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

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## **Preface**

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

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

## Table of Contents

Clause in Legislative Proposals	Section Amended	Topic	Page
<b>Legislative Proposals Relating to Income Tax</b>			
<b>Income Tax Act</b>			
1	6	Reasonable standby charge .....	2
2	7	Non-arm's length relationship with trusts .....	2
3	8	Sales expenses .....	3
4	12	Definitions .....	3
5	13	Exchange of property .....	4
6	39	Meaning of capital gain and capital loss .....	4
7	44	Meaning of capital gain and capital loss .....	4
8	50	Debts established to be bad debts and shares of bankrupt corporation .....	5
9	54	Definitions .....	5
10	56	Pension benefits, unemployment insurance benefits, etc. ....	6
11	60	Transfer of superannuation benefits .....	6
12	66	Reductions in renunciations .....	7
13	81	Social assistance .....	8
14	89	Late designation - transitional ERDTH .....	8
15	95	Determination of certain components of foreign accrual property income ...	8
16	108	Interest rate hedging agreements .....	9
17	116	Liability of purchaser .....	9
18	118.2	Sperm or ova costs .....	10
19	122.6	Definitions .....	10
20	122.92	Definition of "return of income" .....	11
21	128	Where individual bankrupt .....	11
22	128.1	Definitions .....	12
23	129	Definitions .....	12
24	131	Sections not applicable .....	12
25	135.2	Eligible trust .....	13
26	137	Definitions .....	13
27	146	Definitions .....	13
28	146.3	Subsection (6.3) not applicable .....	15
29	146.4	Definitions .....	15
30	146.6	Definitions .....	17
31	147.4	RPP annuity contract .....	21
32	147.5	Member's PRPP account .....	22
33	149.1	Information returns .....	22
34	150	Returns - Trusts .....	22
35	153	Withholding .....	23
36	164	Interest on refunds and repayments .....	23
37	204.1	Waiver of tax .....	24
38	204.2	Undeducted RRSP premiums .....	24
39	204.91	Waiver of tax .....	24
40	205	Waiver of tax .....	25
41	207.01	Definitions .....	25
42	207.5	Election .....	31
43	207.64	Waiver of tax payable .....	31
44	223	Definition of amount payable .....	31
45	227	Penalty .....	32
46	231.2	Judicial authorization .....	32
47	235	Penalty for failing to file corporate returns .....	32
48	241	Provision of information .....	32
49	248	Definitions .....	34

Clause in Legislative Proposals	Section Amended	Topic	Page
<b>Income Tax Regulations</b>			
50	ITR 100	Interpretation.....	35
51	ITR 204	Estates and Trusts.....	35
52	ITR 205	Prescribed information returns.....	36
53	ITR 205.1	Electronic Filing.....	36
54	ITR 209	Distribution of Taxpayers Portions of Returns.....	36
55	ITR 304	Prescribed Annuity Contracts.....	37
56	ITR 1100	Taxation Years Less Than 12 Months.....	37
57	ITR 4901	Interpretation.....	37
58 to 60	ITR 5200 - 5202	Canadian Manufacturing and Processing Profits.....	38
61	ITR 6204	Prescribed Shares.....	38
62	ITR 8300	Interpretation.....	38
63	ITR 8302	Normalized Pension Assumptions.....	39
64	ITR 8500	Interpretation.....	40
65	ITR 8503	Lifetime Retirement Benefits.....	40
66	ITR 8504	Bridging Benefits.....	42
67	ITR 8506	Variable Payment Life Annuity.....	42
68	ITR 8510	Specified Multi-Employer Plan.....	43
69	ITR 9000	Prescribed Person not a Financial Institution.....	43
70	ITR 9005	Prescribed Non-reporting Financial Institution.....	43
71	ITR 9006	Prescribed Excluded Accounts.....	44

# Income Tax Act

## Clause 1

### Reasonable standby charge

*Income Tax Act* (the Act or ITA)

6(2)

Subsection 6(2) provides rules concerning the calculation of a reasonable standby charge which must be included in computing an employee's income where an employer-provided automobile is made available to the employee. Currently, the standby charge may be reduced where personal use of the employer-provided automobile is less than 1,667 kilometres per month and the automobile is used primarily in connection with or in the course of the office or employment.

Elements B and D in the formula contained in the French version of subsection 6(2) are amended to better align the English and French versions.

## Clause 2

### Non-arm's length relationship with trusts

ITA

7(1.11)

Section 7 of the Act contains provisions dealing with agreements under which an employee of a corporation or mutual fund trust may acquire securities of the employer or of an entity that deals at non-arm's length with the employer.

Subsection 7(1.11) deems a mutual fund trust to deal at non-arm's length with a corporation, for the purpose of section 7, only if the trust controls the corporation. Thus, in any other situation in which a corporation and a mutual fund trust deal at non-arm's length, the provisions of section 7 will not apply.

Subsection 7(1.11) is amended to expand the scope of the subsection to include a corporation and a mutual fund trust where the corporation owns securities that would give it more than 50% of the votes that could be cast at a meeting of unitholders of the trust. The securities to which such voting rights are attached would not be limited to units of the trust and could thus include, for example, securities that are exchangeable into units of the trust.

This amendment applies to rights exercised or disposed of after 2004 under agreements to sell or issue securities made after 2002.

### Disposition of newly-acquired security

ITA

7(1.31)

Subsection 7(1.31) contains a special provision (i.e., no cost averaging on disposition of securities) that applies when a taxpayer disposes of a security that is identical to other securities owned by the taxpayer within thirty days following the exercise of an employee stock option. The provision deems a particular security acquired on the exercise of the option, as designated by the taxpayer, to be the security that is the subject of the disposition. This allows an individual to exercise a stock option and sell the underlying share shortly thereafter without realizing a gain due to cost averaging (which could occur if the taxpayer held other securities with a lower cost base prior to exercising the option).

Subsection 7(1.31) is amended to expand the scope to include securities that are acquired on the surrender of an employee stock option.

This amendment comes into force on January 1, 2023.

### **Clause 3**

#### **Sales expenses**

ITA  
8(1)(f)(vi)

Paragraph 8(1)(f) permits a commissioned salesperson to deduct amounts expended for the purpose of earning income from employment, where the salesperson was not in receipt of a non-taxable travel allowance and was required by the contract of employment to pay his or her expenses and carry on the duties of employment away from the employer's place of business.

The French version of subparagraph 8(1)(f)(vi) is amended to better align the English and French versions.

#### **Transport employee's expenses**

ITA  
8(1)(g)

Paragraph 8(1)(g) permits the deduction of certain meal and lodging expenses by taxpayers who are employed by a person whose principal business was passenger, goods, or and passenger and goods transport.

The French version of the postamble of paragraph 8(1)(g) is amended to better align the English and French versions.

#### **Dues and other expenses of performing duties**

ITA  
8(1)(i)

Paragraph 8(1)(i) permits an employee to deduct certain dues and other employment expenses that are paid by the employee.

The French version of paragraph 8(1)(i) is amended to better align the English and French versions.

### **Clause 4**

#### **Definitions**

ITA  
12(11)

##### **“investment contract”**

Subsection 12(4) requires that the accrued interest on an investment contract be included in computing income on an annual basis. A number of arrangements are specifically excluded from these rules under the definition “investment contract” in subsection 12(11).

The definition “investment contract” is amended to add FHSAs to the list of exclusions. This ensures that a FHSA that is issued as a deposit will not be subject to the interest accrual rules.

This amendment comes into force on April 1, 2023.

## **Clause 5**

### **Exchange of property**

ITA

13(4.01)

Subsection 13(4) allows a taxpayer, who is required under subsection 13(1) to include in income recaptured depreciation resulting from the disposition of certain depreciable property, to elect to defer tax on the recapture to the extent that the taxpayer reinvests the proceeds of disposition in a replacement property within a certain period of time.

New subsection 13(4.01) provides that for the purposes of computing time under subsection 13(4), the period of time between March 15, 2020 and March 12, 2022 will not be counted. This amendment addresses challenges in purchasing replacement properties resulting from the global COVID-19 pandemic.

This amendment comes into force on March 15, 2020.

## **Clause 6**

### **Meaning of capital gain and capital loss**

ITA

39(1)(c)(iv)(C)

A taxpayer's business investment loss for a taxation year is determined under paragraph 39(1)(c).

Consequential on the replacement of the *Winding-up Act* with the *Winding-up and Restructuring Act*, clause 39(1)(c)(iv)(C) is amended to change the reference from the *Winding-up Act* to the *Winding-up and Restructuring Act*.

## **Clause 7**

### **Meaning of capital gain and capital loss**

ITA

44(1.01)

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

New subsection 44(1.01) provides that for the purposes of computing time under subsection 44(1), the period of time between March 15, 2020 and March 12, 2022 will not be counted. This amendment addresses challenges in purchasing replacement properties resulting from the global COVID-19 pandemic.

This amendment comes into force on March 15, 2020.



## Clause 8

### Debts established to be bad debts and shares of bankrupt corporation

ITA

50(1)(b)(ii)

Subsection 50(1) provides that certain debt owed to a taxpayer is deemed to be disposed of by the taxpayer for no proceeds and to have been reacquired by the taxpayer at a cost of nil. This rule applies to debts established to have become bad debts by a taxpayer. Subsection 50(1) also applies to certain shares owned by a taxpayer, where the taxpayer so elects.

Subparagraph 50(1)(b)(i) treats a taxpayer as having disposed of a share of the capital stock of a corporation owned at the end of the taxation year in which it becomes bankrupt under the *Bankruptcy Act* and as having reacquired it at a nil cost immediately thereafter. Thus, a taxpayer is allowed to recognize a capital loss on the shares of a bankrupt corporation even though he may not have disposed of them. Amounts subsequently received on the actual disposition of the share are taxed as capital gains.

Subparagraph 50(1)(b)(ii) extends this rule to shareholders of corporations that are governed by the *Winding-up Act* such as banks and insurance corporations, rather than by the *Bankruptcy Act*. For the rule to apply, the corporation must be insolvent under the *Winding-up Act* and subject to a winding-up order made thereunder.

Consequential on the replacement of the *Winding-up Act* with the *Winding-up and Restructuring Act*, subparagraph 50(1)(b)(ii) is amended to change the reference from the *Winding-up Act* to the *Winding-up and Restructuring Act*.

## Clause 9

### Definitions

ITA

54

#### “exemption threshold”

The definitions “exemption threshold”, “flow-through share class of property” and “fresh-start date” were introduced to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

Paragraph (b) of element B of the definition of exemption threshold is amended to correct a typo in the term “flow-through share”.

#### “fresh-start date”

The fresh-start date of a taxpayer in respect of a flow-through share class of property is, except in the case of a partnership interest, the day that is the later of March 22, 2011, and the last day, if any, on which the taxpayer disposed of a property that is included in the flow-through share class of property and at the end of which the taxpayer held no such property.

