A is the "particular amount" referred to in paragraph 212(21)(a). This amount will generally be the interest paid by the taxpayer to the interest coupon holder in respect of a debt or other obligation owed to the non-arm's length creditor.

Variable B is the rate of tax that would be imposed under Part XIII on the particular amount if it were paid by the taxpayer to the non-arm's length creditor at the time it is actually paid to the interest coupon holder.

Variable C is the rate of tax imposed under Part XIII in respect of the particular amount at the time it is paid to the interest coupon holder.

The amount of deemed interest resulting from the formula will be subject to non-resident withholding tax at the rate applicable to the non-arm's length creditor. This withholding tax, together with any withholding tax in respect of the actual payment to the interest coupon holder, will equal the amount of non-resident withholding tax that would have resulted if the interest coupon stripping arrangement had not occurred.

If no non-resident withholding tax is paid on an interest payment to an interest coupon holder, the amount of deemed interest determined by the formula will be the full amount of the interest paid to the interest coupon holder. This scenario can be illustrated by the following example:

Example 1:

UKCo is a UK resident corporation that wholly owns SubCo, a corporation resident in Canada. UKCo lends $100 to SubCo at an interest rate of 5% per year, payable annually. UKCo sells the right to receive interest payments from SubCo to USCo, a US resident corporation. USCo and UKCo are each entitled to treaty benefits under the relevant tax treaties.

SubCo pays an interest payment of $5 to USCo.

Under the Canada-US tax treaty, the rate of non-resident withholding tax on the interest payment is reduced to nil.

Under the Canada-UK tax treaty, the rate of non-resident withholding tax on the interest payment would have been reduced to 10% had it been paid directly to UKCo.

The conditions in subsection 212(21) are met since, under paragraph 212(21)(a), SubCo paid interest to a person (USCo, the interest coupon holder) in respect of a debt owed to a non-resident person with whom it was not dealing at arm's length (UKCo, the non-arm's length creditor) and under paragraph 212(21)(b), the non-resident withholding tax payable under the arrangement would, in the absence of subsection 212(22), be less than if SubCo had paid interest to UKCo directly.

Under subsection 212(22), an amount of interest determined by the formula A × (B − C)/B will therefore be deemed to be paid to from SubCo to UKCo.

Amount A of the formula in subsection 212(22) is $5 since this is the "particular amount" of interest paid to the interest coupon holder referred to in paragraph 212(21)(a).

Amount B of the formula in subsection 212(22) is 10% since this is the rate of non-resident withholding tax to which the $5 payment would have been subject had it been paid to UKCo.

Amount C of the formula in subsection 212(22) is 0% since this is the rate of non-resident withholding tax actually applied to the $5.

Under subsection 212(22), the amount of the deemed interest payment to UKCo is 5 × (10-0)/10) = $5. This reflects the fact that no non-resident withholding tax was paid on the interest payment to USCo, so the entire payment must be deemed to be paid to UKCo in order to ensure that the total amount of non-resident withholding tax payable is the same as if the interest coupon stripping arrangement had not occurred.

The formula in subsection 212(22) also takes into account a situation in which some non-resident withholding tax is paid by an interest coupon holder when it receives interest payments. Such withholding tax is taken into account in variable C. In this situation, the deemed interest payment created by 212(22) will be reduced such that it will generate the

appropriate amount of additional withholding tax. This can be illustrated by the following example:

Example 2:

CaymanCo is a corporation resident in the Cayman Islands that wholly owns SubCo, a corporation resident in Canada. CaymanCo lends $100 to SubCo at an interest rate of 5% per year, payable annually. CaymanCo sells the right to receive interest payments from SubCo to DutchCo, a corporation resident in the Netherlands.

SubCo pays an interest payment of $5 to DutchCo. DutchCo is entitled to treaty benefits under the Canada-Netherlands tax treaty.

Under the Canada-Netherlands tax treaty, the rate of non-resident withholding tax on the interest payment is reduced to 10%.

The rate of non-resident withholding tax on the interest payment would have been 25% had it been paid directly to CaymanCo since Canada does not have a tax treaty with the Cayman Islands.

The conditions in subsection 212(21) are met since, under paragraph 212(21)(a), SubCo paid interest to a person (DutchCo, the interest coupon holder) in respect of a debt owed to a non-resident person with whom it was not dealing at arm's length (CaymanCo, the non-arm's length creditor) and under paragraph 212(21)(b), the non-resident withholding tax payable under the arrangement would, in the absence of subsection 212(22), be less than if SubCo had paid interest to CaymanCo directly.

Under subsection 212(22), an amount of interest determined by the formula $A \times (B - C)/B$ will therefore be deemed to be paid to CaymanCo.

Amount A of the formula in subsection 212(22) is $5 since this is the "particular amount" of interest paid to the interest coupon holder referred to in subsection 212(21).

Amount B of the formula in subsection 212(22) is 25% since this is the rate of non-resident withholding tax to which the $5 payment would have been subject had it been paid to CaymanCo.

Amount C of the formula in subsection 212(22) is 10% since this is the rate of non-resident withholding tax to which the $5 payment was actually subject.

Under subsection 212(22), the amount of the deemed interest payment to CaymanCo is $5 \times (25\text{-}10)/25) = \$3$. This reflects the fact that some non-resident withholding tax was paid on the interest payment to DutchCo and so only a portion of the entire payment (in this example, 60% of the original $5) must be deemed to be paid to CaymanCo in order to ensure that the total amount of non-resident withholding tax payable is the same as if the interest coupon stripping arrangement had not occurred.

Had the interest been paid directly to CaymanCo, it would have resulted in withholding tax of 25% × $5 = $1.25. Paying the interest to DutchCo resulted in withholding tax of 10% × $5 = $0.50. Subjecting the deemed interest payment of $3 to the applicable 25% withholding tax rate results in additional withholding tax of 25% × $3 = $0.75. $0.50 + $0.75 = $1.25, which is also the amount of withholding tax that would have been paid if the arrangement had not occurred.

ITA
212(23)

Subsection 212(23) defines "specified publicly offered debt obligations" for the purpose of subsection 212(21), which creates an exception from the rule in subsection 212(22) for interest relating to specified publicly offered debt obligations.

A debt or other obligation is a specified publicly offered debt obligation if it meets the two conditions set out in subsection (23). The purpose of these conditions is to limit the availability of the exception for specified publicly offered debt obligations in subsection 212(21) to bona fide public debt offerings.

The first condition is that the obligation must have been issued by the taxpayer to the public as part of a lawful public debt offering. This condition will generally be met if a debt obligation was offered to the public in accordance with relevant securities laws.

The second condition is that none of the taxpayer's main purposes behind paying interest on the debt or other obligation is avoid or reduce tax that would otherwise be payable under this Part by a non-resident person or partnership to whom the debt or other obligation is owed. This condition is intended to act as a safeguard against inappropriate use of the exception for publicly offered debt obligations as a way to avoid the application of subsection 212(22). For example, the exception would not be available where a public offering is used purposefully to allow a non-arm's length person to acquire a debt that is subsequently transferred in a coupon stripping transaction. The purpose test in this condition applies to a series of transactions or events in which the taxpayer pays interest on the debt or other obligation.

