Explanatory Notes Relating to the Income Tax Act and Other Legislation

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

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

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Part 1 – Amendments to Income Tax Act and Other Legislation

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

Clause 2

Standby charge for automobile

ITA
6(1) and (2)

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

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

Consequential amendments are also being made to paragraph 6(1)(k) and subsections 6(2) and 15(5) of the Act to ensure consistency with the changes described above.

This amendment applies to taxation years that begin after 2022.

Clause 3

Apprentice mechanic's tool costs

ITA
8(1)(r)

Paragraph 8(1)(r) allows an eligible apprentice mechanic to deduct the cost of certain extraordinary expenditures incurred by the apprentice in respect of the cost of eligible tools.

In general terms, extraordinary expenditures are the costs incurred by an apprentice in respect of eligible tools acquired in the taxation year in excess of a threshold. This threshold is provided for in the description of B in the formula in subparagraph 8(1)(r)(ii) as the lesser of two amounts. The first is the cost of the eligible tools. The second is the greater of

- the total of $500 (the tools deduction in paragraph 8(1)(s) for tradespersons) and the amount on which the taxpayer's Canada employment credit under subsection 118(10) for the taxation year is calculated, and
- 5% of the total of
  - the apprentice's income from employment as an eligible apprentice mechanic, computed without reference to the deduction in paragraph 8(1)(r), and
  - the amount by which the amount required by paragraph 56(1)(n.1) (apprenticeship incentive grant) to be included in computing the apprentice mechanic income for the taxation year exceeds the amount required by paragraph 60(p) (repaid apprentice grants) to be deducted in computing that income.

Consequential on the increase from $500 to $1,000 for the tools deduction for tradespersons in paragraph 8(1)(s), subclause (B)(I) in the description of B in the formula in subparagraph 8(1)(r)(ii) is amended to change the reference to $500 to the first dollar amount referred to in paragraph 8(1)(s). As a result of this amendment, any future change to the limit in the deduction for eligible tool costs of tradespersons in paragraph 8(1)(s) will automatically be reflected as a change in the threshold for expenses eligible for the apprentice mechanics' tool costs deduction.

This amendment applies to the 2023 and subsequent taxation years.

Deduction – Tradesperson's tools

ITA
8(1)(s)

Paragraph 8(1)(s) provides a deduction of up to $500 in respect of the cost of eligible tools acquired in a taxation year by an employed tradesperson. The amount that may be deducted (not exceeding $500) is the amount by which the lesser of the following amounts exceeds $1,000 (indexed after 2007):

- the tradesperson's income for the taxation year from employment as a tradesperson; and
- the cost of the tradesperson's eligible tools acquired in the year.

Paragraph 8(1)(s) is amended to increase the limit for the deduction for the cost of eligible tools from $500 to $1,000.

This amendment applies to the 2023 and subsequent taxation years.

Certificate of employer

ITA
8(10)

Subsection 8(10) of the Act provides that a deduction will not be allowed to an employee under certain provisions unless the employee files with the return of income a prescribed form signed by the employer to the effect that the employee met the requirements of the relevant provisions.

Subsection 8(10) is amended to remove the requirement that the form be signed by the employer, to allow employers to use electronic signatures to confirm that the employee met the requirements of the relevant provisions.

This amendment comes into force on royal assent.

Clause 4

Interest income

ITA
12(3)

Subsection 12(3) requires corporations, partnerships and certain trusts to use the accrual method for computing interest income in respect of debt obligations. Certain debt obligations are excluded from this accrual rule. Consequential on the repeal of sections 15.1 and 15.2, subsection 12(3) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Definitions

ITA
12(11)

The definition “investment contract” in subsection 12(11) provides that, for the purposes of section 12, it means any debt obligation other than those listed in that definition, including, at paragraph (g), a small business development bond and at paragraph (h), a small business bond.

Consequential on the repeal of sections 15.1 and 15.2, paragraphs (g) and (h) of the definition “investment contract” in subsection 12(11) are repealed.

This amendment comes into force on royal assent.

Definition “flipped property”

ITA
12(13)

Subsection 12(13) provides the definition "flipped property", which is relevant for new subsections 12(12) and (14). Together, these subsections provide a deeming rule to ensure profits from flipping residential real estate are always subject to full taxation.

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

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

Subsection 12(13) is amended to extend the definition of "flipped property" to include a right to acquire a housing unit in Canada. As such, profits arising from an assignment sale would be deemed to be business income if the rights to purchase a property were assigned after having been held for less than 12 months.

The existing 365 day holding period related to the actual housing unit would continue to be a separate test that only commences when the taxpayer acquires ownership of the housing unit. This means that the residential property flipping rule could apply when selling a constructed property within one year of acquiring ownership, regardless of how long the taxpayer held the rights to purchase the property before it was constructed.

The definition has a number of exclusions that relate to the reason for the disposition. These exclusions will also apply in respect of a disposition of a right to acquire a housing unit.

A property will not be a flipped property if the disposition can reasonably be considered to occur due to, or in anticipation of, one or more of the following events:

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

- an involuntary termination of the employment of the taxpayer or the taxpayer's spouse or common-law partner;
- the insolvency of the taxpayer; or
- the destruction or expropriation of the property.

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

Clause 5

Exchanges of property

ITA
13(4.3)(d)

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

This amendment applies to dispositions that occur after 2016.

ITA
13(42)(a)

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

This amendment comes into force on January 1, 2017.

ITA
13(43)

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

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

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

- the amount is part of the proceeds of disposition of "eligible capital property" (as defined in section 54, as it read on December 31, 2016) that is in respect of the taxpayer's business;
- the disposition is under an agreement between the taxpayer and a purchaser that deals at arm's length with the taxpayer;
- the disposition occurred before the announcement on March 22, 2016 of the repeal of the eligible capital property rules;
- the amount becomes receivable under the agreement after 2016 and before 2024 because of a condition of the agreement, if
  - at the end of 2016, it was uncertain whether the condition would be met, and
  - the condition is met after 2016;
- the amount would, in the absence of this transitional rule, be a taxable capital gain resulting from the disposition of depreciable property;
- the amount would have been included in computing the taxpayer's business income if the amount had become receivable on December 31, 2016; and
- the taxpayer files an election with the Minister, no later than the filing-due date for the taxpayer's first taxation year that ends after the publication of this transitional rule (August 9, 2022), to have this rule apply in respect of the amount.

This amendment comes into force on January 1, 2017.

Clause 6

Shareholder debt

ITA
15(2.3)

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

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

Subsection 15(2.3) is amended to exclude from the money lending business exception any such business if, at any time during which the particular loan is outstanding, less than 90 per cent of the aggregate outstanding amount of the loans of the business is owing by borrowers that deal at arm's length with the lender. Thus, internal or "captive" money lenders within a corporate group

will not be able to benefit from this exception, which is intended to apply to businesses that primarily engage in arm's length lending.

This amendment applies to loans made after 2022. This amendment also applies to the outstanding portion of any loan made before 2023 if, at the time it was made, the loan met the conditions in subsection 15(2.3) (as it then read). The outstanding portion of such a loan will be subject to the amendment as if it were a separate loan that was made on January 1, 2023 in the same manner and on the same terms as the loan. Subsection 15(2) and all provisions of the Act relevant to its interpretation and application will also apply to this outstanding portion. Accordingly, if the outstanding portion does not meet the money lending exception, as amended, taxpayers may still rely on other exceptions to subsection 15(2), if applicable. For example, if a taxpayer repays the outstanding portion within one year after the end of the taxation year of the lender in which the effective date of January 1, 2023 occurs and meets all the requirements in subsection 15(2.6), the taxpayer will not have to include the amount of the outstanding portion in computing their income. Taxpayers may also make a PLOI election in respect of the outstanding portion of a loan to which subsection 15(2) would otherwise apply, if it meets the conditions in subsection 15(2.11) of the Act. The relevant provisions in other parts of the Act, such as Part XIII, would also apply.

Interpretation – partnerships

ITA
15(2.31)

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

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

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

New subsection 15(2.31) applies to loans made after 2022. It also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023 in the

same manner as the amendment to subsection 15(2.3) applies in respect of that portion. For more information, see the commentary on subsection 15(2.3).

Automobile benefit

ITA
15(5)

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

This amendment applies to taxation years that begin after 2022.

Clause 7

Small business development bonds

ITA
15.1 and 15.2

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

Consequential on the repeal of sections 15.1 and 15.2, subsections 12(3), 20(14), 20(14.1), and the description of N in subclause 20(1)(l)(ii)(D)(II) and the definition of "specified debt obligation" in subsection 142.2(1) are amended to remove the reference to "small business bonds" or "small business development bonds". Also, the definitions "Canadian equity property" and "equity property" in subsection 2400(1) of the *Income Tax Regulations* are amended to remove the reference to "small business bonds" or "small development bonds".