The definition “fresh-start date” applies for the purpose of calculating a taxpayer's “exemption threshold” (as defined in section 54) in respect to a particular flow-through share class of property.

Paragraph (b) of the definition of fresh-start date is amended to correct a typo in the term “flow-through share”.

**Clause 10****Pension benefits, unemployment insurance benefits, etc.**

ITA

56(1)(a)(iv)

Paragraph 56(1)(a) includes in the income of a taxpayer certain amounts received in a taxation year. Subparagraph 56(1)(a)(iv) requires unemployment benefits to be included in the income of the beneficiary.

Subparagraph 56(1)(a)(iv) of the Act is amended to replace the reference to the repealed *Unemployment Insurance Act* with the *Employment Insurance Act*.

**Clause 11****Transfer of superannuation benefits**

ITA

60(j)

Paragraph 60(j) allows a taxpayer a special deduction in respect of amounts paid, in a year or within 60 days after the end of the year, to registered pension plans and registered retirement savings plans. The deduction available to a taxpayer under this paragraph is generally limited to lump sum payments received by a taxpayer from a non-registered pension plan attributable to services rendered while the taxpayer or the taxpayer's spouse was not resident in Canada and included in computing the taxpayer's income.

Subparagraph 60(j)(iv) is amended by adding clause (C), which refers to a registered retirement income fund under which the taxpayer is the annuitant. Accordingly, an amount transferred from a foreign pension plan to a registered retirement income fund of the taxpayer may be eligible for an offsetting deduction under paragraph 60(j) (if not otherwise deducted under paragraph 60(l)) to the extent the transfer amount is included in the taxpayer's income.

This amendment comes into force on Announcement Date.

**Repayment of pension or benefits**

ITA

60(n)

Paragraph 60(n) provides a deduction for repayments of certain benefits included in income.

Paragraph 60(n) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

**Repayment of pension or other benefits**

ITA

60(n.2)

Paragraph 60(n) provides a deduction for repayments of certain benefits included in income, but only in the year of repayment. In certain situations, individuals do not have sufficient income in the year of repayment to fully utilize the available deduction.

Paragraph 60(n.2) is added to the Act to allow a taxpayer to deduct a repaid amount in the year it was included in computing the taxpayer's income under any of subparagraphs 56(1)(a)(i), (ii), (iv), (vi) or (vii)

or paragraph 56(1)(r), to the extent that the repaid amount exceeds the taxpayer's income in the year of repayment and is not otherwise deducted in computing the taxpayer's taxable income.

This amendment applies to the 2019 and subsequent taxation years.

### **Amounts included under s. 146.2(6)**

ITA  
60(r)

Paragraph 60(r) provided for the deduction of amounts permitted under the previous section 146.2 which set out the rules relating to registered home ownership savings plans ("RHOSP").

Paragraph 60(r) is repealed consequential to the expiry of the RHOSP program.

### **EI benefit repayment**

ITA  
60(v.1)

Paragraph 60(v.1) of the Act provides a deduction where a taxpayer repays a benefit received under Part VII of the *Unemployment Insurance Act* or Part VII of the *Unemployment Insurance Act*.

Paragraph 60(v.1) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

## **Clause 12**

### **Reductions in renunciations**

ITA  
66(12.73)(e)

Subsection 66(12.73) provides that, where a corporation purports to renounce amounts under subsection 66(12.6), (12.601) or (12.62) to one or more persons in excess of the amount that the corporation was entitled to renounce, the corporation must reduce the amount so renounced and file a statement with the Minister of National Revenue indicating the adjustments made. The statement must be filed within 30 days after notice in writing is forwarded to the issuing corporation by the Minister. The effect of the statement is to reduce the amount originally renounced by the excess identified in the statement.

Paragraph 66(12.73)(e) provides that where a corporation fails in the statement to apply the excess fully to reduce one or more purported renunciations, the Minister may at any time reduce the total amount purported to be renounced by the corporation by the amount of the unapplied excess. The amount purported to have been renounced by the corporation to a person is deemed, after that time, always to have been reduced by the amount of the unapplied excess allocated by the Minister in respect of that person.

To assist the Minister in reassessing a person in accordance with subsection 66(12.73), the Minister is provided an additional 3 years to reassess the person after the normal reassessment period pursuant to subparagraph 152(4)(b)(v).

The purpose of subsection 66(12.73) and subparagraph 152(4)(b)(v) are to assist the Minister in reassessing taxpayers who have claimed excessive deductions under subsections 66(12.6), (12.601) or (12.62) in respect of expenditures purported to have been renounced by a corporation to such taxpayers that exceed the amounts that the corporation was entitled to renounce.

Paragraph 66(12.73)(e) is amended to clarify that, if the corporation has not fully applied the excess amount in a statement filed with the Minister, the Minister may apply the excess fully to reduce the

amount of one or more purported renunciations regardless of whether the corporation failed to fully apply the excess amount in the filed statement or failed to file the statement at all. This amendment to paragraph 66(12.73) reverses the effect of a 2022 decision of the Tax Court of Canada, in which the Court held that the extended reassessment period provided by subparagraph 152(4)(b)(v) does not apply if a corporation fails to file a statement under subsection 66(12.73).

This amendment comes into force on Announcement Date.

### **Clause 13**

#### **Social assistance**

ITA

81(1)(h)(i)

Paragraph 81(1)(h) specifically exempts from income social assistance payments made to an individual for the benefit of a foster person (child or adult) under the individual's care where the individual and the foster person reside together in the individual's principal place of residence. To qualify for this exemption, the payments must be made under a program provided for by an Act of Parliament or the law of a province.

Subparagraph 81(1)(h)(i) is amended to remove the reference to the *Family Allowances Act* which was repealed and to update references to allowance in accordance with the *Children's Special Allowances Act*.

### **Clause 14**

#### **Late designation - transitional ERDTH**

ITA

89(14.2)

New subsection 89(14.2) provides that a corporation that has not made an eligible dividend designation in respect of a taxable dividend that it has paid can make a late eligible dividend designation, subject to certain conditions. First, the corporation must make the late designation within the six-year period immediately following the day on which the designation was first required to be made. Second, the designation must be made as a consequence of the application of new subparagraph (a)(iii) of the "eligible refundable dividend tax on hand" (ERDTH) definition in subsection 129(4), which applies in respect of certain eligible dividends received during the transition to the ERDTH regime. Third, the Minister must be of the opinion that accepting the late designation would be just and equitable in the circumstances.

### **Clause 15**

#### **Determination of certain components of foreign accrual property income**

ITA

95(2)(a)(ii)(D)

Clause 95(2)(a)(ii)(D) generally recharacterizes, as income from an active business, income derived by a qualifying interest foreign affiliate (the first affiliate) of a taxpayer from amounts paid or payable by another qualifying interest foreign affiliate (the second affiliate) of the taxpayer as interest under a legal obligation arising in relation to borrowed money used to acquire, or the unpaid purchase price from the acquisition of, shares of yet another qualifying interest foreign affiliate (the third affiliate) of the taxpayer that are excluded property of the second affiliate, provided that certain conditions set out in the clause are satisfied.

The text of clause 95(2)(a)(ii)(D) is amended in two respects, to bring it into better alignment with its intended purpose. First, the phrase “under a legal obligation to pay interest” is relocated from the beginning of subclause (D)(I) to the preamble, since that qualification properly applies to both the borrowed money referenced in subclause (I) and the amount payable for property in subclause (II).

Second, the preposition “on” used to denote the relationship between the recharacterized income amount (i.e., interest) and the underlying debt (i.e., the borrowed money or unpaid purchase price) is replaced with “in respect of”. Consistent with the original policy intent of the provision, this second amendment clarifies the scope of clause (D) as applying to both simple interest (that is, interest “on” a debt amount in the strict sense) and compound interest (that is, interest which accumulates by reference to unpaid interest on the debt amount). This clarification brings the text of clause (D) into line with clauses 95(2)(a)(ii)(A) to (C) in that respect.

## **Clause 16**

### **Interest rate hedging agreements**

ITA

108(2.1)

Subsection 108(2) sets out the requirements for a trust to be considered a unit trust for purposes of the Act. Subparagraph 108(2)(b)(iv) requires that not less than 95% of a trust’s income be derived from, or from the disposition of, property described in subparagraph 108(2)(b)(iii).

New subsection 108(2.1) characterizes the income realized from certain interest rate hedging agreements for the purposes of subparagraph 108(2)(b)(iv). Where a trust realizes income from an agreement that can reasonably be considered to have been made to mitigate risk from fluctuations in interest rates on debt incurred by the trust to acquire or refinance property described in subparagraph 108(2)(b)(iii), new paragraph 108(2.1) deems that income to be derived from the property described in subparagraph 108(2)(b)(iii), rather than from the hedging agreement itself.

New subsection 108(2.1) applies to taxation years that end after 2021.

## **Clause 17**

### **Liability of purchaser**

ITA

116(5)(a)

Section 116 establishes procedures for collecting tax from non-resident persons on the disposition of taxable Canadian properties.

Paragraph 116(5)(a) of the French version of the Act is amended to better align the French version of the Act with the English.

### **Treaty-protected property**

ITA

116(5.01)(a)

Subsection 116(5.01) provides conditions related to the acquisition of treaty-property property. Generally, where the conditions are satisfied, a purchaser does not need to withhold.

Paragraph 116(5.01)(a) of the French version of the Act is amended to better align the French version of the ITA with the English.

## **Liability of purchaser in certain cases**

ITA

116(5.3)(a)

Section 116 sets out rules that apply when a non-resident person disposes of certain types of property. Subsection 116(5.2) allows a non-resident vendor to obtain a certificate of compliance in respect of the disposition or proposed disposition of, among other things, depreciable property that is a taxable Canadian property. Subsection 116(5.3) provides that a purchaser must pay 50% of the amount by which the amount payable for the property exceeds the amount fixed in the certificate issued under subsection 116(5.2)

Paragraph 116(5.3)(a) of the French version of the Act is amended to better align the French version of the Act with the English.

## **Clause 18**

### **Sperm or ova costs**

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.

Paragraph 118.2(2)(v) includes in 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.

Paragraph 118.2(2)(v) is amended to add the term “embryos” to ensure that embryo transportation costs would be recognized under the Medical Expense Tax Credit.

This amendment comes into force on January 1, 2022.

## **Clause 19**

### **Definitions**

ITA

122.6

#### **“shared-custody parent”**

Section 122.6 defines a number of terms which apply for purposes of the Canada Child Benefit.

Paragraph 122.6(a) of the definition of shared-custody parent is amended to correct a typographical error.

## Clause 20

### Definition of “return of income”

ITA

122.92(1)

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

Subsection 122.92(1) is amended to add the definition of a “return of income” for the purposes of the Multigenerational Home Renovation Credit. The definition “return of income” is relevant in that the Multigenerational Home Renovation Tax Credit is intended to be only available to an individual in a taxation year if the individual has filed a return of income for the year. A return of income means the return (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the individual had tax payable under Part I of the Act for the taxation year.