Clause 54

Information gathering

ITA
231.1

Section 231.1 grants authorized persons, for any purpose related to the administration or enforcement of the Act, powers of audit, examination and entry. It also enables them to require a taxpayer, or any other person, to give them all reasonable assistance and to answer all proper questions relating to the administration or enforcement of the Act.

ITA
231.1(1)(a)

Paragraph 231.1(1)(a) grants authorized persons the power to inspect, audit or examine any document, including books and records. This paragraph is amended to modernize its language and to render it consistent with the language employed in subsection 288(1) of the *Excise Tax Act*.

ITA
231.1(1)(b)

Paragraph 231.1(1)(b) grants authorized persons the power to examine any property or process of, or matter relating to a taxpayer or any other person. This paragraph is amended to modernize its language and to render it consistent with the language employed in subsection 288(1) of the *Excise Tax Act*. The existing reference to "property in an inventory of a taxpayer" is removed as it is considered to be contemplated in existing references to any property or process of, or matter relating to a taxpayer or any other person.

ITA
231.1(1)(c)

Paragraph 231.1(1)(c) grants authorized persons the power to enter into any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept. This paragraph is amended to include restrictions upon the entry by authorized persons into a dwelling house, consistent with those contained in existing subsection 231.1(2) of the Act (which is being consequentially repealed).

ITA
231.1(1)(d)

Paragraph 231.1(1)(d) requires that authorized persons be given all reasonable assistance and that all their proper questions be answered.

This paragraph is amended to make clear that a taxpayer, or any other person, will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the Act.

Paragraph 231.1(1)(d) is further amended to require a taxpayer or any other person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and confirms the requirement to answer questions orally. This amendment is made to take into account the evolution of the means of communication available for information gathering purposes. The reference to video-conference or another form of electronic communication is

consistent with communications options available for hearings under section 32 of the *Federal Court Rules*.

Revised paragraph 231.1(1)(d) also confirms that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

ITA
231.1(1)(e)

New paragraph 231.1(1)(e) is added to make clear that authorized persons may require a taxpayer or any other person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

These amendments come into force on royal assent.

Prior authorization

ITA
231.1(2)

Consequential on amendments to paragraph 231.1(1)(c), which has been revised to include restrictions upon the entry by authorized persons into a dwelling house, subsection 231.1(2) of the Act is repealed.

This amendment come into force on royal assent.

Clause 55

Certain qualified donees

ITA
241(3.2)

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

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

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

This amendment comes into force on January 1, 2023.

Clause 56

Definitions

ITA
245(1)

Section 245 of the Act contains the general anti-avoidance rule. Subsection 245(1) defines certain expressions used in section 245. Subsection 152(1.111) provides that these definitions also apply for the purposes of subsection 152(1.11), which relates to determinations. For more information, see the commentary on subsection 152(1.11).

"tax benefit"

In order for the GAAR to apply to a transaction, it must (but for section 245) result directly or indirectly in a tax benefit. A 2018 Federal Court of Appeal decision held that the GAAR did not apply to a transaction that resulted in an increase in a tax attribute that had not yet been utilized to reduce taxes, because that increase did not, on its own, constitute a tax benefit.

The definition "tax benefit" is reorganized and amended to provide that it includes a reduction, increase or preservation of an amount that could at a subsequent time be relevant to the computation of tax (i.e., a tax attribute, such as loss carryforwards, the paid-up capital of a share, exempt surplus, undepreciated capital cost and the adjusted cost base of a property).

Subparagraph (c)(ii) of the definition is, in essence, intended to ensure that the definition includes a reduction, increase or preservation of a tax attribute only if it could be a benefit to the taxpayer. The effects referenced are "a reduction, avoidance or deferral" in the case of tax or other amount payable under the Act and "an increase" in the case of a refund of tax or other amount under the Act. As such, for example, an increase in a tax attribute that would only lead to an increase in an amount payable under the Act would generally not be a tax benefit (assuming the increase in the tax attribute does not also give rise to a deferral).

"tax consequences"

Where the GAAR applies to a transaction, the tax consequences to a person are determined as is reasonable in the circumstances in order to deny the tax benefit that would otherwise result from that transaction.

The definition “tax consequences” is reorganized and amended to provide that it includes any amount that could, at a subsequent time, be relevant for the purpose of computing: the amount of income, taxable income or taxable income earned in Canada of a person under the Act; or the tax or other amount payable by, or refundable to, a person under the Act (i.e., tax attributes).

These amendments apply in respect of transactions that occur after April 6, 2022 and determinations made under subsection 152(1.11) after that date.

Clause 57

Definitions

ITA
248(1)

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

“first home savings account” or “FHSA”

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

This amendment comes into force on April 1, 2023.

Clause 58

Investments in limited partnerships

ITA
253.1(1)

Subsection 253.1(1) of the Act applies for specified provisions of the Act and Regulations where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership.

Subsection 253.1(1) is amended so that it also applies for the purpose of new subsection 146.6(3), which provides that a trust governed by a first home savings account (FHSA) is taxable on any business income it may earn. The amendment to subsection 253.1(1) ensures that the acquisition and holding of a limited partnership interest (that is a qualified investment) by a trust governed by a FHSA will not expose the trust to taxation.

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

This amendment comes into force on April 1, 2023.

Amendments to the Canada Deposit Insurance Corporation Act (“CDICA”)

Clause 59

First home savings account

CDICA (Schedule)
5(3.1)

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

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

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6 of the *Income Tax Act*.

This amendment comes into force on April 1, 2023.

Amendments to the Excise Tax Act (“ETA”)

Clause 60

Inspection

ETA
98(3)

Existing subsection 98(3) of the *Excise Tax Act* (the Act) requires that all persons required by subsection 98(1) to keep records and books of account must make such records and books of account available to officers of the Canada Revenue Agency (CRA). Those persons must also provide officers of the CRA and all other persons authorized by the Minister of National Revenue every facility necessary to perform an inspection.

Subsection 98(3) is amended by adding paragraphs (a) to (d).

Similar to existing paragraph 98(3), new paragraphs 98(3)(a) and (b) obligate persons required by subsection 98(1) to keep records and books of account to make them available to officers of the CRA and all other persons authorized by the Minister, and to give those officers and authorized persons all reasonable assistance to inspect, audit or examine them, at all reasonable times and for any purpose related to the administration or enforcement of this Act (which means the Act except Part IX and Schedules V to X).

New paragraph 98(3)(c) requires that officers of the CRA and all other persons authorized by the Minister be given all reasonable assistance and that all their proper questions relating to the administration or enforcement of this Act be answered. It also requires persons required by subsection 98(1) to keep records and books of account to attend with officers of the CRA and all other persons authorized by the Minister at a place designated by such persons, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 98(3)(c) also sets out that officers of the CRA and all other persons authorized by the Minister may require that questions be answered in writing, in any form that they specify. For example, such persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

New paragraph 98(3)(d) sets out that officers of the CRA and all other persons authorized by the Minister may require persons required by subsection 98(1) to keep records and books of account to give the authorized person all reasonable assistance with anything those officers and authorized persons are authorized to do under this Act.