Consequential on the repeal of sections 15.1 and 15.2, paragraphs 12(11)(g) and (h), paragraph 143(1)(m) and the definition of "small business bond" and "small business development bond" in subsection 248(1) are repealed.

Consequential on the repeal of sections 15.1 and 15.2, subsections 96(3) and 136(1), and the definition of "commercial debt obligation" in subsection 80(1), are amended to remove the cross-reference to sections 15.1 and 15.2.

These amendments apply on royal assent.

Clause 8

Deductions permitted in computing income from business or property

ITA
20(1)

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

ITA
20(1)(e)

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

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

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

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

The amendment to subparagraph 20(1)(e)(vi) comes into force on June 26, 2013 (the date of royal assent of the amendment to subsection 99(1) that gave rise to this issue).

Doubtful or impaired debts

ITA
20(1)(l)(ii)(D)(II)

Paragraph 20(1)(l) permits any taxpayer to claim a reserve in respect of doubtful debts and a taxpayer who is an insurer or whose ordinary business includes the lending of money to claim a reserve in respect of doubtful loans and lending assets.

Consequential on the repeal of sections 15.1 and 15.2, the description of N in subclause 20(1)(l)(ii)(D)(II) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Mining Taxes

ITA
20(1)(v)

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

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

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

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

Accrued bond interest

ITA
20(14)

Subsection 20(14) provides rules for apportioning interest when debt obligations (other than loans that are an income bond, an income debenture, a small business bond or a small business development bond) are transferred on a date other than that on which interest is payable. Under these rules, where a debt obligation with accrued interest attached is purchased from another holder, the purchaser is allowed a deduction in respect of the interest accrued thereon at the date of purchase. This deduction is made at the time the interest is subsequently paid.

Consequential on the repeal of sections 15.1 and 15.2, subsection 20(14) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Interest on debt obligation

ITA
20(14.1)

Subsection 20(14.1) provides a rule similar to subsection 20(14) for when a debt obligation (other than loans that are an income bond, an income debenture, a small business bond or a small business development bond) is issued after the date from which interest is stipulated to be payable. In this case the original lender will be required to pay a premium to the borrower for the interest accruing before the issue date and he will be allowed under subsection 20(14.1) to deduct this premium from any interest he subsequently receives.

Consequential on the repeal of sections 15.1 and 15.2, subsection 20(14.1) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Clause 9

Exchanges of property

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

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

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

This amendment comes into force on royal assent.

Clause 10

Definitions - "principal residence"

ITA
54

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

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

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

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

This amendment applies to taxation years that begin after 2016.

Clause 11

Other deductions

ITA
60(i)

Paragraph 60(i) of the Act permits a deduction in respect of amounts that are deductible under section 146, 146.3 or 146.6, or under subsection 147.3(13.1). This paragraph is amended to permit a deduction for amounts that are deductible under subsection 147.5(19) in respect of post-death losses under a pooled registered pension plan (PRPP) account.

This amendment comes into force on December 14, 2012.

Clause 12

Effect of pension income split

ITA
60.03(2)

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

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

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

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

These amendments apply to the 2015 and subsequent taxation years.

Clause 13

Childcare expenses

ITA
63(2.3)(c)

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

This amendment comes into force on royal assent.

Clause 14

Canadian exploration expense

ITA
66.1

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

Canadian development expenses for preceding years

ITA
66.1(9)

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

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

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

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

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

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

Third, similar to subclause (d)(i)(C)(I) of the CEE definition, new clause 66.1(9)(f)(iii)(A) is introduced to ensure that expenses actually incurred before 2021 continue to be eligible for reclassification to CEE if the expenses are in respect of a discovery well, where the taxpayer has, before March 22, 2017, entered into a written commitment (including a commitment to a government under the terms of a license or permit) to incur those expenses.

These amendments come into force on royal assent.

Clause 15

Commercial debt obligation

ITA
80(1)

A “commercial debt obligation” is defined to include an obligation on which interest payable is deductible in computing income or would, if interest had been payable in respect of the obligation and certain assumptions were made, have been so deductible.

In determining whether an obligation is a “commercial debt obligation”, the limitations on the deduction of interest under subsection 15.1(2) (small business development bonds) and subsection 15.2(2) (small business bonds) are ignored.

Consequential on the repeal of sections 15.1 and 15.2, the definition “commercial debt obligation” in subsection 80(1) is amended to remove references to sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Clause 16

Amounts not included in income

ITA
81

Section 81 lists various amounts which are not included in computing a taxpayer’s income.

Canadian Forces members and veterans amounts

ITA
81(1)(d.1)

Paragraph 81(1)(d.1) specifically excludes from the computation of a taxpayer's income certain payments under the *Veterans Well-being Act* (formerly the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*). Subsection 81(1) also provide that payments received on account of pain and suffering compensation and additional pain and suffering compensation under Part 3 of the *Veterans Well-being Act* and certain transitional amounts related to pain and suffering compensation under Part 5 of the *Veterans Well-being Act* are exempt from income tax.

Paragraph 81(1)(d.1) is amended to expand the application of the income exclusion of that paragraph to a spouse, common-law partner or survivor.

Paragraph 81(1)(d.1) is also amended to specifically exclude from the computation of a taxpayer's income certain benefits for Canadian Forces members, veterans or their spouses or common-law partners. These are the total of all amounts received or enjoyed by a taxpayer or the taxpayer's spouse or common-law partner in the year on account of:

- benefits provided under the *Veterans Health Care Regulations*,
- benefits provided in respect of Rehabilitation Services and Vocational Assistance under Part 2 of the *Veterans Well-being Act*, and
- benefits provided to a member of the Canadian Forces under the Compensation and Benefit Instructions for the Canadian Forces that are any of a:
    - home modifications benefit,
    - home modifications move benefit,
    - vehicle modifications benefit,
    - home assistance benefit,
    - attendant care benefit,
    - caregiver benefit,
    - spousal education upgrade benefit,
    - funeral and burial expense benefit, or
    - next of kin travel benefit.

This amendment comes into force on January 1, 2018.

ITA
81(1)(d.1)

Paragraph 81(1)(d.1) specifically excludes from the computation of a taxpayer's income certain benefits for Canadian Forces members, veterans or their spouses or common-law partners.

Paragraph (d.1) is amended to include benefits provided by the Department of National Defence as education expense reimbursements for ill and injured regular force members.

This amendment comes into force on January 1, 2021.

Indigenous Residential Schools Trust

ITA
81(1)(g.3)

Paragraph 81(1)(g.3) is relevant to the taxation of trusts established under the following agreements:

- the 1986–1990 Hepatitis C Settlement Agreement, an agreement executed by the federal, provincial and territorial governments in order to provide compensation for certain individuals infected with the Hepatitis C virus;
- the Pre-1986/Post-1990 Hepatitis C Settlement Agreement;
- the May 8, 2006 Indian Residential Schools Settlement Agreement; and
- the September 15, 2021 agreement relating to long-term drinking water quality for impacted First Nations.

For a trust established under these agreements, as long as no contribution to the trust, other than contributions provided for under the agreement, is made before the end of a taxation year of the trust, the effect of paragraph 81(1)(g.3) is to exempt the trust's income from income taxation for that taxation year.

Paragraph 81(1)(g.3) is amended to add a reference to a trust established under the Indigenous residential schools settlement agreement entered into by Her Majesty in Right of Canada on January 18, 2023.

This amendment applies to the 2023 and subsequent taxation years.

Clause 17

Amalgamations

ITA
87

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

ITA
87(2)

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

Continuing corporation

ITA
87(2)(j.6)

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

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

This amendment applies to taxation years that end after 2007, except that, for taxation years that end before March 19, 2019, paragraph 87(2)(j.6) of the Act, as amended, does not apply to subsection 127(10.2) of the Act.

Clause 18

Loan from foreign affiliate – exceptions

ITA
90(8)(b)

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

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

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

This amendment applies to loans made after 2022. This amendment also applies to the outstanding portion of any loan made before 2023 if, at the time it was made, the loan met the conditions in paragraph 90(8)(b) (as it then read). The outstanding portion of such a loan is subject to the amendment as if it were a separate loan made on January 1, 2023 in the same

manner and on the same terms as the loan. Subsection 90(6) and all provisions of the Act relevant to its interpretation and application will also apply to this outstanding portion. Accordingly, if the outstanding portion does not meet the money lending exception, as amended, taxpayers may still rely on other relieving provisions of the upstream loan rules, if applicable. For example, if a taxpayer repays the outstanding portion within two years of January 1, 2023 and meets all the requirements in paragraph 90(8)(a), subsection 90(6) will not apply. Alternatively, the outstanding portion may be eligible for a reserve under subsection 90(9) if the requirements of that subsection are met.