This amendment comes into force on January 1, 2022.

## Clause 21

### Where individual bankrupt

ITA

128(2)

Subsection 128(2) contains a number of special rules that apply in cases of personal bankruptcy. In particular, paragraph 128(2)(d) divides the calendar year in which an individual becomes bankrupt into two taxation years. The first taxation year runs from January 1 to the day before bankruptcy and the second taxation year begins on the day of bankruptcy and runs to December 31.

New subparagraph 128(2)(d.3)(i) provides that where a bankrupt individual has a taxation year that is not a calendar year, the definitions in subsection 146.6(1) and the definition “excess FHSA amount” in subsection 207.01(1) are to be read as though references to “taxation year” are instead references to “calendar year”. This amendment ensures that the definitions “annual FHSA limit” and “FHSA carryforward” in subsection 146.6(1) function as intended (i.e., a taxpayer does not attain additional amounts of “annual FHSA limit” or “FHSA carryforward” than they would otherwise be entitled to had they not become bankrupt). Correspondingly, the definition of “excess FHSA amount” in 207.01(1) is effectively made to refer to the amount of an individual’s FHSA carryforward for a *calendar year* (rather than *taxation year*).

Similarly, new subparagraph 128(2)(d.3)(ii) provides that where a bankrupt individual has a taxation year that is not a calendar year, references to a taxpayer’s annual FHSA limit in the description of A of the formula in paragraph 146.6(5)(a) are read in respect of a calendar year (instead of a taxation year, as would otherwise be the case due to the preamble of subsection 146.6(5)). This amendment ensures that 146.6(5) functions as intended (i.e., a taxpayer is not able to deduct more than they would have otherwise been entitled to had they not become bankrupt).

These amendments come into force on April 1, 2023.

## Clause 22

### Definitions

ITA

128.1(10)

#### **“excluded right or interest”**

The definition “excluded right or interest” in subsection 128.1(10) applies for the purpose of the deemed disposition of property when an individual taxpayer ceases to be resident in Canada. Paragraph (g) of the definition refers to the right to a benefit under the *Canada Pension Plan* and similar provincial pension plans.

Subparagraph (g)(i) of the definition “excluded right or interest” in the English version of the ITA is amended to refer directly to the definition “provincial pension plan” that appears in the *Canada Pension Plan* statute. This is already provided for in the French version.

This amendment comes into force on Announcement Date.

## Clause 23

### Definitions

ITA

129(4)

#### **“eligible refundable dividend tax on hand”**

New subparagraph (a)(iii) of the definition “eligible refundable dividend tax on hand” (ERDTOH) in subsection 129(4) is added to include eligible dividends received by a particular corporation from payer corporations it is connected with to the extent that such dividends:

- a) caused a dividend refund to those payer corporations from their refundable dividend tax on hand (RDTOH) at the end of their first taxation year that ended after 2018, and
- b) are not otherwise included in determining the particular corporation’s ERDTOH.

This amendment is intended to address situations where a dividend recipient has (in its first taxation year under the ERDTOH regime) received an eligible dividend from a connected corporation (in its last taxation year under the old RDTOH regime) that caused the payer corporation to receive a dividend refund and that was thus subject to Part IV tax. This situation could arise if a dividend recipient and a payer corporation have different taxation year-ends.

This amendment applies to taxation years that begin after 2018.

## Clause 24

### Sections not applicable

ITA

131(4.1)

Subsection 131(4.1) of the Act prevents the exchange of shares of different classes of a mutual fund corporation from occurring on a tax deferred basis where the shares derive their value from different property. Exceptions are provided in paragraphs 131(4.1)(a) and (b) where the shares are of the same class (determined without reference to subsection 248(6)) and certain conditions are met, including that the shares derive their value from the same property or group of properties.



Subsection 131(4.1) is amended to add an additional exception in paragraph (c) where the shares are of Capital regional et coopératif Desjardins (the shares do not need to be of the same class), and certain conditions are met, including that the shares derive their value from the same property or group of properties.

This amendment applies to the exchange or other disposition of a share on or after October 25, 2018.

## **Clause 25**

### **Eligible trust**

ITA

135.2(4)

Subsection 135.2(4) contains rules that relate to an eligible trust (i.e., a type of trust that, among other conditions, was established in connection with the Canadian Wheat Board continuance application) and its beneficiaries.

Paragraphs 135.2(4)(f) and (g) recognize that it is not intended that a beneficial interest (i.e., an eligible unit) in, debt issued by, or any other security of the eligible trust become property of certain tax-exempt arrangements. Consistent with this, special taxes will apply to the extent that such a property is held by a DPSP, RDSP, RESP, RRIF, RRSP or TFSA. An additional tax is imposed under section 207.05 on the holder of a TFSA that acquires such a property.

These paragraphs are amended to include trusts governed by a FHSA.

This amendment comes into force on Announcement Date.

## **Clause 26**

### **Definitions**

ITA

137(6)

Section 137 provides rules that apply to credit unions. Among the definitions set out in subsection 137(6) is “member”, meaning essentially a member of record who is entitled to the services of the credit union. The definition treats a RRSP, RRIF, RESP and TFSA as a member, provided that the annuitant, holder or subscriber under the plan is a person who meets the existing definition of “member”.

This definition is amended to add FHSAs to the types of registered plans treated as members (provided that the holder under the plan is an individual that is a member).

This amendment comes into force on April 1, 2023.

## **Clause 27**

### **Definitions**

ITA

146(1)

#### **“earned income”**

Subsection 146(1) defines “earned income”, which is relevant in determining the maximum tax-deductible contributions that a taxpayer may make to RRSPs.

The French versions of paragraphs (a), (c), (e), and (g) of the definition “earned income” are amended to better align the French and the English versions of these paragraphs.

### **Deemed receipt of refund of premiums**

ITA

146(8.1)

Subsection 146(8.1) allows the legal representative of a deceased RRSP annuitant's estate and a qualifying beneficiary under the estate to jointly designate to have the RRSP proceeds that were paid to the estate treated as a “refund of premiums” (as defined in subsection 146(1)) received by the beneficiary from the RRSP. When such a designation is made, the beneficiary may include the deemed refund of premiums in income. If a corresponding amount is used to acquire a qualifying annuity or is paid into an RRSP or registered retirement income fund of the surviving spouse (or common-law partner) and certain other conditions are satisfied, the beneficiary will be entitled to an offsetting deduction under paragraph 60(1).

Subsection 146(8.1) is amended to permit a joint designation to be filed for a deemed receipt of “refund of premiums” in cases where a spouse or common-law partner is neither a beneficiary of the RRSP nor the estate of the deceased RRSP annuitant, but where a payment is made from the estate (not exceeding the RRSP proceeds) to a surviving spouse or common-law partner in accordance with a court order or written agreement relating to rights or interests in respect of the property from the breakdown of a marriage or common-law partnership.

This amendment comes into force on January 1, 2020.

### **Subsection (8.92) not applicable**

ITA

146(8.93)

Subsection 146(8.93) sets out conditions which must generally be satisfied in order for the deduction under subsection (8.92) to be available.

The French version of subsection 146(8.93) is amended to better align the French and the English versions of this subsection.

### **Transfer of funds**

ITA

146(16)

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

The French version of subsection 146(16) is amended to better align the French and the English versions of this subsection.

### **Specified pension plan — account**

ITA

146(21.2)

Subsection 146(21.2) applies for various purposes of the Act and Regulations to deem an individual's account under a specified pension plan (i.e., the Saskatchewan Pension Plan) to be a registered retirement savings plan under which the individual is the annuitant.

A reference to subsection 60.011 is added to subsection 146(21.2). As a result, the rules in section 60.011 will apply to amounts transferred from an individual's account under a specified pension plan to a

qualifying annuity under which a trust is the annuitant (where the beneficiary of the trust is the individual's spouse or common-law partner).

This amendment comes into force on Announcement Date.

## **Clause 28**

### **Subsection (6.3) not applicable**

ITA

146.3(6.4)

Subsection 146.3(6.4) sets out conditions which must generally be satisfied in order for the deduction under subsection (6.3) to be available.

The French version of subsection 146.3(6.4) is amended to better align the French and the English versions of this subsection.

## **Clause 29**

### **Definitions**

ITA

146.4(1)

#### **“qualifying person”**

Subsection 146.4(1) defines “qualifying person” in relation to a beneficiary of a disability savings plan.

Paragraph (c) is relevant for the purposes of allowing a disability savings plan to be established by a qualifying family member, who at the time the plan is established, is a qualifying person in relation to the plan's beneficiary.

Paragraph (c) is amended so that it applies for the purposes of new paragraph 146.4(4)(b.1). Upon the death of a plan holder who was a qualifying family member, another qualifying family member may acquire rights as a successor of a holder of a disability savings plan of a beneficiary if, at the time the rights are acquired, that successor is a qualifying person in relation to the beneficiary.

For further information, please refer to the commentary on new paragraph 146.4(4)(b.1).

#### **Beneficiary replacing holder**

ITA

146.4(1.5)

Subsection 146.4(1.5) sets out the circumstances in which a holder of a disability savings plan who is a “qualifying person” under paragraph (c) of that definition (referred to below as the “existing holder”) ceases to be the holder of the plan.

This subsection applies if the beneficiary of the plan is determined to be contractually competent by a competent tribunal or other authority under the laws of a province, or if in the issuer's opinion, after reasonable inquiry, the beneficiary's contractual competence to enter into a disability savings plan is no longer in doubt. If the beneficiary notifies the issuer that the beneficiary chooses to become the holder of the plan, the existing holder of the plan ceases to be the holder and the beneficiary becomes the new holder of the plan.

Subsection 146.4(1.5) is amended, consequential on the introduction of paragraph 146.4(4)(b.1). For the purposes of subsection (1.5), the existing holder of the plan includes a qualifying person who was a successor holder of the plan because of paragraph 146.4(4)(b.1).

### **Entity replacing holder**

ITA

146.4(1.6)

Subsection 146.4(1.6) sets out the circumstances in which a holder of a disability savings plan who is a “qualifying person” because of paragraph (c) of that definition (referred to below as the “existing holder”) ceases to be the holder of the plan.

If an entity described in subparagraph (a)(ii) or (iii) of the definition “qualifying person” in subsection 146.4(1) is legally authorized to act on behalf of the beneficiary of the plan (notably, a guardian, tutor, curator or other individual, or public department, agency or institution), then the entity must notify the issuer of its appointment, the existing holder of the plan ceases to be the holder and the entity becomes the new holder of the plan.

Subsection 146.4(1.6) is amended, consequential on the introduction of paragraph 146.4(4)(b.1). For the purposes of subsection (1.6), the existing holder of the plan includes a qualifying person who was a successor holder of the plan because of paragraph 146.4(4)(b.1).