This amendment comes into force on royal assent.

Clause 61

Avoidance planning

ETA
285.03

New section 285.03 of the Act introduces a penalty for section 325 avoidance planning.

New section 285.03 is deemed to have come into force on April 19, 2021.

Definitions

ETA
285.03(1)

New subsection 285.03(1) of the Act defines the following terms for the purposes of section 285.03.

“Gross entitlements”

Gross entitlements means, at any time, all amounts to which a person (or another person not dealing at arm’s length with the person) is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of a planning activity (as newly defined in this subsection). The definition “gross entitlements” is relevant for the purpose of computing a penalty under new subsection 285.03(2) for engaging in section 325 avoidance planning.

“Planning activity”

Planning activity has the same meaning as in subsection 285.1(1) and generally includes organizing or creating an arrangement, entity, plan or scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.

“Section 325 avoidance planning”

Section 325 avoidance planning is the planning activity in respect of which the penalty in new subsection 285.03(2) applies. This is planning activity that involves the removal of property of a person with the intention of rendering all or a portion of a current or future tax liability debt of the person uncollectible, while attempting to circumvent the application of section 325 and the joint and several, and solidary liability in respect of that tax debt. Such planning means planning activity in respect of a transaction or series of transactions that is, or is part of, a section 325 avoidance transaction and that has as one of its purposes:

- the reduction of a transferee’s joint and several, or solidary, liability under section 325 for an amount payable or remittable under Part IX of the Act by a transferor;
- the reduction of a transferee’s joint and several, or solidary, liability under section 325 for an amount that would be payable or remittable by the transferor if not for a transaction or a series of transactions in which an amount, that is or may be relevant in determining any obligations or entitlements under Part IX of the Act of a person that dealt at arm’s length with the transferor or transferee immediately before the transaction or series of transactions, is used directly or indirectly to provide a tax benefit for the transferor or transferee; or
- the reduction of the person or another person’s ability to pay any amount payable or remittable, or that may become payable or remittable, under Part IX of the Act.

“Section 325 avoidance transaction”

Section 325 avoidance transaction means a transaction or series of transactions in respect of which the conditions in paragraph 325(5)(a) or (b) are met. A transaction or series of

transactions can also be a section 325 avoidance transaction in the situation where, if subsection 325(5) were to apply to the transaction or series, the amount determined under subparagraph 325(5)(c)(ii) would exceed the amount determined under subparagraph 325(5)(c)(i).

"Tax benefit"

Tax benefit has the same meaning as in subsection 285.1(1) and means a reduction, avoidance or deferral of tax, net tax or other amount payable under Part IX of the Act or an increase in a refund or rebate under that Part.

"Transaction"

Transaction includes an arrangement or event.

Penalty

ETA
285.03(2)

New subsection 285.03(2) provides for a penalty for a person who engages in, participates in, assents to or acquiesces in section 325 avoidance planning. The penalty is equal to the lesser of

- 50% of the amount payable or remittable under Part IX of the Act, the joint and several, or solidary, liability for which was sought to be avoided through the planning; and
- the total of $100,000 and the person's gross entitlements at the time at which the notice of assessment of the penalty is sent to the person in respect of the planning.

The penalty applies whether the person knows the planning activity is section 325 avoidance planning or the person would reasonably be expected to know it is section 325 avoidance planning but for circumstances amounting to gross negligence.

Clerical or secretarial services

ETA
285.03(3)

Subsection 285.03(3) provides that the penalty in subsection 285.03(2) does not apply to a person solely because the person provided clerical services or secretarial services with respect to the section 325 avoidance planning.

Clause 62

Inspection

ETA
288

Existing section 288 of the Act provides that a person authorized by the Minister of National Revenue may, for purposes related to the administration or enforcement of Part IX of the Act, inspect, audit or examine documents, property or processes of any person and, to this end, at reasonable times, enter any premises or place of business and require persons therein to provide reasonable assistance and answer all proper questions. If the premises are a dwelling-house, entry may be made only upon the consent of the occupant or under the authority of a warrant. A warrant may be issued where consent is refused and a judge is satisfied that entry should be authorized to the particular premises for purposes relating to the administration and enforcement of Part IX. Alternatively, a judge may order, among other things, the occupant to provide reasonable access to the authorized person to any document or property that is or should be kept in the dwelling house.

Subsection 288(1) is amended by adding paragraphs (c) and (d).

Similar to existing subsection 288(1), new paragraph 288(1)(c) requires that authorized persons be given all reasonable assistance and that all their proper questions relating to the administration or enforcement of Part IX be answered. Paragraph 288(1)(c) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of Part IX.

Paragraph 288(1)(c) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally.

Paragraph 288(1)(c) also sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

New paragraph 288(1)(d) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 288 is also amended by updating cross-references in subsection 288(2) and paragraph 288(3)(a) consequential to the amendments made to subsection 288(1) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 63

Period for assessment

ETA
298(1)(e)

Existing subsection 298(1) of the Act sets out the limitation periods for assessments and reassessments of amounts under Part IX of the Act. Paragraph 298(1)(e) establishes that if a person is liable to pay a penalty, other than a penalty under section 280, 285, 285.01, 285.02 or 285.1 of the Act, the person may not be assessed in respect of the penalty more than four years from when the person became liable.

The amendment to paragraph 298(1)(e) adds a reference to the new penalty imposed under new section 285.03 of the Act in the list of provisions not subject to the limitation period provided for in this paragraph.

This amendment comes into force on royal assent.

Clause 64

Tax liability re transfers not at arm's length

ETA
325

Existing section 325 of the Act provides rules under which a transferee of property may be liable for unpaid taxes of the transferor when the two parties are not dealing at arm's length.

Section 325 is amended by adding new subsection 325(0.1) and by replacing existing subsection 325(5).

These amendments are deemed to have come into force on April 19, 2021.

Definitions

ETA
325(0.1)

Consequential on the introduction of the section 325 anti-avoidance rules in new subsection 325(5) and the section 325 avoidance planning penalty in new section 285.03 of the Act, section 325 is amended by adding new subsection 325(0.1), which contains

definitions that apply in section 325. The existing definition “property” is moved from subsection 325(5) to new subsection 325(0.1). Subsection 325(0.1) also provides that a “transaction” includes an arrangement or event.

Anti-avoidance rules

ETA
325(5)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm’s length tax debtor is determined under subsection 325(1). The Minister of National Revenue may assess the person for such a liability under subsection 325(2). Subsection 325(1) applies in situations where

- there has been a non-arm’s length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable or remittable by the transferor under Part IX of the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 325(5) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 325.

New paragraph 325(5)(a) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that property be transferred between persons that do not deal at arm’s length. This paragraph deems, for the purposes of section 325, a transferor and transferee of property to not be dealing at arm’s length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm’s length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable or remittable under Part IX of the Act.