Interpretation – partnerships

ITA
90(8.01)

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

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

New subsection 90(8.01) applies to loans made after 2022. It also applies in respect of any portion of a particular loan made before 2023 that remains outstanding on January 1, 2023 in the same manner as the amendment to paragraph 90(8)(b) applies in respect of that portion. For more information, see the commentary on the amendments to that paragraph.

Clause 19

Specified trusts

ITA
93.3

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

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

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

Paragraph 93.3(2)(e) is also amended to take account of situations where a non-resident corporation first acquires a beneficial interest in a specified trust before the first time the non-resident corporation becomes a foreign affiliate of the taxpayer. In these situations, it is intended that neither of the conditions in subparagraphs 93.3(2)(e)(i) and (ii) need to be satisfied for subsection 93.3(3) to apply. This amendment is deemed to be effective from the date that section 93.3 applied to the taxpayer, being either July 12, 2013 or, if the requisite election was made under the original enacting legislation, January 1, 2006.

These amendments generally come into force on January 1, 2022. The amendments to paragraph 93.3(2)(e) apply as described above.

Clause 20

Base Erosion Rules for Income from Services

ITA
95(2)(b)

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

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that begin on or after February 27, 2004.

Definitions – “eligible controlled foreign affiliate”

ITA
95(4)

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

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

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

The second amendment adds another “read-as rule” for the purpose of determining whether the condition in paragraph (b) is met. For this purpose, new subparagraph (ii) of the description of A ensures that the definition “participating percentage” in subsection 95(1) applies without reference to the *de minimis* rule in its paragraph (a) and the portion of its paragraph (b) before subparagraph (i). This rule is intended to ensure that the condition in paragraph (b) of the definition “eligible controlled foreign affiliate” can be met even if the FAPI of the controlled foreign affiliate for the year is not greater than $5,000.

These amendments apply in respect of determinations made after August 19, 2011 in respect of property of a foreign affiliate of a taxpayer. However, in respect of any such determination made before August 9, 2022, a taxpayer may elect an alternate reading of paragraph (b) of the definition “eligible controlled foreign affiliate”.

Clause 21

Agreement or election of partnership members

ITA
96(3)

Subsection 96(3) provides rules that apply if a member of a partnership makes an election under certain provisions of the Act for a purpose that is relevant to the computation of the member’s income from the partnership. In such a case, the election will be valid only if it is made on behalf of all the members of the partnership and the member has authority to act for the partnership.

Consequential on the repeal of section 15.2, subsection 96(3), is amended to remove the reference to section 15.2.
This amendment comes into force on royal assent.

Clause 22

Rules applicable if partnership ceases to exist

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

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

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

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

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

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

New subparagraph 98(3)(c)(i.1) provides that, if the property described in subparagraph 98(3)(c)(i) is a membership interest in a partnership (the “other partnership”), the person’s percentage of the fair market value of the property immediately after its distribution to the person is deemed to be determined by the formula A – B**.** The amounts of both variables are determined without reference to new subparagraph (i.1) itself.

Variable A is the amount that is the person’s percentage of the fair market value of the property immediately after its distribution. Variable B is a portion of the difference between two amounts. The difference described in variable B is the amount by which the person’s percentage of the fair market value of the property immediately after its distribution exceeds the person’s percentage of the cost amount to the partnership of the property immediately before its distribution. Variable B is the portion of that difference that may reasonably be regarded as being attributable to the total of three amounts (described in new clauses A, B and C) calculated immediately after the cessation of the partnership’s existence (the “particular time” referred to in the opening words of subsection 98(3)). Clause A relates to depreciable property. Clause B relates to Canadian resource property or foreign resource property. Clause C relates to other property that is not capital property. The properties referred to in each of clause A, B and C can be held directly or indirectly by the other partnership. In general terms, Clauses A and C identify the amount by which the fair market value of the relevant property exceeds its cost, whereas Clause B is the fair market value of the relevant property, determined without reference to liabilities.

This amendment (and the amendment to paragraph 98(5)(c) described below) respond to transactions under which some taxpayers are seeking to bump-up the cost of an undivided interest in a capital property by an amount in respect of property that would be ineligible (“ineligible property”) for a bump-up (e.g., depreciable property) if the ineligible property were held directly. In the case of a tiered-partnership structure, a dissolving partnership holds a direct interest in another partnership (the “other partnership”) and the member of the dissolving partnership bumps-up the cost of its undivided interest in the other partnership received on the dissolution. The Canada Revenue Agency (CRA) challenges these transactions where appropriate under existing provisions of the Act, including the general anti-avoidance rule. However, specific legislative action is warranted to explicitly prohibit such transactions. This change is similar to a change made in 2012 to limit a bump-up in the cost of property received by a corporation on the winding-up of a subsidiary (i.e., see subparagraph 88(1)(d)(ii.1)).

This amendment applies in respect of partnerships that cease to exist on or after August 9, 2022.

Where partnership business carried on as sole proprietorship

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

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

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

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

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

Paragraph 98(5)(c) is amended to add a new limit in new subparagraph (i.1). New subparagraph (i.1) limits the amount that is "the fair market value of the property immediately after the particular time" to the sole proprietor, as referred to in subparagraph (c)(i) – the particular time being the time when the partnership has ceased to exist as per the opening words of subsection 98(5). This new limit ensures that, in general, the maximum bump-up available under subparagraph 98(5)(b)(ii) for capital property received from the dissolving partnership does not include unrealized gains and recapture income in respect of property that would be ineligible for a bump if it were held directly by the dissolved partnership (e.g., depreciable property). New subparagraph 98(5)(c)(i.1) operates similarly to new subparagraph 98(3)(c)(i.1). For more information, see the commentary on that provision.

This amendment applies in respect of partnerships that cease to exist on or after August 9, 2022.

Clause 23

Income of a trust in certain provisions

ITA
108(3)

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

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

This amendment applies to taxation years that begin after 2016.

Clause 24

Definitions – capital gains exemption

ITA
110.6

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

This amendment comes into force on royal assent.

Clause 25

Not carrying on business in Canada

ITA
115.2(2)

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

Subsection 115.2(2) of the Act is amended to also apply this interpretive rule for the purposes of section 805 of the Regulations. This amendment ensures that Part XIII applies to amounts paid or

credited to a non-resident that is considered not to be carrying on business in Canada because of subsection 115.2(2).

This amendment comes into force on August 9, 2022.

Clause 26

Adjustment to tax payable – advance payment

ITA
117(2.1)

Section 117 of the Income Tax Act (Act) deals with the computation of tax payable under Part I of the Act by an individual.

Subsection (2.1) is amended to ensure that the lesser of (a) an individual's entitlement to the Canada Workers Benefit (CWB) under subsections 122.7(2) and (3), and (b) the advance CWB payments received by the individual (and, under specific circumstances, their cohabiting spouse or common-law partner) in respect of a taxation year under section 122.72, is to be included in the individual's tax payable under Part I of the Act for that taxation year.

This amendment applies to the 2023 and subsequent taxation years.

Clause 27

Pension credit

ITA
118(7)

The pension credit available in subsection 118(3) of the Act to a taxpayer who is 65 years of age or older is based on the taxpayer's "pension income", as defined in subsection 118(7). The definition "pension income" is also relevant for the pension income splitting rules under section 60.03.

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

This amendment applies to the 2019 and subsequent taxation years.

Clause 28

Tax payable by a specified individual

ITA
120.4(3)

Subsection 120.4(3) of the Act ensures that the Part I tax payable by a specified individual is not less than the individual's split income for the year multiplied by the highest individual tax rate for the year reduced only by the dividend tax credit and the foreign tax credit. It also provides that the tax on split income (TOSI) does not reduce or eliminate a specified individual's ability to deduct an amount under section 118.3 (the disability tax credit).

This subsection is amended to ensure that any Canada Workers Benefit payment received by an individual and included in the individual's tax payable pursuant to subsection 117(2.1) is considered for the purposes of the TOSI rules.

This amendment applies to the 2023 and subsequent taxation years.

Clause 29

GSTC One-Time Payment

ITA
122.5(3.003)

Existing subsection 122.5(3) provides for the calculation of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) Credit. To receive the GST/HST Credit for a taxation year, subsection 122.5(3) provides that an eligible individual must file a return of income for the year. The amount of the GST/HST Credit depends on an eligible individual's family circumstances.