### **Rules applicable in case of dispute**

ITA

146.4(1.7)

Subsection 146.4(1.7) applies to a disability savings plan entered into between an issuer and a qualifying family member who is a “qualifying person” in relation to the beneficiary of the plan because of paragraph (c) of that definition if a dispute arises because of the issuer’s acceptance of the qualifying family member as holder of the plan.

Subsection 146.4(1.7) is amended, consequential on the introduction of paragraph 146.4(4)(b.1). As a result, this subsection also applies to a qualifying family member who is a qualifying person in relation to the beneficiary of the plan who became a successor holder of the plan because of paragraph 146.4(4)(b.1).

### **Plan conditions**

ITA

146.4(4)

Subsection 146.4(4) sets out registration conditions applicable to registered disability savings plans.

Subparagraph 146.4(4)(b)(iv) is amended, consequential on the introduction of paragraph 146.4(4)(b.1).

New paragraph 146.4(4)(b.1) is introduced in order to allow a qualifying family member who is a qualifying person in relation to the beneficiary to become a successor holder of the plan in each case where a qualifying family member who is the existing holder of the plan passes away.

Paragraph 146.4(4)(b.1) only applies in circumstances where after the death of the qualifying family member plan holder, there are no qualifying family members that remain as plan holders. For example, if two legal parents are both plan holders because of paragraph (c) of the definition of “qualifying person”, paragraph 146.4(4)(b.1) will not apply upon the death of one legal parent, as there is still one plan holder that remains. If there are no remaining plan holders, only one qualifying family member at a time can acquire the rights as a successor of the holder of the plan. If this successor holder also passes away, another qualifying family member who is a qualifying person in relation to the beneficiary can become a successor holder.

Paragraph 146.4(4)(b.1) will apply until the end of 2026. As a consequence, a qualifying family member who is a qualifying person in relation to the beneficiary will not have a right after 2026 to succeed an existing qualifying family member plan holder. However, an individual who becomes a successor holder of a disability savings plan by virtue of this measure will generally be able to remain the holder of the plan after 2026.

The French version of paragraphs (f) and (g) in subsection 146.4(4) are amended to better align the French and the English versions of these paragraphs.

### **Obligations of issuer**

ITA

146.4(13)

Subsection 146.4(13) imposes obligations on the issuer of a registered disability savings plan.

Paragraph 146.4(13)(c) is amended, consequential on the introduction of paragraph 146.4(4)(b.1), to add a reference to a qualifying family member who was a successor holder of the plan because of paragraph 146.4(4)(b.1).

### **Issuer's liability**

ITA

146.4(14)

Subsection 146.4(14) limits the issuer's liability with respect to the issuer's decision to enter into a disability savings plan with a qualifying family member who is a "qualifying person" in relation to the beneficiary because of paragraph (c) of that definition, if after reasonable inquiry, the issuer is of the opinion that the contractual competence of the beneficiary to enter into a plan is in doubt.

Subsection 146.4(14) is amended, consequential on the introduction of paragraph 146.4(4)(b.1), to add a reference to a qualifying family member who was a successor holder of the plan because of paragraph 146.4(4)(b.1).

## **Clause 30**

### **Definitions**

ITA

146.6(1)

#### **"annual FHSA limit"**

The definition "annual FHSA limit" is used in the determination of the amount an individual may deduct, in respect of contributions to a FHSA, in computing the individual's income for a particular taxation year under subsection 146.6(5). The annual FHSA limit for a particular taxation year is the lesser of paragraphs (a), (b) and (c) of the definition.

The amount determined for paragraph (b) operates by way of a formula. In particular, paragraph (b) works to establish the maximum amount of contributions that could be deductible in a given year, which would typically be \$8,000 plus any "FHSA carryforward". However, this amount may be reduced where amounts have been transferred into the FHSA from an RRSP (less amounts transferred back to an RRSP at any time as a designated amount to correct an excess FHSA amount).

The description of E of the formula in paragraph (b) of the definition "annual FHSA limit" is revised to be the taxpayer's "net RRSP-to-FHSA transfer amount" at the end of the taxation year. As a result, the formula in paragraph (b) no longer includes a separate variable for the total of all amounts transferred

back to an RRSP at any time as a designated amount to correct an excess FHSA amount. This will ensure the formulas described in paragraph (b) of the definition “annual FHSA limit” function as intended.

For additional information, see the commentary below for “net RRSP-to-FHSA transfer amount”.

This amendment comes into force on April 1, 2023.

#### **“beneficiary”**

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

The French version of the definition is amended to correct typographical errors.

This amendment comes into force on April 1, 2023.

#### **“net RRSP-to-FHSA transfer amount”**

Subsection 146.6(1) is amended to add the definition “net RRSP-to-FHSA transfer amount”. A holder’s net RRSP-to-FHSA transfer amount at a given time is the total of all amounts transferred from a RRSP to a FHSA of the holder under paragraph 146(16)(a.2) at or before that time less the total of all designated amounts in respect of a transfer (i.e., amounts designated under paragraph (a) of the definition “designated amount” in subsection 207.01(1)) at or before that time.

The “net RRSP-to-FHSA transfer amount” definition is used in the amendment to the definition “annual FHSA limit”, the amendment to paragraph 146.6(5)(b) and the amendment to the definition “excess FHSA amount” in subsection 207.01(1).

This amendment comes into force on April 1, 2023.

#### **“survivor”**

Subsection 146.6(1) defines an individual to be a “survivor” if that individual was, immediately before a qualifying individual's death, a spouse or common-law partner of that 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 subsection 146.6(13).

It is not intended that a decedent must be a qualifying individual at the time of death for their spouse or common-law partner to be a survivor. The definition “survivor” is therefore amended to replace references to a “qualifying individual” (the decedent) with references to “holder”.

This amendment comes into force on April 1, 2023.

#### **Amount credited to a deposit**

ITA

146.6(3.1)

New subsection 146.6(3.1) provides that, in the case of a FHSA that is a deposit, the mere crediting of interest (or the addition of other income) in respect of the deposit does not constitute the receipt of that interest or other income by the FHSA holder (or any other person). Consequently, the holder is not required to include that amount in income.

In conjunction with this amendment, subsection 12(11) of the Act is amended to provide that a FHSA is listed as an investment contract. For more information, see the commentary for the amendment to the definition “investment contract” in subsection 12(11).

This amendment comes into force on April 1, 2023.

## **FHSA deduction**

ITA

146.6(5)(b)

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).

Subparagraph 146.6(5)(b)(ii) is amended to refer to the taxpayer's "net RRSP-to-FHSA transfer amount" as at the end of the taxation year. This amendment ensures that amounts transferred in the year or a preceding year are appropriately reduced by amounts designated under paragraph (a) of the definition designated amount in subsection 207.01(1). In cases where an individual has carried forward FHSA deductions and later has an excess FHSA amount caused by a transfer from an RRSP, this amendment ensures that designated amounts returned to an RRSP will allow the individual to deduct previously undeducted contributions.

### **Example**

Jimmy contributes \$8,000 to a FHSA in 2023 and contributes another \$8,000 in 2024. Jimmy is able to deduct \$8,000 from his income in each of those years, but instead decides to carry forward these deductions to a later year. In other words, Jimmy may deduct \$16,000 from income in a future taxation year.

Suppose Jimmy transfers \$30,000 from his RRSP to his FHSA on January 1, 2025 (as a result, Jimmy will have an excess FHSA amount of \$22,000 afterward, which will be subject to a 1%-per-month tax). Paragraph 146.6(5)(b) reduces the amount Jimmy can deduct from \$16,000 to \$10,000 ( $\$40,000 - 0 - \$30,000 = \$10,000$ ). The amendment will allow Jimmy to designate \$6,000 to reduce his excess and restore his carried forward deduction to \$16,000.

This amendment comes into force on April 1, 2023.

## **Transfer of amounts**

ITA

146.6(7)(c)

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, subsection 146.6(8) allows the transfer to be made on a tax-free basis.

Variables A and B of the formula in paragraph 146.6(7)(c) are amended to clarify that, in cases where an FHSA may have no holder because of the previous holder's death, the calculations are to be made in respect of the last (i.e., most recent) holder. Furthermore, variable B of the formula in paragraph 146.6(7)(c) is amended to clarify that it is to be determined immediately before the particular time (instead of *at* the particular time).

These amendments come into force on April 1, 2023.

**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.

Paragraph (a) is amended to clarify that an amount transferred is deemed to have been received by the holder, or, in the case there is no holder, the estate of the last holder.

This amendment comes into force on April 1, 2023.

**Successor holder**

ITA

146.6(13)

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.

Paragraphs (a) and (b) are amended to clarify that the determination of whether the survivor is a qualifying individual takes place immediately after the time of death of the FHSA holder.

Paragraph (a) is also amended to ensure that a survivor that contributes or transfers an amount into an inherited FHSA, or makes a qualifying withdrawal from that FHSA, between the deceased holder's time of death and the end of the calendar year following the death will be deemed to have entered into a new arrangement immediately after the death of their spouse. That is, by making a contribution or transfer to an inherited FHSA, or a qualifying withdrawal from an inherited FHSA, a survivor (that is a qualifying individual) cannot later avail themselves of paragraph (a) (to avoid being deemed to have opened an FHSA) by closing the account before the end of the year following the year in which their spouse died.

Paragraph (b) is also amended to allow a survivor that is not a qualifying individual immediately after the deceased holder's death to transfer the balance of the decedent's FHSA to an FHSA they opened in the past (i.e., opened at a time the survivor was a qualifying individual).

These amendments come into force on April 1, 2023.

**Rules applicable on FHSA cessation**

ITA

146.6(17)

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



Subsection 146.6(17) is amended in two ways. First, paragraph (a) is amended to include a reference to new subsection 146.6(3.1). This amendment clarifies that if an arrangement ceases to be a FHSA, neither subsection 146.6(3) nor 146.6(3.1) will apply to exempt the trust, deposit or contract (as the case may be) from tax under Part I of the Act.

Second, new paragraphs 146.6(17)(d) and (e) are added. Paragraph (d) treats a trust as having disposed of each of its properties immediately before the time that the arrangement ceases to be a FHSA, and as having reacquired each of those properties at the particular time. It also deems the proceeds of disposition, and the cost of acquisition, for each such property to be the property's fair market value immediately before the particular time. Subparagraphs 146.6(17)(d)(iii) and (iv) deem the trust's current taxation year to have ended immediately before the particular time and for a new taxation year to have commenced at the particular time.

New subparagraph 146.6(17)(e)(i) treats the holder of a non-trusted FHSA as having disposed of the deposit or contract, as the case may be, at the time immediately before it ceases to be a FHSA for proceeds of disposition equal to the fair market value of the deposit at that time. Under subparagraph (ii), if the arrangement is an annuity contract, the contract is deemed to be a separate contract that was issued at the time the arrangement ceased to be a FHSA, and as not having been issued or effected as a FHSA. Under subparagraph (iii), each person with an interest in the deposit or contract, as the case may be, at the time it ceases to be a FHSA is treated as having acquired that interest at that time at a cost equal to its fair market value at that time.