New paragraph 325(5)(b) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part IX of the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 325, regardless of whether the

Minister has made an assessment under subsection 325(2) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under Part IX of the Act by the transferor or transferee.

New paragraph 325(5)(c) addresses planning that attempts to effectively avoid section 325 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 325, element A of the formula in paragraph 325(1)(d) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (5)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 325, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (5)(c) deems the amount determined under element A in paragraph 325(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (5)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Amendments to the Air Travellers Security Charge Act (“ATSCA”)

Clause 65

Inspection

ATSCA
70

Existing section 70 of the *Air Travellers Security Charge Act* (the Act) allows that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property or processes in order to determine whether a person is in compliance with the Act. The authorized person may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 70(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with this Act at all reasonable times.

Subsection 70(2) is further amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 70(2)(b) is amended to make clear that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the Act.

Paragraph 70(2)(b) is amended by setting out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 70(2)(b) further sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 70(2) is amended by adding paragraph 70(2)(c). New paragraph 70(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 70 is also amended by updating cross-references in subsection 70(3) and paragraph 70(4)(a) consequential to the amendments made to subsection 70(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Amendments to the Excise Act, 2001 ("EA, 2001")

Clause 66

Inspection

EA, 2001
260

Existing section 260 of the *Excise Act, 2001* (the Act) allows that an officer may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act. The officer may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 260(2) is amended to ensure that an officer may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act at all reasonable times.

Paragraph 260(2)(c) is amended by requiring that officers be given all reasonable assistance and that all their proper questions be answered. Paragraph 260(2)(c) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of this Act.

Paragraph 260(2)(c) further sets out a requirement for any person to attend with the officer at a place designated by the officer, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 260(2)(c) sets out that officers may require that questions be answered in writing, in any form that they specify. For example, officers may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 260(2) is amended by adding paragraph (g).

New paragraph 260(2)(g) sets out that officers may require a person to give the officers all reasonable assistance with anything the officers are authorized to do under this Act.

Section 260 is also amended by updating cross-references in subsection 260(3) and paragraph 260(4)(a) consequential to the amendments made to subsection 260(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 67

Liability re transfers not at arm's length

EA, 2001
297

Existing section 297 of the Act provides rules under which a transferee of property may be liable for unpaid duties of the transferor when the two parties are not dealing at arm's length.

Section 297 is amended by adding new subsection 297(0.1) and by replacing existing subsection 297(6).

These amendments are deemed to have come into force on April 19, 2021.

Definitions

EA, 2001
297(0.1)

Consequential on the introduction of the section 297 anti-avoidance rules in new subsection 297(6), section 297 is amended by adding new subsection 297(0.1), which contains definitions that apply in section 297. The existing definitions "common-law partner" and "common-law partnership" are moved from subsection 297(6) to new subsection 297(0.1). Subsection 297(0.1) also provides that a "transaction" includes an arrangement or event.

Anti-avoidance rules

EA, 2001
297(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 297(1). The Minister of National Revenue may assess the person for such a liability under subsection 297(3). Subsection 297(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair

market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 297(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 297.

New paragraph 297(6)(a) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 297, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under the Act.

New paragraph 297(6)(b) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 297, regardless of whether the Minister has made an assessment under subsection 297(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under the Act by the transferor or transferee.

New paragraph 297(6)(c) addresses planning that attempts to effectively avoid section 297 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 297, element A of the formula in paragraph 297(1)(d) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 297, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 297(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Amendments to the Greenhouse Gas Pollution Pricing Act ("GGPPA")

Clause 68

Inspection

GGPPA
141

Existing section 141 of the *Greenhouse Gas Pollution Pricing Act* (the Act) allows that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of Part 1 of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with this Part. The person may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 141(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of Part 1, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with that Part at all reasonable times.

Paragraph 141(2)(b) is amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 141(2)(b) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of Part 1.

Paragraph 141(2)(b) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 141(2)(b) sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 141(2) is amended by adding paragraph (c).
New paragraph 141(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under Part 1.

Section 141 is also amended by updating cross-references in subsection 141(3) and paragraph 141(4)(a) consequential to the amendments made to subsection 141(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 69

Charge liability – transfers not at arm's length

GGPPA
161

Existing section 161 of the Act provides rules under which a transferee of property may be liable for unpaid charges of the transferor when the two parties are not dealing at arm's length.

Section 161 is amended by adding new subsection 161(0.1) and by replacing existing subsection 161(6).

These amendments are deemed to have come into force on April 19, 2021.

Meaning of transaction

GGPPA
161(0.1)

Consequential on the introduction of the section 161 anti-avoidance rules in new subsection 161(6), section 161 is amended by adding new subsection 161(0.1), which provides that a “transaction” includes an arrangement or event.

Anti-avoidance rules

GGPPA
161(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm’s length charge debtor is determined under subsection 161(1). The Minister of National Revenue may assess the person for such a liability under subsection 161(3). Subsection 161(1) applies in situations where

- there has been a non-arm’s length transfer of property, and
- the transferor had a pre-existing charge liability or a charge liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under Part 1 of the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 161(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 161.

New paragraph 161(6)(a) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that property be transferred between persons that do not deal at arm’s length. This paragraph deems, for the purposes of section 161, a transferor and transferee of property to not be dealing at arm’s length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm’s length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under Part 1 of the Act.

New paragraph 161(6)(b) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that the transferor have an existing charge debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part 1 (including, for greater certainty, an amount that the transferor is liable to pay under section 161, regardless of whether the Minister has made an assessment under subsection 161(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under Part 1 of the Act by the transferor or transferee.

New paragraph 161(6)(c) addresses planning that attempts to effectively avoid section 161 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a charge debt of the transferor uncollectible.

In applying section 161, element A of the formula in paragraph 161(1)(d) is intended to limit the joint and several, or solidary liability in respect of any charge liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's charge liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 161, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 161(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Amendments to the Income Tax Regulations (the "Regulations" or "ITR")

Clause 70

Interpretation

ITR
100(1)

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

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

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

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

ITR
100(3)

Subsection 100(3) of the Regulations excludes certain amounts from the amount of remuneration paid to a taxpayer that is subject to withholding at source.

New paragraph 100(3)(c.1) is added to also exclude certain employee contributions to a first home savings account (FHSA) from the amount of employee remuneration that is subject to withholding at source.

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

This amendment comes into force on April 1, 2023.

Clause 71

Lump sum payments

ITR
103(6)

Subsection 103(6) of the Regulations defines a “lump sum payment” for the purposes of subsection 103(4), which sets out the amount of tax that is required to be withheld from such payments. This subsection is amended to add amounts required to be withheld under new paragraph 153(1)(v) of the Act (to the list of lump sum payments), which is either a payment out of a first home saving account (FHSA) that is included in a taxpayer’s income or a payment out of an arrangement that ceased to be a FHSA due to subsection 146.6(16). For more information see the commentary on new paragraph 153(1)(v).

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

This amendment comes into force on April 1, 2023.

Clause 72

ITR
204.2

New section 204.2 of the Regulations is introduced in order to provide for additional information reporting requirements for certain trusts.