New subsection 122.5(3.003) provides a one-time, extra GST/HST Credit payment equal to twice the amount of an eligible individual's January 2023 entitlement.

ITA
122.5(3.04)

Subsection 122.5(3.01) provides a formula for the computation of the credit if an eligible individual is a "shared-custody parent" at the beginning of a month. The definition "shared-custody parent" is in section 122.6 (the Canada Child Benefit rules). If an eligible individual is a shared-custody parent of a qualified dependant, that parent will be entitled to one-half of the credit with respect to that qualified dependant that the parent would have received if the parent were the only eligible individual of that qualified dependant.

New subsection (3.04) applies the shared-custody parent rule to the computation of the one-time, extra GST/HST Credit payment provided under new subsection 122.5(3.003).

ITA
122.5(4.3)

GST/HST Credit amounts are paid for specified months based upon an eligible individual's family income for the relevant taxation year. New subsection 122.5(4.3) provides that, for the one-time, extra GST/HST Credit payment provided under new subsection 122.5(3.003), the specified month is January 2023 and the reference taxation year for measuring income is the 2021 taxation year.

These amendments come into force on royal assent.

Clause 30

Canada Workers Benefit

ITA
122.7

Section 122.7 and new section 122.72 of the Act provide the Canada Workers Benefit (CWB), which is a refundable tax credit for low-income individuals and families, who have earnings from employment or self-employment ("working income") for a taxation year.

Section 122.7 is amended, and new section 122.72 is added, to change the delivery of CWB payments from a refundable credit claimed annually on personal income tax returns to three automatic advance payments made through the benefit system plus a refundable credit for the remaining amount on personal income tax returns.

These amendments apply to the 2023 and subsequent taxation years.

Definitions

ITA
122.7(1)

Subsection 122.7(1) of the Act defines several terms for the purposes of the CWB. Consequential on amendments to the CWB and the introduction of section 122.72, the portion of subsection 122.7(1) before the definitions is amended to specify that the definitions apply for the purposes of the subdivision.

Deemed payment on account of tax

ITA
122.7(2)

Subsection 122.7(2) of the Act provides for the calculation of the "basic" CWB and subsection (3) provides the CWB "disability supplement". To receive the basic CWB for a taxation year, subsection (2) provides that an eligible individual must file a return of income for the year.

Consequential on repeal of subsections (4) and (6) to (9), subsection (2) is amended to remove the reference to pre-existing subsection (4), which deemed an eligible spouse not to be an eligible individual when a joint application under subsection (6) was filed.

Clause 31

Advance payment

ITA
122.72

New section 122.72 of the Act implements the rules according to which the Canada Workers Benefit (CWB) shall be delivered and is introduced to change the delivery of CWB payments from a refundable credit claimed annually on personal income tax returns to three automatic advance payments made through the benefit system plus a refundable credit for the remaining amount on personal income tax returns.

This amendment applies to the 2023 and subsequent taxation years.

Advance payment

ITA
122.72(1)

New subsection 122.72(1) of the Act provides for the calculation of the advance CWB payments for a taxation year. Each amount of an individual's advance CWB payments account for 1/6 of the total of the amounts determined for the individual for the preceding taxation year under new subsections 122.7(2) and (3).

To support the delivery of the advance CWB payments through the benefit system, new subsection (1) stipulates that an amount determined under that subsection is deemed to have been paid during a month specified under subsection (4) for a taxation year.

When single advance payment applies

ITA
122.72(2)

New subsection 122.72(2) of the Act sets out the requirements governing the single advance CWB payment provided for under new subsection 122.72(3). For more information, refer to the commentary on new subsection 122.72(3).

Single advance payment

ITA
122.72(3)

New subsection 122.72(2) of the Act sets out the requirements governing the advance CWB payment provided for under new subsection 122.72(3). Subsection 122.72(3) applies if a particular advance CWB payment is less than $33 and it is reasonable to conclude that each subsequent advance CWB payment in relation to the same year will not exceed $33. In this situation, a single advance CWB payment is available to an eligible individual in relation to a particular month specified for a taxation year (and each subsequent month specified for that taxation year).

Months specified

ITA
122.72(4)

Subsection 122.72(4) of the Act specifies the months in which the advance CWB payments are paid to an eligible individual for a year. To support the delivery of the advance CWB payments through the benefit system, subsection (4) stipulates that the months specified for a particular taxation year are July and October of the year, and January of the following year.

No advance payment

ITA
122.72(5)

New subsection 122.72(5) of the Act provides that, for the purposes of the advance CWB payments, certain individuals are not considered eligible individuals for the preceding taxation year in relation to a month specified for a taxation year.

An individual is not an eligible individual if the individual dies before the month of July of the taxation year, if the individual is confined to a prison or similar institution for a period in the taxation year of at least 90 days that begins on or before the first day of the specified month or if the individual ceases to be resident in Canada on or before the first day of the specified month.

Notification to Minister

ITA
122.72(6)

To support the delivery of advance CWB payments through the benefit system, new subsection 122.72(6) of the Act requires a person to notify the Minister of National Revenue (Minister) if that person or their cohabiting spouse or common-law partner at the end of the preceding taxation year dies in the taxation year, ceases to be resident in Canada or is confined to a prison or similar institution for a period of at least 90 days in the taxation year. (Pursuant to subsection 159(1), this duty applies to a legal representative in case of death or in certain other situations.) The Minister must be notified of the event before the end of the month following the month in which the event occurred.

Advance payment – no eligible spouse

ITA
122.72(7)

New subsection 122.72(7) applies for the purposes of the advance CWB payments under subsection (1). It applies to situations where an individual had an eligible spouse for the preceding taxation year, but that spouse has ceased to be an eligible individual because of one of the events described in subsection (5).

In these situations, subsection (7) causes an individual's entitlement to advance CWB payments under subsection (1) to be determined as if that individual did not have an eligible spouse in the preceding taxation year. This could result in a change to the amount of the advance CWB payments, if any, that the individual is entitled to receive under subsection (1).

Clause 32

Small business deduction

ITA
125(7)

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

This amendment comes into force on royal assent.

Clause 33

Cooperative Not Private Corporation

ITA
136(1)

Section 136 provides rules that apply to cooperative corporations. For the purposes of the Act, cooperatives corporations are generally considered not to be private corporations. However, subsection 136(1) provides that a cooperative corporation that would otherwise be a private corporation is treated as a private corporation for the purposes of specified provisions, notably section 125.

Consequential on the repeal of section 15.1, subsection 136(1) is amended to remove the reference to section 15.1.

This amendment comes into force on royal assent.

Clause 34

Specified debt obligation

ITA
142.2(1)

A “specified debt obligation” of a taxpayer is the taxpayer’s interest in a loan, bond, debenture, mortgage, note, agreement of sale or any other similar indebtedness, or in any debt obligation purchased by the taxpayer. However, it does not include an interest in an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property.

Consequential on the repeal of sections 15.1 and 15.2, paragraph (c) of the definition “specified debt obligation” in subsection 142.2(1) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Clause 35

Communal organizations

ITA
143(1)

Subsection 143(1) provides that, where a religious congregation that does not allow its members to own property in their own right, or one or more of its business agencies over which it has effective management or control, carry on a business, an *inter vivos* trust is deemed to exist. Property of the congregation or its agencies is treated as property of the trust. The congregation and its business agencies are deemed to act as agents for the trust in all matters relating to their business activities. Paragraph 143(1)(m) provides for a special rule for the application of section 15.1.

Consequential on the repeal of sections 15.1 and 15.2, paragraph 143(1)(m) is repealed.

This amendment comes into force on royal assent.

Clause 36

Employee life and health trust

ITA
144.1(2)(f)

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

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

This amendment comes into force on February 27, 2018.

Clause 37

Definitions

ITA
146(1)

Subsection 146(1) provides definitions for terms that are relevant for the purposes of the provisions of section 146 of the Act relating to registered retirement savings plans. Subsection 146(1) contains a definition of a taxpayer's net past service pension adjustment (net PSPA) for the purposes of computing the taxpayer's RRSP deduction limit and the taxpayer's unused RRSP deduction room.

A taxpayer's net PSPA for a year is defined to be the amount determined by the formula P + Q – G. Variable Q refers to an amount prescribed for the taxpayer under a government-sponsored retirement arrangement. Currently, such an amount is not prescribed under the Regulations.