These amendments come into force on April 1, 2023.

### **Clause 31**

#### **RPP annuity contract**

ITA

147.4(1)(c)

Where an individual acquires ownership of an annuity in satisfaction of the individual's entitlement to benefits under a registered pension plan (RPP) and certain other conditions are met, subsection 147.4(1) deems the individual not to have received an amount from the RPP as a result of acquiring the annuity and deems amounts received under the contract to be amounts received under the RPP. As a consequence, there is no immediate taxation on acquisition of the annuity and any payments under the contract are included in the recipient's income in the year in which they are received.

One of the conditions that must be met in order for this deeming rule to apply is that the RPP annuity contract does not provide for any further premiums to be paid after the contract is acquired by the individual. Paragraph 147.4(1)(c) is amended (and divided into subparagraphs (i) and (ii)) to permit additional premiums to be paid to the annuity contract to acquire additional benefits that are consequential to proceedings commenced under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*.

This amendment comes into force on January 1, 2018.

**Clause 32****Member's PRPP account**

ITA

147.5(12)

Subsection 147.5(12) deems an individual's account under a pool registered pension plan to be an RRSP under which the individual is the annuitant, for the purposes of a number of listed provisions of the Act and Regulations.

A reference to section 60.011 is added to subsection 147.5(12). As a result, the rules in section 60.011 will apply to amounts transferred from an individual's account under a pool registered pension plan to a qualifying annuity under which a trust is the annuitant (where the beneficiary of the trust is the individual's spouse or common-law partner).

This amendment comes into force on Announcement Date.

**Clause 33****Information returns**

ITA

149.1(14.1)

Subsection 149.1(14.1) requires that each "registered journalism organization" file an information return and a public information return for the year in prescribed form and containing prescribed information. Information contained in a public information return will be disclosed to the public by the Minister of National Revenue pursuant to subsection 149.1(15), including the name of each donor whose total gifts to the organization in a taxation year exceed \$5,000 and the total amount of donations from each such donor.

The returns must be filed within 6 months from the end of the organization's taxation year.

The French version of paragraph 149.1(14.1) of the Act is amended to correct typographical errors.

**Clause 34****Returns - Trusts**

ITA

150(1.2)

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).

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 section 204.2 of the Regulations. Trusts that are required to file a return, will be required to provide the additional information outlined in section 204.2 of the Regulations.

Subsection 150(1.2) is amended to add an exemption for an “eligible trust” as defined in subsection 135.2(1). Generally speaking, this is a trust formed on the continuation of the Canadian Wheat Board.

This amendment comes into force on December 30, 2023. This is the same coming into force date of existing subsection 150(1.1).

## **Clause 35**

### **Withholding**

ITA  
153(1)

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

Paragraph 153(1)(d.1) is amended to add a reference to an income replacement benefit under the *Veterans Well-being Act* (i.e. a new reference to subparagraph 56(1)(a)(viii)).

This amendment comes into force on April 1, 2019.

### **Canada Emergency Wage Subsidy claimed**

ITA  
153(1.05)

Subsection 153(1.2) provides for the Temporary Wage Subsidy (TWS). The TWS was introduced in the initial phase of the COVID-19 pandemic in the spring of 2020. This was a 10% subsidy on wages paid between March 18, 2020 and June 19, 2020. It was structured as a deemed remittance on account of required income tax withholding/remittance amounts for wages paid in that period.

The government subsequently introduced the Canada Emergency Wage Subsidy (CEWS) for periods beginning March 15, 2020. The CEWS paid a direct subsidy to eligible employers for wages paid. The initial periods of the CEWS and the periods of the TWS overlapped. In order to prevent a double subsidy under the CEWS and TWS in respect of the same wages paid, the formula in the CEWS provided for a reduction in a subsidy amount for a period by the amount of TWS received for that period. This reduction is in the description of B of the CEWS formula in subsection 125.7(2).

This amendment deems an amount to have not been remitted under subsection 153(1.02) if the employer made a claim for the same period for the CEWS and did not deduct the otherwise deemed remitted amount from the CEWS claim as required. This amendment would prevent an employer from receiving a double subsidy (TWS and CEWS) in respect of the same wages paid.

This amendment comes into force on March 18, 2020.

## **Clause 36**

### **Interest on refunds and repayments**

ITA  
164(3)

Subsection 164(3) provides for the payment of interest on tax refunds, other than any portion of a refund that arises in relation to the GST/HST Credit, Canada Child Benefit, COVID-19 emergency subsidies or Climate Action Incentive.

Subsection 164(3) is amended consequential on introduction of paragraph 60(n.2) that allows a taxpayer to deduct certain repaid benefits in previous taxation years. Repaid amounts deducted under paragraph 60(n.2) are added to the list of amounts in subsection 164(3) in respect of which the payment of interest will not be made.

This amendment applies to the 2019 and subsequent taxation years.

### **Clause 37**

#### **Waiver of tax**

ITA

204.1(4)

Part X.1 (sections 204.1 to 204.3) imposes a special tax on excess contributions to registered retirement savings plans and deferred profit sharing plans.

The French version of subsection 204.1(4) is amended to better align the French and the English versions of this subsection.

### **Clause 38**

#### **Undeducted RRSP premiums**

ITA

204.2(1.2)

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

Variable H in subsection 204.2(1.2) is amended to add paragraph (c), which subtracts employer pool registered pension plan contributions that were included in previous taxation years. Given that contributions to an individual's account reduce the individual's RRSP contribution room for subsequent years, this relieving amendment to subsection 204(1.2) fixes a technical error to ensure that employer contributions do not increase the individual's "undeducted RRSP contributions" in the subsequent years.

This amendment applies to the 2012 and subsequent taxation years.

Subparagraph (a)(iii) of variable I of the formula in subsection 204.2(1.2) is amended to add transfers from a FHSA to a RRSP to the list of transfers that are not considered for purposes of the Part X.1 tax to be premiums paid to a RRSP.

This amendment comes into force on April 1, 2023.

### **Clause 39**

#### **Waiver of tax**

ITA

204.91(2)

Section 204.91 provides a tax equal to 1% per month on the subscriber's share of the excess amount in respect of a beneficiary to the extent that the share has not been withdrawn (i.e., overcontributions to registered education savings plans). Subsection (2) allows the Minister of National Revenue to waive the tax where it is just and equitable to do so.

The French version of subsection 204.91(2) is amended to better align the French and the English versions of this subsection.

#### **Clause 40**

##### **Waiver of tax**

ITA  
205(3)

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

The French version of subsection 204.91(2) is amended to better align the French and the English versions of this subsection.

#### **Clause 41**

##### **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. The definitions “designated amount”, “excess FHSA amount” and “swap transaction” are amended as follows.

##### **“designated amount”**

The 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.

Paragraph (a) of the definition “designated amount” is amended to ensure the language “to a FHSA under which the individual is the holder” correctly appears after the reference to paragraph 146(16)(a.2), instead of after the reference to subparagraph 146.6(7)(b)(ii).

This amendment comes into force on April 1, 2023.

##### **“excess FHSA amount”**

The 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.

The amendment replaces the existing “excess FHSA amount” definition. New paragraph (a) determines an individual's excess FHSA amount by examining a taxpayer's FHSA activity on a year-by-year basis. New paragraph (b) of the definition “excess FHSA amount” provides the Minister of National Revenue the discretion to reduce the amount determined in paragraph (a) in appropriate circumstances.

Specifically, paragraph (a) is the amount determined by the formula  $A + B + C - D - E$ . The formula starts with Variable A, which is the individual's excess FHSA amount as at the end of the previous year. In the first year an individual has an FHSA, variable A is set to zero.

Variables B and C represent amounts that could increase an individual's excess FHSA amount. Specifically, variables B and C are the contributions and transfers, respectively, that have been made to an individual's FHSA in the taxation year (at or before the particular time).

Variables D and E represent amounts that reduce an individual's excess FHSA amount. Specifically, variable D is the lesser of (a) the amount of the FHSA carryforward plus \$8,000 and (b), an amount determined by the subformula  $\$40,000 - F - G$ . Paragraph (a) of Variable D can at most be \$16,000 (a full \$8,000 FHSA carryforward amount plus \$8,000).

The subformula in paragraph (b) of variable D will reduce the amount determined in the previous paragraph as a taxpayer approaches the \$40,000 lifetime limit on deductible contributions. Variable F is the amount of deductible contributions made before the start of the current taxation year.

Transfers also generally reduce the amount of deductible contributions available to a taxpayer. As such, variable G represents the amount of transfers made assuming such transfers would have given rise to a deduction as if they were instead directly contributed. Since designated amounts under paragraph (a) of the definition "designated amount" in subsection 207.01(1) can 'reinstate' the amount a taxpayer is able to deduct, variable G is based on an individual's "net RRSP-to-FHSA transfer amount" (refer to the explanatory note for this definition in subsection 146.6(1)). Essentially, variable G is the total of all amounts that would have been deductible in respect of preceding taxation years if any increase in an individual's "net RRSP-to-FHSA transfer amount" in a given year was instead directly contributed.

Finally, variable E reflects the total of the individual's "designated amounts" made in the taxation year before the particular time or amounts to be included in the taxpayer's income for the taxation year before the particular time. Designated amounts allow an individual to correct an excess FHSA contribution by essentially reversing a transfer from an RRSP or a direct contribution.

The operation of paragraph (a) of the definition "excess FHSA amount" is shown through several examples below. In these examples, assume that the "excess FHSA amount" is calculated after any contributions or transfers are made.

### Example 1

Janice contributes \$40,000 to a FHSA on April 1, 2023 (as a result, Janice will have an excess FHSA amount of \$32,000 throughout the remainder of 2023, which will be subject to a 1%-per-month tax). Presuming Janice takes no further action, her excess FHSA amount would be determined as follows:

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Excess FHSA Amount</b>
<b>2023</b>	0	40,000	0	8,000	0	32,000
<b>2024</b>	32,000	0	0	8,000	0	24,000
<b>2025</b>	24,000	0	0	8,000	0	16,000
<b>2026</b>	16,000	0	0	8,000	0	8,000

<b>2027</b>	8,000	0	0	8,000	0	0
<b>2028</b>	0	0	0	0	0	0

Note:

- In 2023, D is 8,000, since the lesser of (a) 8,000 and (b) 40,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 0 = 40,000$ .
- In 2024, D is 8,000, since the lesser of (a) 8,000 and (b) 32,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 0 = 32,000$ .
- In 2025, D is 8,000, since the lesser of (a) 8,000 and (b) 24,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 16,000 - 0 = 24,000$ .
- In 2026, D is 8,000, since the lesser of (a) 8,000 and (b) 16,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 24,000 - 0 = 16,000$ .
- In 2027, D is 8,000, since the lesser of (a) 8,000 and (b) 8,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 32,000 - 0 = 8,000$ .
- In 2028, D is 0, since the lesser of (a) 8,000 and (b) 0 is 0.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 40,000 - 0 = 0$ .