New subsection 204.2(1) introduces a requirement for all trusts that are required to file a return of income to provide additional information (in the T3 form), except for those trusts specifically listed in any of paragraphs 150(1)(a) to (o) of the Act. This additional information includes the name, address, date of birth (in the case of an individual other than a trust), jurisdiction of residence and taxpayer identification number (or TIN, as defined in subsection 270(1) of the Act) for each person who, in the year,

- is a trustee, beneficiary or settlor (as defined in subsection 17(15) of the Act) of the trust; or
- has the ability (through the terms of the trust or a related agreement) to exert influence over trustee decisions regarding the appointment of income or capital of the trust. This would include, for example, a protector of the trust.

New subsection 204.2(2) provides that for the purposes of subsection (1), the requirement to provide information in respect of the beneficiaries of a trust is met if

- the required information is provided in respect of each beneficiary of the trust whose identity is known or ascertainable with reasonable effort by the person making the return at the time of filing the return;
- in respect of a trust, the beneficiaries of which are all of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of The Constitution Act, 1982, or an identifiable class of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of The Constitution Act, 1982, the person making the return provides a sufficiently detailed description of the class of beneficiaries to determine with certainty whether any particular person is a member of that class of beneficiaries;
- in respect of a trust where some but not all of the units of which are listed on a designated stock exchange, to the extent of those classes of units of the trust that are not all listed on a designated exchange, the person making the return provides the required information regarding the beneficiaries of those unlisted classes of units; and
- for beneficiaries whose identity is not known or ascertainable with reasonable effort by the person making the return, the person making the return provides sufficiently detailed information to determine with certainty whether any particular person is a beneficiary of the trust.

For example, the beneficiary of a trust may not be known where the trust provides for a class of beneficiaries that includes the settlor's current children and grandchildren and any children or grandchildren that the settlor may have in the future. In these circumstances the reporting requirement will be met if the relevant information in respect of all of the settlor's current children and grandchildren are included as well as the details of the terms of the trust that extend the class of beneficiaries to any of the settlor's future children or grandchildren.

Section 204.2 applies to taxation years that end after December 30, 2023.

Clause 73

Date returns to be filed

ITR
205(3)

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

This amendment comes into force on April 1, 2023.

Clause 74

Electronic filing

ITR
205.1(1)

Section 205.1 of the Regulations provides that, under certain conditions, an information return must be filed electronically through the internet.

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

This amendment comes into force on April 1, 2023.

Clause 75

Distribution of taxpayers’ portion of returns

ITR
209

Section 209 is amended in two respects:

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

Subsection 209(5) of the Regulations permits issuers to provide T4 slips and Tuition and Enrolment Certificates to a taxpayer electronically, without having received the taxpayer's express consent to receive the slip or Certificate in this format. Subsection 209(5) is amended to also permit first home savings account (FHSA) issuers to provide a FHSA information return to taxpayers electronically without having received the taxpayer's express consent to receive the information return in that format.

These amendments come into force on April 1, 2023.

Clause 76

Information returns – FHSA

ITR
219

New section 219 of the Regulations sets out the requirements for filing information returns in respect of first home savings accounts (FHSAs), applicable to the 2023 and subsequent taxation years.

For more information on the rules that apply to FHSAs, see the commentary on new section 146.6 of the *Income Tax Act*.

ITR
219(1)

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

ITR
219(2)

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

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

ITR
219(3)

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

issuer will be required to report the same information to the CRA on the FHSA annual information return.

Clause 77

ITR
309.1

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

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

These amendments apply to taxation years that begin after 2022.

Clause 78

Part XIV – Insurance Business Policy Reserves

ITR
1400 to 1408

Part XIV of the Regulations provides rules for determining the amount that may be deducted, or must be included, by an insurer in computing its income for a taxation year under Part I of the Act as a reserve in respect of liabilities under insurance policies. Part XIV is amended to incorporate new concepts introduced by International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (known as "IFRS 17").

More specifically, the formulas in Part XIV which provide for the amount deductible, or included in an insurer's income, in respect of a reserve for non-life insurance policies (subsection 1400(3)) and life insurance policies (1404(3)), are amended to incorporate the concept of the contractual service margin for its groups of insurance contracts (see definition in subsection 138(12)) that include certain kinds of multi-year policies, namely, life insurance policies (other than segregated fund policies), non-cancellable or guaranteed renewable accident and sickness policies, and policies in respect of mortgage or title insurance. In addition, these formulas are amended to incorporate the deduction in the reserve for the reinsurance contract held amount for groups of reinsurance contracts held by an insurer.

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

Division 1 – Policy Reserves

Non-life insurance business

ITR
1400

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

ITR
1400(3)

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

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

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

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

Variable A is the total of all amounts each of which is the liability for remaining coverage for a group of non-life insurance contracts of the insurer at the end of the taxation year.

(For more information, see the commentary on the new definition “liability for remaining coverage” and “group of contracts” in subsection 138(12) of the Act).

Variable A replaces existing variable A (referring to unearned premiums) and existing variables B (in general, including reserves in respect of insurance policies as reported to the relevant authority), H, I, J and K.

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

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

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

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

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

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

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

Variable H is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsure a risk under an insurance policy excluding, if the group reinsures a risk under a life insurance policy, the portion that relates to the reinsurance of the risk under the life insurance policy. For more information, see the commentary on new definition "reinsurance contract held amount" in subsection 138(12) of the Act.

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

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

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

These amendments apply to taxation years that begin after 2022.

Clause 79

Division 3 – Special Rules

Non-life and life insurance businesses

ITR
1402

Section 1402 provides that any amount determined under section 1400 or 1401 of the Regulations shall be determined net of reinsurance recoverable amounts and without reference to any amount in respect of a deposit accounting insurance policy. Consequential on the introduction of International Financial Reporting Standard for insurance contract effective for years that begin on or after January 1, 2023, which introduces the reinsurance contract held amount concept to replace reinsurance recoverable amounts and new variable H under subsection 1400(3), section 1402 is

amended in order that only section 1401 be determined net of reinsurance recoverable amounts.

This amendment applies to taxation years that begin after 2022.

Clause 80

Division 4 – Life Insurance Policy Reserves

ITR
1404

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

ITR
1404(1)

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

ITR
1404(2)

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

ITR
1404(3)

Subsection 1404(3) sets out a formula for determining the amount prescribed for the purposes of subsections 1404(1) and (2) of the Regulations. The total amount determined

under this formula in subsection 1404(3), as well as the individual amounts determined under each of the components of the formula, may be equal to, greater or less than, nil.

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

The new formula is the following:

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

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

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

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

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

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

These amendments apply to taxation years that begin after 2022.

Clause 81

ITR
1405

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

This amendment applies to taxation years that begin after 2022.

Clause 82

ITR
1406

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

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

This amendment applies to taxation years that begin after 2022.

Clause 83

ITR
1407

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

This amendment applies to taxation years that begin after 2022.