Consequential on the introduction of permitted corrective contributions under new subsection 147.1(20) of the Act, variable Q is amended to refer instead to contributions made under subsection 147.1(20) in respect of the taxpayer in the year immediately preceding the taxation year. Accordingly, the permitted corrective contribution will be added to a taxpayer's net PSPA and will reduce the taxpayer's "RRSP deduction limit" and "unused RRSP deduction room" (each as defined in subsection 146(1)) for the taxation year after the year in which the permitted corrective contribution is made.

For more information on the rules to determine a permitted corrective contribution, please see the commentary on the definitions added to subsection 147.1(1) of the Act and the commentary on new subsection 147.1(20) of the Act.

This amendment comes into force on January 1, 2021.

Clause 38

Home Buyers' Plan

ITA
146.01(2)

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

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

This special rule was intended as a relieving provision for the purpose of meeting the requirement under paragraph (c) in the definition "regular eligible amount" and paragraph (d) in the definition "supplemental eligible amount" where the individual is able to occupy but not acquire a unit prior to the "completion date". However, this provision was not intended to restrict the 30-day withdrawal requirement under paragraph (d) in the definition "regular eligible amount" and paragraph (e) in the definition "supplemental eligible amount", nor intended to relax the residency requirement in paragraph (g) and (f) of those definitions, respectively.

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

This amendment comes into force on August 9, 2022.

Clause 39

Definitions – "education savings plan"

ITA
146.1(1)

An "education savings plan" is defined as an arrangement between an individual who is the subscriber, or individuals who are spouses or common-law partners and joint subscribers, and a person or organization who is the promoter.

The definition is amended to provide that the arrangement may also be entered into jointly by an individual and the individual's former spouse or former common-law partner if they are both the legal parent of a beneficiary of the plan.
This amendment comes into force on March 28, 2023.

Conditions for registration

ITA
146.1(2)

Subsection 146.1(2) sets out the requirements that must be satisfied in order to register an education savings plan. Under paragraph 146.1(2)(g.1), an RESP must not allow for the payment of an educational assistance payment (EAP) to an individual who is not enrolled as a student in a qualifying educational program or a specified educational program. Additionally, EAPs must not exceed certain limits.

Paragraph (g.1) is amended to increase the limits for the total amount of EAPs that can be made to the individual under the RESP.

Subclause (ii)(A)(II) relates to full-time educational programs. It is amended to increase the limit from $5,000 to $8,000 for the amount of EAP that can be made to an individual that is enrolled as a student in a qualifying educational program for the first 13 consecutive weeks in the program. Once the individual has completed 13 consecutive weeks in the program, the individual is permitted to receive any amount of EAP from the plan (provided the individual continues to be enrolled in a qualifying educational program).

Clause (ii)(B) relates to part-time educational programs. It is amended to increase the limit from $2,500 to $4,000 for the total amount of EAP that can be made to an individual that is enrolled as a student in a specified educational program in a 13-week period.

This amendment comes into force on March 28, 2023.

RESP promoters may need to amend the terms of existing plans in order for the increased EAP limits to apply. Previously paid EAPs cannot be retroactively modified; however, individuals who withdrew EAPs prior to March 28, 2023 may be able to withdraw an additional EAP amount, subject to the new limits and the terms of the plan.

Clause 40

Right of offset

ITA
146.2(4.1)

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

This amendment comes into force on August 9, 2022.

Tax-free Savings Account

ITA
146.2(5)

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

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

This amendment applies to the 2009 and subsequent taxation years.

Clause 41

Registered Retirement Income Funds

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

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

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

These amendments come into force on August 9, 2022.

Transfer to PRPP or RPP

ITA
146.3(14.1)(b)

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

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

This amendment comes into force on August 9, 2022.

Clause 42

Definitions

ITA
146.4(1)

“disability savings plan”

Clause (a)(ii)(B.1) of the definition “disability savings plan” in subsection 146.4(1) of the Act allows a qualifying family member (i.e., a parent, spouse or common-law partner) of a beneficiary whose contractual competency is in doubt to open, and become the holder of, a disability savings plan of the beneficiary if the plan is entered into before 2024.

Clause (a)(ii)(B.1) is amended to extend the availability of the provision to the end of 2026.

“qualifying family member”

A qualifying family member is an individual who may become, under certain circumstances, the holder of an RDSP for an adult beneficiary whose contractual competence is in doubt.

New paragraph (c) of the definition “qualifying family member” provides that a brother or sister of a beneficiary is a qualifying family member, meaning they may become the plan holder if other conditions are satisfied. For the purposes of this definition, an individual is a brother or sister of the beneficiary by blood (i.e., brother and sister, respectively, including half-brother and half-sister) or by adoption. The extended meaning of brother and sister in subsection 252(2) does not apply for the purposes of this definition.

This amendment applies on royal assent and will be in effect until the end of 2026.

Trust not taxable

ITA
146.4(5)

Subsection 146.5 of the Act provides that an RDSP trust is taxable only on income from carrying on a business or income earned on non-qualified investments.
Subparagraph (b)(ii) is amended to use terminology similar to that used in subsection 146.2(6) for TFSA purposes but it continues to require that, in the case of disposition of properties that are

a non-qualified investment, the RDSP trust is taxable on the capital gains (net of allowable capital losses) of the disposition of those properties.

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

These amendments come into force on August 9, 2022.

Clause 43

Registered Pension Plans

ITA
147.1(1)

Subsection 147.1(1) defines those terms that are relevant for the purposes of the provisions of sections 147.1, 147.2 and 147.3 of the Act relating to registered pension plans (RPPs).

"compensation"

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

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

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

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

This amendment comes into force on August 9, 2022.

"money purchase provision"

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

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

This amendment comes into force on January 1, 2020.

Fixing contribution errors

The definitions "designated money purchase provision" and "permitted corrective contributions" are being added consequential on the introduction of new subsection 147.1(20) of the Act which permits pension plan administrators to correct for under-contribution errors.

These amendments come into force on January 1, 2021.

"designated money purchase provision"

A money purchase provision is a designated money purchase provision in a calendar year if the provision meets one of the following conditions:

- accounts are maintained for 10 or more members under the money purchase provision throughout the year; or
- not more than 50% of the contributions made under the provision in the year are with respect to individuals described in paragraph 8515(4)(a) or (b) of the Income Tax Regulations (i.e., connected persons and employees whose remuneration for the year exceeds 2.5 times the year's maximum pensionable earnings (for Canada Pension Plan purposes)).

"permitted corrective contribution"

A "permitted corrective contribution" in a calendar year is a contribution, with respect to an individual, that would have been made to a money purchase provision of an RPP (including an RPP of a "predecessor employer") in any of the 10 immediately preceding years (each referred to as a "retroactive year") in accordance with the plan terms, but for a failure to enroll the individual in the plan or a failure to make a contribution required by the terms of the plan as registered. A permitted corrective contribution cannot exceed the lesser of the two amounts determined in paragraphs (a) and (b).

Paragraph (a) is the total catch-up contributions that may be made in respect of the retroactive years. It is the total of formula A + B – C that applies for each of the 10 retroactive years.

Variable A is the amount by which the required contributions with respect to the individual under the money purchase provision for the retroactive year exceeds the amounts actually contributed with respect to the individual in the retroactive year.

Variable B is the amount of interest, if any, that may be added to the amounts determined for variable A at a rate that is either:

(i) required by the *Pension Benefits Standards Act*, or a similar law of a province; or
(ii) if the relevant law does not impose a requirement, a rate that does not exceed a reasonable rate.

Note that, in the case of several missed contributions (e.g., over several months) in a retroactive year, there could be multiple interest calculations to determine a total amount for variable B.

Variable C is the amount of permitted corrective contributions previously contributed under subsection 147.1(20) of the Act in respect of the individual for the retroactive year.

Paragraph (b) is the dollar limit determined by the formula E – F. Variable E is 150% of the money purchase limit for the year in which the permitted corrective contributions are made. Variable F is the total permitted corrective contributions previously made with respect to the individual under subsection 147.1(20) of the Act under the money purchase provision of the plan or another plan under which the employer (or a predecessor employer) participated.

Illustration of a permitted corrective contribution

Andreya was hired on January 1, 2020 and earned a salary of $90,000 plus an annual bonus. Her employer participates in a money purchase pension plan that requires each employee to contribute 6% of earnings and requires the employer to match the employee contribution. She also makes contributions to her personal Registered Retirement Savings Plan (RRSP).

In April 2023, the plan administrator discovered that Andreya had not been enrolled in the plan. On May 31, 2023, she and the employer each make a lump sum catch-up contribution to make up for the contributions not made in years 2020 to 2022. The employer also adds credited interest (for both employer and employee portions) at the fund rate of return of 5% per annum.