### Example 2

Instead, suppose Janice transfers \$40,000 from her RRSP to a FHSA on April 1, 2023. Her resulting excess FHSA amounts would be the same.

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Excess FHSA Amount</b>
<b>2023</b>	0	0	40,000	8,000	0	32,000
<b>2024</b>	32,000	0	0	8,000	0	24,000
<b>2025</b>	24,000	0	0	8,000	0	16,000
<b>2026</b>	16,000	0	0	8,000	0	8,000
<b>2027</b>	8,000	0	0	8,000	0	0
<b>2028</b>	0	0	0	0	0	0

Note:

- In 2023, D is 8,000, since the lesser of (a) 8,000 and (b) 40,000 is 8,000.  
↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 0 = 40,000$ .

- In 2024, D is 8,000, since the lesser of (a) 8,000 and (b) 32,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 8,000 = 32,000$ .
- In 2025, D is 8,000, since the lesser of (a) 8,000 and (b) 24,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 16,000 = 24,000$ .
- In 2026, D is 8,000, since the lesser of (a) 8,000 and (b) 16,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 24,000 = 16,000$ .
- In 2027, D is 8,000, since the lesser of (a) 8,000 and (b) 8,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 32,000 = 8,000$ .
- In 2028, D is 0, since the lesser of (a) 8,000 and (b) 0 is 0.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 40,000 = 0$ .

### Example 3

Instead, suppose on April 1, 2023 Janice contributes \$18,000 to a FHSA and transfers \$24,000 from her RRSP to a FHSA. Her resulting excess FHSA amounts would be the following:

	A	B	C	D	E	Excess FHSA Amount
<b>2023</b>	0	18,000	24,000	8,000	0	34,000
<b>2024</b>	34,000	0	0	8,000	0	26,000
<b>2025</b>	26,000	0	0	8,000	0	18,000
<b>2026</b>	18,000	0	0	8,000	0	10,000
<b>2027</b>	10,000	0	0	8,000	0	2,000
<b>2028</b>	2,000	0	0	0	0	2,000

Note:

- In 2023, D is 8,000, since the lesser of (a) 8,000 and (b) 40,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 0 = 40,000$ .
- In 2024, D is 8,000, since the lesser of (a) 8,000 and (b) 32,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 8,000 = 32,000$ .
- In 2025, D is 8,000, since the lesser of (a) 8,000 and (b) 24,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 16,000 = 24,000$ .
- In 2026, D is 8,000, since the lesser of (a) 8,000 and (b) 16,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 24,000 = 16,000$ .



- In 2027, D is 8,000, since the lesser of (a) 8,000 and (b) 8,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 24,000 = 8,000$ .
- In 2028, D is 0, since the lesser of (a) 8,000 and (b) 0 is 0.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 16,000 - 24,000 = 0$ .

#### Example 4

Instead, suppose Janice contributes \$8,000 to a FHSA on April 1, 2023 and transfers \$16,000 from her RRSP to a FHSA at the beginning of 2024. Her resulting excess FHSA amounts would be the following:

	A	B	C	D	E	Excess FHSA Amount
2023	0	8,000	0	8,000	0	0
2024	0	0	16,000	8,000	0	8,000
2025	8,000	0	0	8,000	0	0
2026	0	0	0	8,000	0	0
2027	0	0	0	16,000	0	0
2028	0	0	0	16,000	0	0

Note:

- In 2023, D is 8,000, since the lesser of (a) 8,000 and (b) 40,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 0 - 0 = 40,000$ .
- In 2024, D is 8,000, since the lesser of (a) 8,000 and (b) 32,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 0 = 32,000$ .
- In 2025, D is 8,000, since the lesser of (a) 8,000 and (b) 24,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 8,000 = 24,000$ .
- In 2026, D is 8,000, since the lesser of (a) 8,000 and (b) 16,000 is 8,000.
  - ↳ Paragraph (a) of D is  $0 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 16,000 = 16,000$ .
- In 2027, D is 16,000, since the lesser of (a) 16,000 and (b) 16,000 is 16,000.
  - ↳ Paragraph (a) of D is  $8,000 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 16,000 = 16,000$ .
- In 2028, D is 16,000, since the lesser of (a) 16,000 and (b) 16,000 is 16,000.
  - ↳ Paragraph (a) of D is  $8,000 + 8,000$ , Paragraph (b) of D is  $40,000 - 8,000 - 16,000 = 16,000$ .

As noted above, new paragraph (b) of the definition “excess FHSA amount” provides the Minister of National Revenue the discretion to reduce the amount determined in paragraph (a) in appropriate circumstances. Such circumstances could include situations of financial hardship. For example, if the value of a taxpayer’s FHSA portfolio has decreased substantially and the taxpayer has exhausted all corrective remedies available to them (e.g., designated amounts, non-qualifying withdrawals), paragraph (b) would provide the Minister the discretion to reduce any remaining excess FHSA amount that would otherwise be determined by paragraph (a).

### **“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) were expanded. Subparagraph (d)(i) was 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. This amendment came into force on April 1, 2023 (Bill C-32, Royal Assent on December 15, 2022).

The definition “swap transaction” is amended to clarify the intention behind the original amendment. Specifically, these amendments clarify that the definition “swap transaction” excludes transfers between FHSAs, non-taxable transfers from an FHSA to an RRSP or RRIF (in accordance with subsection 146.6(8)) and non-taxable transfers from an RRSP to an FHSA (in accordance with paragraph 146(16)(a.2)).

The amendment to paragraph (b) of the definition “swap transaction” comes into force on April 1, 2023. Amendments to paragraph (d) of the definition “swap transaction” come into force on Announcement Date.

### **Breakdown of marriage or common-law partnership**

ITA

207.01(10)

Subsection 207.01(10) sets out the conditions that must be met for subsection 207.01(11) to apply in respect of a property. Subsection 207.01(11) provides for the preservation of grandfathered property status for certain property that has been transferred from an individual's RRSP or RRIF to an RRSP or RRIF of the individual's current or former spouse or common-law partner. Such grandfathered property is not subject to certain taxes (prohibited investment and advantage taxes).

One of the conditions outlined in subsection 207.01(10) is that the controlling individual of an RRSP or RRIF and their current or former spouse or common-law partner must make a joint election in respect of transferred property.

Subsection 207.01(10) is amended to extend the application of the rule to situations involving transfers of property from the controlling individual’s RRSP or RRIF as a consequence of the death of the controlling individual. In such cases, the joint election is to be made between the recipient and the legal representative of the controlling individual’s estate. Moreover, in such cases, the election must be filed with the Canada Revenue Agency no later than 90 days after the end of the taxation year of the recipient that includes the time that the property is transferred.

This amendment comes into force on January 1, 2020.

**Clause 42****Election**

ITA  
207.5(2)

Where the balance of refundable tax of an RCA at the end of the year exceeds the value of assets held by an RCA trust, subsection 207.5(2) permits the custodian of the RCA to elect to reduce the refundable tax to an amount equal to the value of trust assets. This election is available only if the property held at the end of the taxation year consists solely of cash, debt obligations and shares listed on a designated stock exchange.

Subsection 207.5(2) is amended to expand the types of property that may be held by the RCA trust for the election to be available. Specifically, the preamble to subsection (2) is amended to add a reference to units of a mutual fund trust listed on a designated stock exchange. A consequential amendment to refer to such units is made to paragraph 207.5(2)(c). As a result, an RCA trust could generally hold units of exchange-traded funds without precluding the availability of the election.

These amendments apply to elections made in respect of the 2020 and subsequent taxation years.

**Clause 43****Waiver of tax payable**

ITA  
207.64

Section 207.64 authorizes the Minister of National Revenue to waive or cancel a tax (or a portion of a tax) payable if the Minister considers it just and equitable to do so.

The French version of paragraph 207.64(a) is amended to better align the French and the English versions of this paragraph.

**Clause 44****Definition of amount payable**

ITA  
223(1)(b.1)

Section 223 allows the Canada Revenue Agency to register with the Federal Court a certificate specifying an amount payable by a taxpayer under the Act or certain other acts. Paragraph 223(1)(b.1) provides for an amount payable under the *Unemployment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 223(1)(b.1) of the Act is repealed.

**Clause 45****Penalty**

ITA  
227(9.1)

Subsection 227(9.1) restricts the application of the penalty contained in subsection 227(9) for late or deficient remittances to the amount by which the total of the required remittance of source deductions and amounts required to be remitted under the *Canada Pension Plan* and the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, subsection 227(9.1) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

**Clause 46****Judicial authorization**

ITA  
231.2(3)

Subsection 231.2(3) provides that a judge, on an ex parte application, may grant a judicial authorization subject to such conditions that the judge considers appropriate if the judge is satisfied that the unnamed person or persons is ascertainable and that the requirement is made to verify compliance with the Act.

Subsection 231.2(3) is amended to correct a reference from “section” to “subsection”.

**Clause 47****Penalty for failing to file corporate returns**

ITA  
235(1)(a)

Section 235 provides a penalty for large corporations that fail to file, as and when required, a tax return under Part I (income tax) or Part VI (minimum tax on financial institutions).

Paragraph 235(1)(a) is amended to clarify that the term “the corporation’s taxable capital employed in Canada” has the meaning assigned in Part I.3 of the Act.

**Clause 48****Provision of information**

ITA  
241(1)(c)

Section 241 sets out a prohibition against the unauthorized communication of information obtained by government officials in administering the tax system. The existing section does not, however, prohibit the personal or other use by an authorized official of any information obtained. Paragraph 241(1)(c) expressly prohibits CRA employees and other government officials from using taxpayer information, other than as expressly provided for purposes other than the administration and enforcement of the Act, the *Canada Pension Plan* and the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(1)(c) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

#### **Communication where proceedings have been commenced**

ITA  
241(3)(b)

Subsection 241(3) authorizes the disclosure of tax information in respect of any legal proceedings relating to the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(3)(b) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

#### **Where taxpayer information may be disclosed**

ITA  
241(4)(a)

Paragraph 241(4)(a) authorizes the communication of information to government officials outside the CRA, for the purposes of the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(4)(a) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

#### **Where taxpayer information may be disclosed**

ITA  
241(4)(d)(vii.10)

Subsection 241(4) authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes. Subparagraph 241(4)(d)(vii.10) provides that taxpayer information may be provided to an official of a department or agency of a provincial government solely for the purposes of the administration and enforcement, or evaluation or formulation of policy, of a program that provides financial assistance in respect of rent or interest payments in the context of the coronavirus disease 2019 (COVID-19) pandemic Canada.