Clause 84

Division 5 – Interpretation

ITR
1408

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

Insurance businesses

ITR
1408(1)

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

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

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

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

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

The definition "reported reserves" is amended consequential on the removal of that term from certain places in the formula in subsections 1400(3), and from the entirety of the formula 1404(3), which now instead rely on liability for remaining coverage and liability for incurred claims for a group of insurance contracts for the reserve computation. This definition is still relevant for variable E of the formula in subsection 1400(3) (in respect of a fidelity risk, nuclear risk or a risk related to a financial loss of a lender on a loan made on a security of real property) and variable G (in respect of a policy that insures earthquake risk). The definition is also amended to remove details on which reported amount is applied as that is now included in subsection 138(12.3) of the Act (for more information, see the commentary on that subsection).

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

Subsections 1408(2), (4), (7) and (8) provide rules of interpretation that apply to Part XIV of the Regulations. Following the introduction of the new International Financial Reporting Standard for insurance contracts applicable for years that begin on or after January 1, 2023, these interpretative rules are no longer necessary and are repealed. These amendments apply to taxation years that begin after 2022.

Clause 85

Part XXIV – Insurers

ITR
2400 to 2412

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

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

ITR
2400

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

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

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

Part XXIV is amended to include amounts for liability for remaining coverage and liability for incurred claims for groups of insurance policies of an insurer at the end of the taxation year that are relevant to computing the property and casualty surplus for non-resident insurers, essentially replacing existing concepts related to unearned premium reserves and the provision for unpaid claims and adjustment expenses.

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

ITR
2400(1)

Subsection 2400(1) contains definitions for terms and expressions used in Part XXIV of the Regulations. Subsection 2400(1) is amended to incorporate IFRS 17.

The definitions "Canadian outstanding premiums", "foreign policy loan", "mean Canadian outstanding premiums", "mean policy loans", "outstanding premiums" and "reinsurance recoverable" relate to concepts that are no longer relevant under the new Standard and are, therefore, repealed.

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

"Canadian reserve liabilities"

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

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

$$A – A.1 + A.2 + A.3 – (0.9 \times B) - (C - (0.9 \times D))$$

Variable A is the total amount of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of life insurance policies in Canada, fire insurance policies issued or effected in respect of property situated in Canada and insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. Variable A is amended in order to include an insurer's liabilities and reserves in respect of segregated fund policies other than a liability for an obligation to pay a benefit in respect of which subparagraphs 1406(b)(i) and (ii) apply. Furthermore, variable A is amended to exclude policyholders' liabilities (for more information, see the commentary on that definition in subsection 138(12)). Finally, variable A is amended in order that the insurer’s liabilities and reserves for purposes of this variable be those liabilities and reserves that are reported. For more information on the interpretation of reported, see the commentary on subsection 138(12.3) of the Act.

Variable A.1 is the total of all amounts each of which is an amount of an item reported by the insurer as an insurance contract asset as at the end of the year in respect of insurance policies that are life insurance policies in Canada, fire insurance policies issued or effected in respect of property situated in Canada or insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. For more information on the interpretation of reported, see the commentary on subsection 138(12.3) of the Act.

Variable A.2 is the total of funds withheld as at the end of the year by the insurer in respect of the reinsurance of a risk under an insurance policy that is a life insurance policy in Canada, fire insurance policy issued or effected in respect of property situated in Canada or an insurance policy of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. This variable refers to funds withheld by the insurer that is ceding the risk to another insurer or reinsurer.

Variable A.3 is the total of amounts recoverable as at the end of the year by the insurer under a funds withheld arrangement in respect of the reinsurance of a risk by the insurer under an insurance policy that is a life insurance policy in Canada, fire insurance policy issued or effected in respect of property situated in Canada or insurance policy of any other class covering risks ordinarily within Canada at the time the policy was issued or effected. This variable refers to the amounts receivable to an insurer or reinsurer that has assumed risk from another insurer.

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

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

- it is one of the three insurance policies described in variable A (subparagraph (i)),
- it is a
  - life insurance policy in Canada,
  - policy that insures risk in respect of a financial loss of a lender on a loan made on the security of real property,
  - non-cancellable or guaranteed renewable accident and sickness policy in respect of accident and sickness insurance (as defined in subsection 1408(1)), or
  - a policy in respect of title insurance (as defined in subsection 1408(1)) (subparagraph (ii)), and
- it is a policy that is not a segregated fund policy (subparagraph (iii)).

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

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

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

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

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

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

“property and casualty surplus”

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

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

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

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

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

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

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

Variable E is the total of all amounts each of which is the reinsurance contract held amount for a group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk that is in respect of property and casualty insurance.

Variable F provides the equivalent computation as variable E for the preceding taxation year.

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

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

“weighted Canadian liabilities”

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

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

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

Specifically, the definition "weighted Canadian liabilities" is replaced by the formula

$$(3 \times A) + B$$

Variable A replaces existing paragraph (a) of the definition by a formula representing the insurer's weighted Canadian life insurance (other than annuities) and accident and

sickness insurance policy liabilities. Weighting life and accident and sickness insurance policy liabilities by a factor of 3 recognizes the fact that an insurer must maintain more capital in respect of such policies than in respect of other types of insurance products.

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

$$C - (0.9 \times D) - (E - (0.9 \times F))$$

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

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

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

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

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

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

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

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

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

Variable B replaces existing paragraph (b) of the definition "weighted Canadian liabilities" by a formula representing the insurer's liabilities excluding liabilities for those policies that form part of the insurer's weighted liabilities.

Variable B is substantially similar to variable A with changes to incorporate the fact it applies to liabilities (other than a debt incurred or assumed to acquire property) not described in variable C and is determined by the formula

$$G - (0.9 \times H) - (I - (0.9 \times J))$$

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

Furthermore, liabilities in respect of debts incurred or assumed by the insurer to acquire property of the insurer are excluded.

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

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

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

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

Variable I is the reinsurance contract held amount for each group of reinsurance contracts held by the insurer at the end of the taxation year that reinsures a risk under an insurance policy not described in variable I, other than the reinsurance of an obligations to which subparagraphs 1406(b)(i) and (ii) apply. For more information, see the commentary on new definition "reinsurance contract held amount".

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

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

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

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

“weighted total liabilities”

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

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

“Canadian investment fund”

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

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

Subparagraph (a)(i) of the definition is amended by repealing variable B in the formula that incorporates the concepts outstanding premiums and policy loans that are no longer necessary following the adoption of IFRS 17. Subparagraph (a)(i) is, therefore, the resident insurer's Canadian reserve liabilities as described in existing variable A. Note

that amendments are also made to the definition "Canadian reserve liabilities". For more information, see the commentary for that definition.

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

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

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

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

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

“Canadian investment property”

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

Paragraph (i) of that definition includes as Canadian investment property an amount due or accrued to an insurer from designated Canadian investment properties listed in paragraph (a) to (h) that was assumed in computing the insurer's Canadian reserve

liabilities. In order that this provision apply appropriately on the introduction of the new IFRS standard for insurance contracts, subparagraph (i)(ii) is amended in order that Canadian investment property include an amount due or accrued (from designated properties listed in paragraph (a) to (h)) that supports the insurer’s Canadian insurance contract liabilities for the year.