The total (employer plus employee) catch-up contribution in 2023 in respect of Andreya cannot exceed the lesser of the amounts determined in the formulas under paragraphs (a) and (b) of the definition “permitted corrective contribution”.

The amount in paragraph (a) is the total contributions (plus credited interest) that may be made in respect of the three retroactive years, each year determined by the formula A + B – C.

For 2020:
A = $90,000 x 12% = $10,800
B = compound interest for 3 years at 5% per annum = $540 + $567 + $595 = $1,702
C = $0
A + B – C = $10,800 + $1,702 – 0 = $12,502

For 2021:
A = $90,000 x 12% = $10,800

B = compound interest for 2 years at 5% per annum = $540 + $567 = $1,107
C = $0
A + B – C = $10,800 + $1,107 – 0 = $11,907

For 2022:
A = $90,000 x 12% = $10,800
B = 10,800 x .05 = $540
C = $0
A + B – C = $10,800 + $540 – 0 = $11,340

The total amount for paragraph (a) is $12,502 + $11,907 + $11,340 = **$35,749**

The amount in paragraph (b) is the dollar limit determined by the formula E – F, where
E = 150% of the money purchase limit for 2023 (which is $31,560)
F = $0
E – F = $47,340 – $0 = $47,340

The lesser of the amounts in paragraphs (a) and (b) is **$35,749**.

On May 31, 2023, a permitted corrective contribution was deposited to Andreya's account under the plan equal to **$35,749**. The plan administrator must file a prescribed information return with the Canada Revenue Agency to report the amount within 120 days after the contribution is made (i.e., on or before September 28, 2023). The administrator does not need to amend T4 slips for any of years 2020 to 2022.

The contribution will reduce Andreya's RRSP contribution room for 2024 (i.e., the year following the year of the catch-up contribution). If Andreya otherwise would have had less than $35,749 of RRSP contribution room for 2024, she will not be able to make deductible RRSP contributions in 2024 (and in any future years in which RRSP room remains negative). If she chooses to make non-deductible RRSP contributions, she would be subject to a Part X.1 tax on overcontributions. However, the negative RRSP room does not impede current or future required contributions to the registered pension plan by Andreya and her employer.

Second error discovered in 2024:

In June 2024, the plan administrator discovered that Andreya's annual bonus of $10,000 for each of 2022 and 2023 was not included in determining the pension contribution amount for those two years. Therefore, in 2024, the plan administrator will facilitate another permitted corrective contribution to the plan for Andreya.

Her permitted corrective contribution amount in 2024 cannot exceed the lesser of the amounts determined in the formulas under paragraphs (a) and (b) of the definition "permitted corrective contribution".

The amount in paragraph (a) is the total catch-up contributions that may be made in respect of the retroactive years, each year determined by the formula A + B – C that applies for each of the retroactive years (in this case for 2022 and 2023.

For 2022:
A = (($90,000 salary + $10,000 bonus) x 12%) minus nil contributions made in 2020
A = $12,000
B = compound interest for 2 years at 5% per annum = $600 + $630 = $1230
C = $11,340 (catch-up contribution under subsection 147.1(20) in 2023 in respect of 2020
A + B – C = $12,000 + $1,230 – $11,340 = $1,890

For 2023:
A = required contributions for 2023 minus contributions already made in 2023
= ($100,000 x 12%) – ($90,000 x 12%) = $1,200
B = $1,200 x .05 = $60
C = 0
A + B – C = $1,200 + $60 – 0 = $1,260

The amount for paragraph (a) is $1,890 + $1,260 = $3,150.

The amount for paragraph (b) is the dollar limit determined by the formula E – F, where
E = 150% of the money purchase limit for 2024 (assume $33,000) = $49,500
F = $35,749 (the permitted corrective contributions in 2023)
E – F = $13,751

The lessor of the amounts in paragraphs (a) and (b) is **$3,150**.

On June 20, 2024, a permitted corrective contribution is deposited to Andreya's account under the plan equal to **$3,150**. The plan administrator must file a prescribed information return with the Canada Revenue Agency to report the amount within 120 days after the contribution is made (i.e., on or before October 18, 2024). The administrator does not need to amend T4 slips for 2022 nor 2023.

Permitted corrective contribution

ITA
147.1(20)

New subsection 147.1(20) of the Act permits an individual or an employer to make a catch-up contribution in a calendar year to a money purchase provision of a registered pension plan in respect of the individual under certain conditions. Those conditions are that the contribution is a permitted corrective contribution and the provision was a designated money purchase provision in each of the years in respect of which a permitted corrective contribution is made.

Permissible contributions to a registered pension plan are listed under paragraph 8502(b) of the Regulations and are part of the registration conditions applicable to pension plans.

Notwithstanding the registration conditions, plan administrators will not be required to amend the plan terms to explicitly provide for permitted corrective contributions.

For information on the definitions “permitted corrective contribution” and “designated money purchase provision”, see the commentary on the amendments made to subsection 147.1(1) of the Act.

For more information on reporting requirements for a permitted corrective contribution for an individual, see the commentary on new subsection 8402(4) of the Regulations.

This amendment comes into force on January 1, 2021.

Clause 44

Pension contributions deductible — employer contributions

ITA
147.2(1)(a)

Paragraph 147.2(1)(a) of the Act permits an employer to deduct from income for a taxation year the amount of contributions it makes under a money purchase provision of a registered pension plan, if the contributions are in respect of periods before the end of the taxation year and made in accordance with the plan as registered.

Paragraph 147.2(1)(a) is amended to allow an employer to deduct “permitted corrective contributions” under new subsection 147.1(20) in respect of periods before the end of the taxation year. The paragraph is split into two subparagraphs. Subparagraph (i) preserves the traditional rule permitting a deduction for contributions made in accordance with the plan as registered. Subparagraph (ii) refers to permitted corrective contributions made under subsection 147.1(20).

For more information, please see the commentary on subsection new 147.1(20) of the Act.

Employee contributions - service after 1989

ITA
147.2(4)(a)

Subsection 147.2(4) of the Act provides rules that govern the deductibility of employee contributions to registered pension plans. Paragraph 147.2(4)(a) allows an individual to deduct contributions in respect of years after 1989, or a prescribed eligible contribution, to the extent that the contributions are made in accordance with the terms of the plan as registered.

Consequential on the introduction of permitted corrective contributions under new subsection 147.1(20) of the Act, paragraph 147.2(4)(a) is amended to allow an individual to deduct, in addition to the contributions described above, a permitted corrective contribution. The paragraph

is split into two subparagraphs. Subparagraph (i) preserves the traditional rule permitting the deduction of contributions made in accordance with the plan as registered. Subparagraph (ii) refers to permitted corrective contributions made under new subsection 147.1(20).

For more information on the rules to determine a permitted corrective contribution, see the commentary on subsections 147.1(1) and 147.1(20) of the Act.

These amendments come into force on January 1, 2021.

Clause 45

Pooled Registered Pension Plans

ITA
147.5(2)(f)

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

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

This amendment comes into force on August 9, 2022.

Member's account

ITA
147.5(12)

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

Subsection (12) is amended to add a reference to section 160.2 of the Act so that the joint and several tax liability rules applicable to benefits paid out of an RRSP will also apply to benefits paid out of a PRPP account.

This amendment comes into force on August 9, 2022.

Post-death increase in value

ITA
147.5(18)

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

The amount of the income inclusion is determined by the formula A – B. Variable A is the amount being distributed from the account under the PRPP to the taxpayer. Variable B is the amount designated by the administrator in relation to the distribution, which cannot exceed the lesser of (a), the amount being distributed, or (b), the amount by which the fair market value of all property held in the account immediately before death exceeds the total of amounts determined for variable B in relation to all other distributions and amounts distributed to a qualifying survivor and included in income by virtue of 147.5(16) (i.e., that are not transferred on a tax-deferred basis).

Subparagraph (b)(ii) of variable B is amended to replace the reference to amounts included in income by a reference to “amount distributed” (i.e., taxable amounts and tax-deferred transfers) to a qualifying survivor. This amendment will ensure that subsection 147.5(18) operates as intended in the case of multiple beneficiaries of a deceased PRPP member.

This amendment comes into force on August 9, 2022.

Clause 46

Pension Benefits Guarantee Fund

ITA
149(1)(o.5)

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

This amendment applies to 2022 and subsequent taxation years.

Income test for municipal corporations

ITA
149(1.2)

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

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

This amendment comes into force on August 9, 2022.

Clause 47

Information may be communicated

ITA
149.1(15)

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

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

ITA
149.1(15)(a)

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

This amendment applies with respect to information returns that are required to be filed for taxation years that end after August 9, 2022.