Subparagraph 241(4)(d)(vii.10) is renumbered to 241(4)(d)(vii.91) in accordance with numbering conventions.

#### **Where taxpayer information may be disclosed**

ITA  
241(4)(h)

Paragraph 241(4)(h) authorizes the use of taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by His Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of His Majesty in right of Canada to assist in the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, to the extent that the information is relevant for the purpose.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(4)(h) of the Act is amended to remove the reference to the *Unemployment Insurance Act*.

## Definitions

ITA  
241(10)

### “authorized person”

Subsection 241(10) provides definitions that apply for the purposes of section 241. Subsection 241(10) defines an “authorized person” as a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of His Majesty in right of Canada to assist in carrying out the provisions of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, the definition of “authorized person” in subsection 241(10) of the Act is amended to remove the reference to the *Unemployment Insurance Act*.

## Clause 49

### Definitions

ITA  
248(1)

### “automobile”

Paragraph (d) of the definition “automobile” in subsection 248(1) excludes motor vehicles that are acquired to be sold, rented or leased in the course of carrying on a business, except that this exclusion does not apply for the purposes of the employee benefit rules in section 6 of the Act. Paragraph (d) of the definition of automobile is amended to also include a reference to section 15.

This amendment would provide that the exclusion also does not apply for the purposes of section 15 (the shareholder benefit rules). This would ensure that a shareholder who uses a vehicle that otherwise meets the exclusion from the “automobile” definition (for example, a vehicle acquired by a car dealership for resale) would be subject to the rules in section 15 that apply where a shareholder receives the use of an automobile.

This amendment applies as of Announcement Date.

### “disposition”

Paragraph (f) of the “disposition” definition in subsection 248(1) excepts transfers of property without a change of beneficial ownership where certain conditions are met, including transfers between the same type of registered plans.

Subparagraph (f)(vi) is amended to add FHSAs to the types of registered plans specified for this purpose.

This amendment comes into force on April 1, 2023.

### Qualifying arrangement

ITA  
248(3.2)

Subsection 248(3.2) describes a qualifying arrangement for the purposes of paragraphs 248(3)(b) and (c) (i.e., for the purposes of deeming certain arrangements established under Quebec law to be trusts for the purpose of the Act). Paragraph 248(3.2)(d) requires that for an arrangement to a qualifying arrangement, it must be presented as an arrangement in respect of which the issuer (being a trust company) is to take action for the arrangement to become a RDSP, RESP, RRIF, RRSP or TFSA.

The amendment adds the FHSA to the types of arrangements listed in paragraph 248(3.2)(d).

This amendment comes into force on April 1, 2023.

## Income Tax Regulations

### Clause 50

#### Interpretation

*Income Tax Regulations* (the Regulations or ITR)  
100(1)

#### “remuneration”

Consequential to the addition of income replacement benefits in paragraph 153(1)(d.1) of the Act, new paragraph (e.1) is added to the definition “remuneration” in subsection 100(1) of the Regulations. This addition ensures that the tax withholding rules in the Regulations apply as intended to income replacement benefits.

This amendment comes into force on April 1, 2019.

#### Amounts excluded from base

ITR

100(3)

Subsection 100(3) excludes certain amounts (including contributions to a registered pension plan) from the amount of remuneration paid to a taxpayer that is subject to withholding at source.

Subsection 100(3) is amended by adding paragraph (f) to exclude certain pension transfers on death for the benefit of the deceased’s spouse, child or grandchild (as described in paragraph 60(1)) from amounts that are subject to withholding at source.

This amendment comes into force on Announcement Date.

### Clause 51

#### Estates and Trusts

ITR

204(3)

Section 204 generally requires that a person receiving income, gains or profits in a fiduciary capacity file an information return in respect of such amounts within 90 days from the end of the taxation year in which the amounts arose.

Paragraph 204(3)(h) is added so that this requirement does not apply to a trust governed by a tax-free first home savings account (FHSA), as these trusts are required to file information returns under the reporting rules in section 219 of the Regulations. If a trust governed by a former FHSA continues to exist after it ceases to be a FHSA, this filing exclusion would no longer apply, subjecting the trust to the ordinary trust return filing requirements of section 204.

This amendment comes into force on April 1, 2023.

**Clause 52****Prescribed information returns**

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 (the penalty is based on the number of prescribed information returns of a particular type that are late-filed and the number of days that they are late).

Subsection 205(3) of the Regulations is amended consequential to recent amendments to the Act and Regulations that permit “permitted corrective contributions” (as defined in subsection 147.1(1) of the Act) and “pension adjustment corrections” (determined under subsection 8304.1(16) of the Regulations).

The names of CRA forms T10 and T215 are revised to reflect the requirement to report “permitted corrective contributions” and “pension adjustment corrections” to the CRA.

This amendment comes into force on January 1, 2021.

Subsection 205(3) of the Regulations is also amended to update "First Home Savings Account Annual Information Return" to “First Home Savings Account Statement” (i.e., the T4FHSA) on the list of prescribed returns for the purposes of subsection 162(7.01).

This amendment comes into force on April 1, 2023.

**Clause 53****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 update "First Home Savings Account Annual Information Return" to “First Home Savings Account Statement” (i.e., the T4FHSA) on the list of prescribed forms that must be electronically filed.

This amendment comes into force on April 1, 2023.

**Clause 54****Distribution of Taxpayers Portions of Returns**

ITR  
209(5)

Subsection 209(5) permits the issuer of certain types of information returns (i.e., slips) to provide a slip to a taxpayer electronically, without having received the taxpayer's express consent to receive it in this format.

Subsection 209(5) is amended to update the name of the "FHSA information return" to “First Home Savings Account Statement (T4FHSA)”.

This amendment comes into force on April 1, 2023.



## **Clause 55**

### **Prescribed Annuity Contracts**

ITR

304(1)

Section 304 prescribes certain annuity contracts for exclusion from the rules in section 12.2 of the Act that require income from life insurance policies to be reported on an accrual basis. Paragraph 304(1)(a) provides an exclusion for annuity contracts purchased pursuant to a registered retirement savings plan (RRSP) or certain other registered plans.

Paragraph 304(1)(a) is amended to extend the exclusion from the accrual rules to annuity contracts issued as a FHSA. This change is implemented by extending the existing reference to include annuity contracts issued as or pursuant to an arrangement described in paragraph 148(1)(b.4) (which excludes FHSA annuity contracts from the rules in subsection 148(1) that require an income inclusion on the disposition of a life insurance policy).

This amendment comes into force on April 1, 2023.

## **Clause 56**

### **Taxation Years Less Than 12 Months**

ITR

1100(3)

Subsection 1100(3) of the Regulations provides for the proration of capital cost allowance deductions for taxation years that are less than 12 months. That subsection is amended to provide that no proration is required in respect of the immediate expensing deduction in subsection 1100(0.1) which is already limited to the eligible person or partnership's pro-rated immediate expensing limit for the taxation year pursuant to paragraph 1104(3.5)(b). Subsection 1100(3) is also amended to remove references to paragraphs 1100(1)(l), (zg) and (zh), each of which has been repealed.

This amendment is applicable to taxation years that end on or after April 19, 2021.

## **Clause 57**

### **Interpretation**

ITR

4901(2)

#### **“governing plan”**

Subsection 4901(2) defines a number of terms that apply for the purposes of Part XLIX (Registered Plans — Investments).

A “governing plan” is defined to include a DPSP, RDSP, RESP, RRIF, RRSP or TFSA. The expression is used in describing conditions that apply to various types of investments that qualify for these plans under subsection 4900(1) of the Regulations.

The definition is amended to add a reference to a FHSA.

This amendment comes into force on April 1, 2023.

## **Clauses 58 to 60**

### **Canadian Manufacturing and Processing Profits**

ITR

5200 - 5202

Section 125.2 of the Act provides a corporate tax rate reduction applicable to zero-emission technology manufacturing profits (as defined in new subsection 125.2(1) of the Act) resulting in a deduction from tax otherwise payable by the corporation.

Part LII of the Regulations is amended to update cross references to “manufacturing or processing”, as defined in paragraph 125.1(3) of the Act and references to the list of activities in paragraphs (a) to (k) of the definition “manufacturing or processing”, as defined in subsection 125.1(3) of the Act.

## **Clause 61**

### **Prescribed Shares**

ITR

6204(1)

Subsection 6204(1) sets out the requirements for a share to be a prescribed share for the purposes of the stock option deduction under paragraph 110(1)(d) of the Act. Paragraph 6204(1)(b) requires that, at the time of the sale or issue of a share, it cannot be reasonable to expect that the corporation or a specified person in respect of the corporation (which is defined in subsection 6204(3)) will redeem, acquire or cancel the share, or reduce its paid-up capital, subject to certain listed exceptions.

Paragraph 6204(1)(b) is amended to add subparagraph (iv) to allow a taxpayer to convert or exchange a security that meets the requirements of subsection 6204(1) for another security that continues to meet the requirements. As a result, the requirement in subparagraph 110(1)(d)(i.1) of the Act can apply to a share that may be converted into, or exchanged for, another share within two years of issuance. The new share must be issued by the same corporation that issues the original share, or by another corporation that does not deal at arm’s length with the first mentioned corporation immediately after the exchange. This amendment is intended to provide more flexibility for the exercise or settlement of stock options prior to an acquisition or reorganizations wherein shareholders are maintaining their equity position in the issuer or a related entity after the exchange (such as on a share-for-share exchange).

Subparagraph 6204(1)(a)(iii) is also amended to add a reference to an exchange of securities. This clarifies that a conversion or exchange that is permissible under 6204(1)(b) would not cause the share to be disqualified from meeting the conditions under 6204(1)(a).

This amendment comes into force on January 1, 2023.

## **Clause 62**

### **Interpretation**

ITR

8300(1)

#### **“past service event”**

The definition of “past service event” is amended consequential to amendments to paragraph 8503(2)(a) that apply to lifetime retirement benefits payable from a registered pension plan.

In the case where the administrator reduces the amount of pension-in-pay to one or more members of the plan and where the original (higher) pension amount is fully or partially restored at a later date, that increase in pension is not a “past service event” and thus not subject to the calculation and reporting of a past service pension adjustment.

This amendment comes into force on January 1, 2011.

## Clause 63

### Normalized Pension Assumptions

ITR

8302(3)

Subsection 8302(3) sets out rules for determining the normalized pension of an individual under a defined benefit provision of a registered pension plan. The normalized pension is used in determining the individual's pension credit under the provision. In general terms, an individual's normalized pension at the end of a year is the total lifetime retirement benefits accrued to the individual to the end of the year, determined on the basis of a number of assumptions.

ITR

8302(3)(i.1)

Subsection 8302(3) is amended by adding paragraph (i.1) that will apply to RPPs whose benefit formulas are integrated with benefits payable to members from the *Canada Pension Plan*, and where such integration takes into account the new enhanced CPP benefits and the “Year’s Additional Maximum Pensionable Earnings” (YAMPE) under the CPP statute.