“equity limit”

The equity limit of an insurer for a taxation year is relevant in determining the extent to which an insurer may designate Canadian equity property for a taxation year. Under subsection 2401(4), an insurer cannot designate Canadian equity property for the year in excess of that insurer's equity limit for the year to ensure that an insurer cannot fill its Canadian investment fund with property on which it receives tax-free dividend income. Paragraphs (b) and (c) of the definition are amended to remove amounts from the equity limit computation that are no longer relevant on the introduction of IFRS 17.

Paragraph (b) of the definition provides the equity limit for non-resident insurers that are not life insurers. Subparagraph (b)(i) is amended to refer only to the insurer's mean Canadian reserve liabilities at the end of the year removing references to premiums receivable and deferred acquisition costs.

Paragraph (c) of the definition applies to non-resident life insurers. Subparagraph (c)(ii) of the definition is amended to refer only to the insurer's mean Canadian reserve liabilities, removing references to premiums receivable and deferred acquisition costs.

“investment property”

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

Paragraph (e) of that definition includes as investment property an amount due or accrued to an insurer on account of income from designated property listed under paragraphs (a) to (d) that was assumed in computing an insurer`s Canadian reserve liabilities. In order that this provision apply appropriately on the introduction of the new IFRS standard for insurance contracts, subparagraph (e)(ii) is amended in order that investment property include an amount due or accrued (from designated properties listed in paragraph (a) to (d)) that supports the insurer’s Canadian insurance contract liabilities for the year.

“value”

The value for a taxation year of a property is used for determining the value for different types of properties for purposes of designating property of the insurer for a taxation year. This definition is amended to repeal paragraph (a), which provides the value amount for

certain property like mortgages, and paragraph (b), which provides the value amount for an amount due or accrued. These paragraphs are no longer necessary on the introduction of IFRS 17. Paragraph (c) is also amended consequential on the repeal to remove references to the repealed paragraphs.

The value amount for property currently included in paragraphs (a) and (b) will be determined under paragraph (c) or (d) of this definition.

ITR
2400(3)

Subsection 2400(3) provides that any reference in Part XXIV of the Regulations to an amount reported as an asset or liability of an insurer is to be construed as a reference to the amount that is reported as a liability in the taxpayer's year-end balance sheet accepted by the Office of the Superintendent of Financial Institutions or, where the taxpayer is incorporated under a province's law, the amount reported as an asset or liability on the year-end balance sheet accepted by that province's superintendent of insurance or similar officer.

Subsection 2400(3) is repealed consequential to the introduction of subsection 138(12.3) of the Act which provides the equivalent interpretative rules and applies for purposes of this Part. For more information, see the commentary on subsection 138(12.3) of the Act.

ITR
2400(10)

International Financial Reporting Standard for insurance contracts that insurance corporations must follow are being changed effective for years that begin on or after January 1, 2023. These changes impact the tax rules that apply to insurance corporations for taxation years that begin after 2022.

In order to ensure that no inconsistencies arise under Part XXIV of the Regulations in respect of the tax treatment of insurance corporations as a result of these changes, new subsection 2400(10) provides a special rule for computations that are required to be made under Part XXIV in respect of an insurer's taxation year immediately precedes the first taxation year that began after 2022 and that is relevant to a computation (the "transition year computation") that is required to be made under Part XXIV in respect of the insurer's first taxation year that begins after 2022. The rule specifies that such computations are, for the purposes only of the transition year computation, to be made using the same definitions, rules and methodologies that are used in the transition year computation. These would include accounting rules required to be complied with by the insurer in its transition year.

These amendments apply to taxation years that begin after 2022.

Clause 86

Designation rules

ITR
2401(2)

Subsection 2401(2) sets out rules that an insurer is required to follow in designating investment property for a taxation year in respect of its insurance businesses carried on in Canada in the year.

Paragraph 2401(2)(a) provides that an insurer shall designate in respect of its Canadian life insurance business, investment property with a total value (as defined in amended subsection 2400(1)) equal to the amount by which the insurer's mean Canadian reserve liabilities (as defined in amended subsection 2400(1)) exceeds its mean policy loans and mean Canadian outstanding premiums (as defined in amended subsection 2400(1)) in respect of that business. Paragraph 2401(2)(b) provides a similar rule for an insurer's accident and sickness insurance business carried on in Canada.

Consequential to the repeal of the definitions "mean Canadian outstanding premiums" and "mean policy loans" in subsection 2400(1) on the adoption of IFRS 17, paragraphs (a) and (b) are amended to remove those references from the computation of an amount under either of those paragraphs. As amended, paragraph (a) and (b) provide that an insurer shall designate an amount equal to the insurer's mean Canadian reserve liabilities in respect of the insurer's life insurance business, and the insurer's accident and sickness insurance business, respectively.

Paragraph 2401(2)(c) provides that an insurer shall designate in respect of its non-life and non-accident and sickness insurance business, investment property with a total value equal to the amount by which the insurer's mean Canadian reserve liabilities in respect of that business exceeds the insurer's average deferred acquisition expenses or premiums receivable in respect of that business.

The adoption of IFRS 17 makes concepts such as premium receivables and deferred acquisition expenses in respect of a business no longer relevant and those have been removed from the computation under paragraph (c). Similar to the amendments to paragraph (a) and (b) above, paragraph (c) is amended to provide that an insurer shall designate in respect of its non-life and non-accident and sickness insurance business, investment property with a total value equal to the amount of the insurer's mean Canadian reserve liabilities in respect of that business.

These amendments apply to taxation years that begin after 2022.

Clause 87

Master trust

ITR
4802(1.1)

Subsection 4802(1.1) of the Regulations sets out the conditions to prescribe a trust as a "master trust" for the purposes of paragraph 149(1)(o.4) of the Act. Among other things, a master trust holds investments exclusively for beneficiaries that are registered pension plans or deferred profit sharing plans.

Subsection 4802(1.1) is amended so that the conditions for prescribing a trust as a master trust apply for the purposes of new paragraph 150(1.2)(i) of the Act. For more information, see the commentary on subsection 150(1.2).

The amendment applies to taxation years that end after December 30, 2023.

Clause 88

Qualified investments for registered plans

ITR
4900

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

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

These amendments come into force on April 1, 2023.

Clause 89

Interpretation

ITR
5202

Section 5202 of the Regulations defines a number of terms that apply for the purposes of Part LII of the Regulations (except as otherwise provided in sections 5203 or 5204 of the Regulations) and are therefore relevant in determining a corporation's zero-emission

technology manufacturing and processing profits for a taxation year (for the purposes of the zero-emission technology manufacturing deduction in section 125.2).

“qualified zero-emission technology manufacturing activities”

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

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

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

This amendment applies as of January 1, 2022.