ITA
149.1(15)(b)(iii)

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

Subparagraph 149.1(15)(b)(iii) provides that for any charity or Canadian amateur athletic association, the Minister may provide the effective date of the revocation, annulment or termination of the charity’s or Canadian amateur athletic association’s registration. Subparagraph

149.1(15)(b)(ii) is amended to provide that the Minister may also make available the effective date of any suspension.

This amendment applies as of August 9, 2022.

Clause 48

Definition of tax preparer

ITA
150.1

Section 150.1 of the Act provides for the use of electronic means for filing tax returns.

ITA
150.1(2.2)

Subsection 150.1(2.2) defines a “tax preparer” for the purposes of the electronic filing requirement and the associated penalty for non-compliance under subsection 162(7.3). A person or partnership is a tax preparer for a calendar year if, in the year, they accept consideration to prepare more than 10 returns of income of corporations or more than 10 returns of income for individuals (other than trusts). An employee who prepares returns of income in the course of performing their employment duties is not a tax preparer.

Section 150.1(2.2) is amended to remove the exception for returns of income of trusts and estates, and to lower the exemption threshold to five returns. A person or partnership is a tax preparer for a calendar year if, in the year, they accept consideration to prepare more than five returns of income of corporations, more than five returns of income for individuals (other than trusts), or more than five returns of income of estates or trusts.

This amendment comes into force on January 1, 2024.

Electronic filing – tax preparer

ITA
150.1(2.3)

Subsection 150.1(2.3) requires tax preparers to electronically file any return of income that they prepare for consideration. This requirement is subject to the exception that a tax preparer may file in a calendar year by other means up to ten corporate returns and ten individual returns. The requirement is also subject to the exceptions set out in subsection (2.4).

Subsection 150.1(2.3) is amended to provide that a tax preparer may file in a calendar year by other means up to five corporate returns, five individual returns and five trust or estate returns.

This amendment comes into force on January 1, 2024.

Declaration

ITA
150.1(4)

Subsection 150.1(4) requires a person on whose behalf a return is filed electronically to complete an information return in prescribed form and containing prescribed information, to keep a copy, and to give the signed original to the person filing the return.

To facilitate the use of electronic signatures, subsection 150.1(4) is amended to remove the requirement for the information return to be signed by the person on whose behalf a return is filed.

This amendment comes into force on royal assent.

Electronic notice of assessment

ITA
150.1(4.1)

New subsection 150.1(4.1) allows the Minister of National Revenue to provide a notice of assessment electronically to an individual for a return of income that the individual files electronically, if the individual is registered for CRA's My Account for Individuals.

Under new subsection (4.1), the notice of assessment is presumed to have been sent to the individual and received by the individual on the day that it is made available to the individual using electronic means.

In conjunction with the amendments made to subsection 244(14.1), a notice or other communication will be considered to be made available using electronic means only if it is posted by the Minister in the individual's secure electronic account and the individual has authorized that notices or other communications may be made available in this manner. An individual may revoke their authorization for notices or other communications to be made in this manner, effective as of the day following such a revocation.

This amendment comes into force on January 1, 2024.

Clause 49

Assessment

ITA
152(1)(b)

Subsection 152(1) of the Act lists certain refunds and deemed payments on account of tax that are to be determined in the course of assessing a taxpayer's tax. Paragraph (b) refers to provisions under which amounts are deemed to be paid on account of tax.

Consequential on the introduction of new subsection 122.5(3.003), this paragraph is amended to add a reference to new subsection 122.5(3.003). This subsection relates to the GST/HST Credit and deems an amount to have been paid on account of tax payable by an eligible individual in respect of January 2023.

Paragraph (b) is also amended to add a reference to the advance Canada Workers Benefit (CWB) payments in new subsection 122.72(1).

This amendment comes into force on royal assent.

Provisions applicable

ITA
152(1.2)(d)

Subsection 152(1.2) of the Act generally provides for the application of paragraphs 56(1)(l) and 60(o) and Divisions I and J of Part I of the Act as they relate to assessments and to various determinations and redeterminations made under Part I of the Act. Exceptions are made as to how certain provisions in the Act apply to certain of those determinations and redeterminations.

Paragraph (d) of this subsection is relevant for purposes of the GST/HST Credit (GSTC) and the Climate Action Incentive (CAI) under sections 122.5 and 122.8, respectively. Paragraph (d) provides that where the Minister determines the amount deemed by subsection 122.5(3), (3.001), (3.002) or 122.8(4) to have been paid by an individual for a taxation year to be nil, the Minister is not required to send the individual a notice of determination unless the individual requests a notice of determination from the Minister.

Consequential on the introduction of new subsection 122.5(3.003), paragraph 152(1.2)(d) is amended to provide that it also applies to a nil determination made under new subsection 122.5(3.003).

Paragraph (d) is also amended consequential on introduction of new section 122.72 to partially deliver the CWB through advance payments. Consistent with the treatment of the GSTC and the CAI, where the Minister determines the amount deemed by subsection 122.72(1) to have been paid by an individual for a taxation year to be nil, the Minister is not required to send the individual a notice of determination unless the individual requests a notice of determination from the Minister.

This amendment comes into force on royal assent.

Assessment

ITA
152(4)(b)(ii)

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

This amendment comes into force on royal assent.

Assessment and reassessment

ITA
152(4)(b.1)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may, at any time, assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. Exceptions to this general rule are described in paragraphs 152(4)(a) to (d). Paragraph (b.1) currently provides an exception where an information return described in subsection 237.1(7) or 237.3(2) is not filed as and when required.

Consequential on the amendments to section 237.3, paragraph 152(4)(b.1) is amended so that it applies only in respect of information returns described in subsection 237.1(7). New paragraph 152(4)(b.5) is being added to address situations where an information return is required to be filed under subsection 237.3(2).

This amendment applies to taxation years that begin after 2022.

Assessment and reassessment

ITA
152(4)(b.5) to (b.7)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may, at any time, assess tax and other amounts payable by a taxpayer for a taxation year, but may not assess after the normal reassessment period for the year. Exceptions to this general rule are described in paragraphs 152(4)(a) to (d).

Paragraph 152(4) of the Act is amended to add new paragraphs (b.5) to (b.7), consequential on the amendments to section 237.3 and the additions of sections 237.4 and 237.5.

New paragraph (b.5) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.3(2) (relating to reportable transactions) is not filed as and when required.

New paragraph (b.6) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.4(4) (relating to notifiable transactions) is not filed as and when required.

New paragraph (b.7) provides an exclusion from the normal reassessment period rules where an information return that is required to be filed under subsection 237.5(2) (relating to uncertain tax treatments) is not filed as and when required.

These new paragraphs apply to taxation years that begin after 2022.

Extended period of assessment

ITA
152(4.01)

Subsection 152(4.01) of the Act limits the matters in respect of which the Minister of National Revenue can assess when an assessment to which paragraph 152(4)(a), (b), (b.1), (b.3), (b.4) or (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. In general terms, such a reassessment can be made only to the extent that it can reasonably be regarded as relating to a matter specified in any of those paragraphs.

Consequential on the addition of paragraphs 152(4)(b.5) to (b.7), the portion of subsection 152(4.01) before paragraph (a) is amended to include references to these new paragraphs. In addition, paragraph 152(4.01)(b) is amended to include:

- references to new paragraphs 152(4)(b.5) to (b.7) in its opening words;
- a revised reference to paragraph 152(4)(b.1) (which has been modified to confine its scope to subsection 237.1(7)) in paragraph 152(4.01)(b)(vii); and
- references to new paragraphs 152(4)(b.5) to (b.7) in new subparagraphs 152(4.01)(b)(viii) to (x).

For more information, see the commentary on new paragraphs 152(4)(b.5) to (b.7) and on sections 237.3 to 237.5.

This amendment applies to taxation years that begin after 2022.

Assessment and reassessment

ITA
152(4.2)(b)

Subsection 152(4.2) contains rules relating to the reassessment of tax, interest and penalties payable by a taxpayer and to the redetermination of tax deemed to have been paid by a taxpayer. This subsection gives the Minister of National Revenue discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by an individual (other than a trust) or a graduated rate estate.

Consequential on the introduction of new subsection 122.5(3.003), paragraph 152(4.2)(b) is amended to add a reference to new subsection 122.5(3.003).

This amendment comes into force on royal assent.

Clause 50

Withholding

ITA
153(1)

Subsection 153(1) of the Act requires the withholding of tax from any of the payments described in paragraphs 153(1)(a) to (v). The person making the payment is required to remit any tax so withheld to the Receiver General.