Where benefits depend on earnings up to YAMPE for a year other than the current year (for example, where the integration of benefits with CPP or QPP benefits is based on a five-year average of YAMPEs), new paragraph 8302(3)(i.1) provides that the current year's YAMPE is to be used for the purpose of computing the normalized pension.

This amendment comes into force on January 1, 2024.

ITR

8302(3)(j.1)

Paragraph 8302(3)(j.1) applies to a registered pension plan where the formula to determine defined benefits are offset by reference to expected CPP payments to the plan member. The reference to paragraphs 46(1)(a) and (b) of the *Canada Pension Plan* effectively refers to both base CPP benefit benefits determined as 33.33% of an individual’s earnings up to the Year’s Maximum Pension Earnings (YMPE).

Paragraph 8302(3)(j.1) is amended in two ways to reflect that, after 2023, CPP benefit calculations include an individual’s earnings above YMPE but not exceeding the Year’s Additional Maximum Pensionable Earnings (YAMPE). First, the preamble of paragraph (j.1) is amended by adding a reference to paragraph 41(1)(c) of the *Canada Pension Plan*, thus including a plan member’s pensionable earnings above YMPE (and not exceeding YAMPE).

Second, a new clause (B) is added to variable B in the formula set out in subparagraph 8302(3)(j.1)(i) (the prior clauses (A) and (B) are reorganized as sub-clauses (A)(I) and (II)). For registered pension plans with benefit formulas integrated with full CPP benefits:

- clause (A) will apply to pension adjustment calculations for years before 2024 and will determine the CPP offset based on a YMPE limit; and

- new clause (B) will apply to pension adjustment calculations for years after 2023 and will determine the CPP offset based on a YAMPE limit.

This amendment comes into force on January 1, 2024.

ITR

8302(3)(k)

Paragraph 8302(3)(k) is amended consequential to the increase in Old Age Security payments for individuals over age 75 to exclude the increased amount from the individual's normalized pension.

This amendment applies to the 2022 and subsequent taxation years.

## **Clause 64**

### **Interpretation**

ITR

8500(1)

#### **“Year's Additional Maximum Pensionable Earnings”**

The definition “Year's Additional Maximum Pensionable Earnings” is added to subsection 8500(1) of the Regulations, applicable for various registered pension plan tax rules, notably for pension adjustment calculations and for the formulas related to maximum bridging benefits payable to plan members.

This amendment comes into force on January 1, 2024.

## **Clause 65**

### **Lifetime Retirement Benefits**

ITR

8503(2)(a)

In general, a member's lifetime retirement benefits under a registered pension plan (RPP) must be payable on an equal and periodic basis. A number of exceptions to “equal” amounts are outlined in subparagraphs 8503(2)(a)(i) through (x).

Paragraph 8503(2)(a) is amended by adding subparagraph (xi) to permit reductions in a member's lifetime retirement benefits to the extent permitted under the *Pension Benefits Standard Act, 1985* or similar provincial pension standards legislation. For example, various pension standards statutes permit reductions in benefit levels (including payments being made to retirees) of “negotiated-cost benefit plans”, “shared-risk plans” or “target benefit plans”.

This amendment comes into force on January 1, 2011.

### **Bridging Benefits**

ITR

8503(2)(b)

Paragraph 8503(2)(b) permits an RPP to provide bridging benefits to a plan member who commences to receive lifetime retirement benefits under a defined benefit provision of the plan before age 65. Bridging benefits may be paid until a member attains age 65. This accommodates plans that provide additional retirement benefits during the period before benefits are payable under the *Old Age Security Act (OAS)* and the Canada and Quebec Pension Plans (CPP/QPP).

Paragraph 8503(2)(b) is amended in two ways. First, the maximum bridge amount is increased by adding “ $E \times (F/10)$ ” to the formula that appears in subparagraph (ii). Variable E is essentially the maximum CPP benefits that could be payable to an individual who is 65 years of age under the new enhanced CPP under paragraph 46(1)(c) of the *Canada Pension Plan* (33% of the lesser of earnings and the YAMPE).

Variable F (a pensionable service requirement) is determined in the same manner as variable D, except that it applies only to periods of pensionable service after 2023 (which correspond to years in which YAMPE is factored in CPP benefit calculations).

Secondly, clause D of variable A in the bridge benefit formula is amended to refer to paragraphs 46(1)(a) and (b) of the *Canada Pension Plan* which represent “base benefits” under the CPP determined as 25% of the lesser of earnings and the YMPE.

These amendments come into force on January 1, 2024.

### **Commuted Value Payment (Death Before Retirement)**

ITR

8503(2)(i)

Paragraph 8503(2)(i) allows an RPP to provide for the payment of one or more lump sum amounts to one or more beneficiaries after the death of a plan member who dies before the member's pension commences, in place of the payment of a pre-retirement survivor pension. The total of all such amounts must not exceed the present value of the member's accrued benefits (plus interest to the date of payment).

Paragraph 8503(2)(i) is amended to allow for a change to the date of determination of a member's current value of benefits used to calculate the payment amount consistent with provincial legislation. For example, if a lump sum survivor benefit is not paid within a specified time period after the death of the plan member and if the pension standards legislation permits or requires a redetermination of the present value of benefits, the amendment to paragraph 8503(2)(i) of the Regulations will permit that recalculation.

This amendment comes into force on January 1, 2020.

### **Benefit Accruals After Pension Commencement**

ITR

8503(3)(b)

Paragraph 8503(3)(b) prohibits the continued accrual of benefits under a defined benefit provision of an RPP after retirement benefits have commenced to be paid to the member under the provision or under any other defined benefit provision of the RPP. The prohibition also applies on a cross-plan basis where an employer who participates in one plan also participates (or does not deal at arm's length with an employer who participates) in another plan.

The amendment ensures that retirement benefits payable as a consequence of the death of another person under a defined benefit provision of an RPP (e.g., survivor benefits paid to one member of the plan whose deceased spouse was also a member of the plan) will not jeopardize a member's ability to accrue benefits under that defined benefit provision.

This amendment comes into force on January 1, 2022.

## Clause 66

### Bridging Benefits

ITR

8504(5)

Subsection 8504(5) restricts the amount of retirement benefits (lifetime retirement benefits plus bridging benefits) that can be paid under a defined benefit provision of an RPP before a member reaches age 65. Paragraph 8504(5)(a) provides that the level of a member's retirement benefits (expressed on an annualized basis) for the year in which the member's pension commences to be paid cannot exceed:

- (a) the defined benefit limit for the year times the number of years of pensionable service, plus
- (b) 25% of a three-year average of the Year's Maximum Pensionable Earnings (YMPE), prorated if the member has less than 35 years of pensionable service.

Paragraph 8504(5)(a) is amended in two ways. First, the preamble is amended to apply in a case that spouses or common-law partners are members of the same pension plan. If one of the spouses is paid bridge benefits as a survivor benefit after the death of the other spouse, those survivor bridge benefits are not taken into account when determining the maximum bridge benefits that the survivor member may accumulate under the plan based on their own ongoing pensionable service. (See the commentary on corresponding amendment to paragraph 8503(3)(b).)

The amendment to the preamble of subsection 8504(5) comes into force on January 1, 2022.

Second, as a consequence of enhanced benefits under the *Canada Pension Plan* based on “Year’s Additional Maximum Pensionable Earnings” (YAMPE) after 2023, the formula in paragraph 8504(5)(a) is amended. The maximum amount of retirement benefits payable to a plan member before age 65 (i.e., maximum lifetime retirement benefits plus bridge benefits) is increased by adding “ $(0.3333 \times E \times (F / 35))$ ”. Variable D is amended so that it applies only to years of pensionable service before 2024. New variable E multiplied by 0.333 is essentially the maximum CPP benefits that could be payable to a member whose earnings exceed the average YAMPE (averaged over 5 years if benefits commence to be paid after 2027, and averaged over a shorter period if the benefit start date is before 2028). New variable F is the lesser of 35 years or the member’s years of pension service (variable B) for years after 2023.

The amendments to paragraph 8504(5)(a) come into force on January 1, 2024.

## Clause 67

### Variable Payment Life Annuity

ITR

8506(1)(e.2)

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

Clause 8506(1)(e.2)(iii)(C) is amended to remove the reference to the Consumer Price Index. As a result, indexing of VPLA benefits in-pay is limited to 2% per annum.

Currently, subparagraph 8506(1)(e.2)(iv) requires VPLA benefits to increase or decrease to the extent that the fund rate of return, or the rate of mortality of the members and beneficiaries, differs from actuarial assumptions. Subparagraph 8506(1)(e.2)(iv) is amended to also require that VPLA benefits be increased or decreased to reflect updates (i.e., by the plan actuary) to mortality-related actuarial assumptions.

These amendments come into force on January 1, 2020.

**Clause 68****Specified Multi-Employer Plan**

ITR

8510(3)

Subsection 8510(3) sets out the conditions required for a registered pension plan to qualify as a “specified multi-employer plan” (SMEP).

Paragraph 8510(3)(c) is amended to permit employers to participate in the SMEP under participation agreements that adopt substantially similar contribution rates and benefit levels as under collective bargaining agreements applicable to the SMEP.

Paragraph 8510(3)(d) is amended to permit a registered charity or a non-profit organization (paragraphs 149(1)(f) or (l) of the Act) to participate in a SMEP provided that the organization and its related persons employ fewer than 100 full-time employees.

These amendments come into force on January 1, 2023.

**Clause 69****Prescribed Person not a Financial Institution**

ITR

9000

Section 9000 of the Regulations prescribes persons for the purposes of paragraph (e) of the definition of “financial institution” in subsection 142.2(1) of the Act. Prescribed persons are not financial institutions for purposes of the mark-to-market rules. Section 9000 is amended to add Farm Credit Canada as a prescribed person that is not a financial institution for the purposes of these rules.

This amendment applies to the 2016 and subsequent taxation years.

**Clause 70****Prescribed Non-reporting Financial Institution**

ITR

9005

Section 9005 of the Regulations prescribes certain entities for the purposes of the definition “non-reporting financial institution” in subsection 270(1) of the Act.

Section 9005 is amended to add a FHSA to the list of prescribed entities. This amendment ensures that FHSA trusts are considered non-reporting financial institutions for Common Reporting Standards purposes.

This amendment comes into force on April 1, 2023.

**Clause 71****Prescribed Excluded Accounts**

ITR  
9006

Section 9006 of the Regulations prescribes certain accounts for the purposes of the definition “excluded account” in subsection 270(1) of the Act.

Section 9006 is amended to add a FHSA to the list of prescribed accounts. This amendment ensures that FHSAs are considered excluded accounts for Common Reporting Standards purposes.

This amendment comes into force on April 1, 2023.