Clause 90

Part LXXXVI – Taxable Capital Employed in Canada

ITR
8600 to 8605

Part LXXXVI of the Regulations provides rules for determining "taxable capital employed in Canada". Although Part I.3 tax has been eliminated, a corporation's "taxable capital employed in Canada" remains relevant for several purposes, including Part VI of the Act, which levies a minimum tax on the capital of financial institutions. Part LXXXVI is amended to replace the definition "total reserve liabilities" and amend section 8605 on the introduction of the new International Financial Reporting Standard for insurance contracts effective for years that begin on or after January 1, 2023 (IFRS 17).

ITR
8600

Section 8600 defines a number of terms for the purposes of Part LXXXVI of the Regulations and Part I.3 of the Act. Some of these terms are also defined for purposes of Part VI of the Act.

Section 8600 is amended by adding the definitions "contractual service margin", "group of insurance contracts", "group of segregated fund policies", "policyholder's liabilities" and "reinsurance contract held amount" to incorporate new concepts introduced under IFRS 17. These definitions have the same meaning as in subsection 138(12) (for more information, see the commentary on those definitions in subsection 138(12)).

“total reserve liabilities”

The definition "total reserve liabilities" is relevant for the computation of taxable capital employed in Canada under subsection 181.3(1) of the Act for purposes of Part I.3 and for section 190.11 of the Act for purposes of Part VI tax. The definition is amended primarily to incorporate the concept of the contractual service margin introduced under new IFRS 17. Furthermore, the definition is amended to replace the concept of reinsurance recoverable reported by the insurer with the reinsurance contract held amount concept (for more information, see the commentary for the definition "reinsurance contract held amount" under subsection 138(12)).

Specifically, the definition "total reserve liabilities" is replaced by the formula:

$$A - A.1 + A.2 + A.3 - (0.9 \times B) - (C - (0.9 \times D))$$

Variable A is the total amount of the insurer's liabilities and reserves in respect of insurance policies (subject to certain exceptions), as those liabilities and reserves are determined for the Office of the Superintendent of Financial Institutions, if the insurer is required by law to report to that regulator or, in any other case, the superintendent of insurance of other similar officer of authority under a province under which the insurer is incorporated. Variable A is amended in order to include an insurer's liabilities and reserves in respect of segregated fund policies other than a liability for an obligation to pay a benefit in respect of which subparagraphs 1406(b)(i) and (ii) apply. Furthermore, variable A is amended to exclude policyholders' liabilities (for more information, see the commentary on that definition in subsection 138(12)).

Variable A.1 is the total of all amounts each of which is an amount of an item reported by the insurer as an insurance contract asset as at the end of the year. For more information on the interpretation of reported, see the commentary on subsection 138(12.3) of the Act.

Variable A.2 is the total of funds withheld as at the end of the year by the insurer in respect of the reinsurance of a risk under an insurance policy. This variable refers to funds withheld by the insurer that is ceding the risk to another insurer or reinsurer.

Variable A.3 is the total of amounts recoverable as at the end of the year by the insurer under a funds withheld arrangement in respect of the reinsurance of a risk by the insurer under an insurance policy. This variable refers to the amounts receivable to an insurer or reinsurer that has assumed risk from another insurer.

Variable B is the total of all amounts each of which is the contractual service margin for a group of insurance contracts of the insurer at the end of the taxation year other than a group of segregated fund policies.

Variable C is the total of all amounts each of which is the reinsurance contract held amount for a group of contracts held by the insurer at the end of the taxation year excluding, for any group that reinsures an obligation to pay a benefit under which subparagraphs 1406(b)(i) and (ii) apply, that portion of the reinsurance contract held amount that relates to that obligation.

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

These amendments apply to taxation years that begin after 2022.

Clause 91

ITR
8605

Section 8605 computes, for the purposes of Parts I.3 and Part VI of the Act, amounts in respect of foreign insurance subsidiaries, and aggregates them with those of their Canadian insurer "parent", to achieve an approximation of the result that would arise if the foreign subsidiary's business were part of the Canadian corporation's operations rather than that of a separate entity.

ITR
8605(1)

Subsection 8605(1) of the Regulations sets out rules for computing the amount prescribed for the purposes of subclause 181.3(1)(c)(ii)(A)(II) and clause 190.11(b)(i)(B) of the Act. This amount is determined by calculating the "capital" of each foreign insurance subsidiary of a resident life insurance corporation, and deducting any part that represents the carrying value of shares or debt of the subsidiary that is held by (as well as any surplus contributed by) the Canadian insurer or certain of its affiliates. A subsidiary's capital is determined for this purpose using the rules applying to Canadian life insurance corporations under Part I.3 or VI (as the case may be), computed in respect of the

subsidiary's last taxation year ending at or before the end of the Canadian insurer's taxation year in question (referred to as the subsidiary's last taxation year).

Subsection 8605(1) is amended to incorporate new concepts introduced by the new International Financial Reporting Standard for insurance contracts (known as "IFRS 17") effective for years that begin on or after January 1, 2023 and to remove the deduction for the deferred debit tax balance of the corporation. The amount prescribed under subsection 8605(1) in respect of a particular corporation for a taxation year is the total of all amounts determined in respect of a foreign subsidiary at a particular time, the amount determined by the formula A – B.

Variable A replaces existing paragraph 8605(1)(a) with the formula:

$$C + D + (0.9 \times E) - (0.9 \times F) - G$$

- Variables C and G are the equivalent to subparagraphs 8605(1)(a)(i) and (iv) respectively.
- Variable D is the equivalent of existing subparagraph 8605(1)(a)(ii) that adds certain amounts to the amount prescribed in respect of a foreign subsidiary for the subsidiary's last taxation year. Variable D now also includes two new amounts that are not in subparagraph 8605(1)(a)(ii), policyholders' liabilities (as defined in subsection 138(12)), and accumulated other comprehensive income, of the foreign subsidiary at the end of its last taxation year.
- Variable E is the total of all amounts each of which is the contractual service margin for a group of insurance contracts of the foreign subsidiary at the end that subsidiary's last taxation year. The basis for the inclusion is that the contractual service margin for a group of contracts of the foreign subsidiary represents profits that is capital of the insurer. The contractual service margin for a group of segregated fund policies is not included in the parent's capital base.
- Variable F is the contractual service margin for a group of reinsurance contracts held by the foreign subsidiary at the end of the subsidiary's last taxation year excluding, where a portion of the contractual service margin for the group reinsures a risk under segregated fund policies, the contractual service margin in respect of those risks.

Variable B of the formula essentially rewrites existing paragraphs 8605(1)(b) and (c) as a formula and updates references to Variable A (which replaces paragraph 8605(1)(a)) as appropriate.

ITR
8605(2)

Subsection 8605(2) of the Regulations sets out rules for computing the amount prescribed for the purposes of subclause 181.3(c)(ii)(A)(III) and clause 190.11(b)(i)(C) of the Act. This subsection computes an amount referencing amounts in subsection 8605(1).

This subsection is amended to be a formula and to properly reference amended subsection 8605(1).

These amendments apply to taxation years that begin after 2022.

Clause 92

Deduction for Depreciation

ITR
Schedule II

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

Class 43.1 (30% CCA rate)

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

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

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

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

- equipment that distributes heated air or water in a building.

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

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