Subsection 153(1) is amended to modernize the language and to clarify that an electronic payment at or through a designated financial institution is permissible.

See also the commentary on new section 160.5, which requires all payments or remittances to the Receiver General greater than $10,000 to be made through electronic services offered by a designated financial institution, or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of remittances made after 2021.

Exception – remittance to designated financial institution

ITA
153(1.4)

Subsection 153(1.4) provides that the remittance of a prescribed person for the purposes of subsection (1) is treated as having been made to the account of the Receiver General at a designated institution if it is remitted at least one day before the day upon which the amount is due.

Subsection (1.4) is amended consequential on the amendment to subsection 153(1) to align and modernize the language of the provision.

See also the commentary on new section 160.5 below, which requires all payments or remittances to the Receiver General greater than $10,000 to be made through electronic services offered by a designated financial institution, or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of remittances made after 2021.

Clause 51

Where excess refunded

ITA
160.1(1)(b)

Subsection 160.1(1) of the Act provides for the recovery of an amount refunded to a taxpayer under the Act in excess of the amount to which the taxpayer was entitled. Paragraph (b) provides that interest is to be paid by the taxpayer on the excess amount recovered at the prescribed rate, except that no interest is to be paid on the portion of the excess amount that represents a repayment of the GST/HST credit (GSTC) under section 122.5, the Canada Child Benefit (CCB) under section 122.61 or the Climate Action Incentive (CAI) under 122.8.

Paragraph (b) is amended consequential on introduction of new section 122.72 to partially deliver the Canada Workers Benefit (CWB) through advance payments. Consistent with treatment of the GSTC, CCB and CAI, paragraph (b) is amended to provide that no interest is charged on any excess portion of a refund that represents a repayment of the advance CWB payments paid to a taxpayer under section 122.72.

This amendment come into force on royal assent.

Liability for refund by reason of s. 122.5

ITA
160.1(1.1)(b)

Subsection 160.1(1.1) provides that, where a person is a qualified relation (that is, a cohabiting spouse or common-law partner) of an individual who is a GST/HST Credit recipient, both the person and the individual are jointly and severally liable for any excess GST/HST Credit paid or credited to the individual.

Consequential on the introduction of new subsection 122.5(3.003), paragraph 160.1(1.1)(b) is amended to add a reference to new subsection 122.5(3.003). This would provide for joint and several liability for any excess payment made under the one-time, extra GST/HST Credit provided under that subsection.

This amendment comes into force on royal assent.

Liability under other provisions

ITA
160.1(3)

Subsection 160.1(3) of the Act allows the Minister to assess a taxpayer in respect of excess refunds and overpayments for which the taxpayer is jointly and severally liable under subsection

160.1(1) to (1.2), (2.1) or (2.2). Such an assessment is subject to interest, except that no interest is payable to the extent that the excess refund is attributable to the overpayment of GSTC, CCB or CAI.

Subsection (3) is amended consequential on introduction of new section 122.72 to partially deliver the CWB through advance payments. Consistent with treatment of the GSTC, CCB and CAI, subsection (3) is amended by adding a reference to section 122.72, so that no interest is payable to the extent that the excess refund is attributable to the overpayment of the advance CWB payment under section 122.72.

This amendment comes into force on royal assent.

Clause 52

Electronic payments

ITA
160.5

New section 160.5 of the Act imposes a requirement to make all payments or remittances to the Receiver General through electronic means, where the amount of the payment or remittance exceeds a certain monetary threshold.

This measure applies in respect of payments and remittances made after 2023.

Definitions

ITA
160.5(1)

New subsection 160.5(1) provides definitions that are relevant to the electronic payments requirement under new subsection 160.5(2).

"designated financial institution"

New definition "designated financial institution" has the meaning assigned by subsection 153(6). For the purposes of new section 160.5, a designated financial institution means a bank (other than an authorized foreign bank subject to the restrictions in subsection 524(2) of the Bank Act — i.e., one which operates as a so-called lending branch), a trust company and a deposit-taking mortgage lender. The definition effectively includes only those authorized foreign banks that operate a so-called full-service branch in Canada.

"electronic payment"

"Electronic payment" is defined as any payment or remittance to the Receiver General that is made through electronic services offered by a designated financial institution or by any electronic means specified by the Minister.

This measure applies in respect of payments and remittances made after 2023.

Requirement – electronic payments

ITA
160.5(2)

New subsection 160.5(2) imposes a requirement to make payments and remittances to the Receiver General through electronic means where the amount of the remittance or payment exceeds $10,000, unless the payor or remitter cannot reasonably remit or pay the amount in that manner.

See also the commentary on new subsection 162(7.4) below, which imposes a penalty of $100 for each failure to make a required payment or remittance electronically.

This measure applies in respect of payments and remittances made after 2023.

Clause 53

Interest on penalties

ITA
161(11)(b.1)

Subsection 161(11) of the Act requires the payment of interest on penalties imposed under the Act.

Consequential on the addition of sections 237.4 and 237.5 to the Act, paragraph 161(11)(b.1) is amended to include references to penalty provisions set out in those new sections.

This amendment comes into force on royal assent.

Clause 54

Failure to file in appropriate manner – prescribed information returns

ITA
162(7.02)

Subsection 162(7.02) of the Act provides a penalty for a failure to file certain information returns in the manner required by the Regulations. The penalty is based on the number of prescribed information returns of a particular type that are not filed in the appropriate manner.

Consequential on the amendment to subsection 205.1(1) of the Regulations, which require a taxpayer to file prescribed information returns electronically if more than five information returns of that type are required to be filed in a calendar year, subsection (7.02) is amended to provide a penalty for failing to file electronically equal to:

- $125 - where the taxpayer is required to file more than five and fewer than 51 returns;
- $250 - where the taxpayer is required to file more than 50 but fewer than 251 returns;
- $500 - where the taxpayer is required to file more than 250 but fewer than 501 returns;
- $1,500 - where the taxpayer is required to file more than 500 but fewer than 2,501 returns; and
- $2,500 - where the taxpayer is required to file more than 2,500 returns.

This amendment applies in respect of information returns filed after 2023.

Penalty – electronic payments

ITA
162(7.4)

New subsection 162(7.4) provides a penalty of $100 for each failure to make an electronic payment or remittance as required under subsection 160.5(2).

This measure applies in respect of payments and remittances made after 2023.

Rules – partnership liable to a penalty

ITA
162(8.1)

Subsection 162(8.1) allows various penalties imposed under section 162 to be assessed against a partnership and applies the provisions of the Act relating to assessments, objections and appeals with respect to those penalties as if the partnership were a corporation.

Subsection (8.1) is amended to apply in respect of the penalty under new subsection 162(7.4) for the failure to make a required payment or remittance electronically.

This amendment applies in respect of payments and remittances made after 2023.

Clause 55

Partnership liable to penalty

ITA
163(2.9)

Subsection 163(2.9) of the Act allows a penalty imposed under subsection 163(2.4) or section 163.3, 237.1 or 237.3 to be assessed against a partnership and applies the provisions of the Act relating to assessments, interest, refunds, objections and appeals with respect to the penalty as if the partnership were a corporation.

Consequential on the addition of section 237.4 to the Act, subsection 163(2.9) is amended to include a reference to that new section.

This amendment comes into force on royal assent.

Clause 56

Application respecting refunds under s. 122.72

ITA
164(2.22)

Subsection 164(2) of the Act provides that, where a taxpayer is liable or about to become liable for other income tax payments, the Minister may apply the amount of an overpayment to the other tax liability rather than make a refund. New subsection (2.22) is enacted consequential on introduction of new section 122.72 to partially deliver the Canada Workers Benefit (CWB) through advance payments, and to provide advance CWB payments with treatment consistent with that of the GST/HST credit (GSTC) under subsection (2.1) and the Climate Action Incentive (CAI) under subsection (2.21).

New subsection (2.22) provides that where the advance CWB payments otherwise payable in respect of a given month specified for that purpose is used in whole or in part to reduce a tax liability, when the applicable return is filed on time, the set-off occurs on the day the amount would have been paid to the individual if the set-off had not occurred. When the individual's return for the year is not filed on time, the set-off occurs on the day the amount is actually applied.

This amendment applies to the 2023 and subsequent taxation years.

Interest on refunds and repayments

ITA
164(3)

Subsection 164(3) of the Act provides for the payment of interest on tax refunds, other than any portion of a refund that arises in relation to the GSTC, CCB, CAI or COVID-19 emergency subsidies provided under section 125.7.

Subsection (3) is amended consequential on introduction of new section 122.72 to partially deliver the CWB through advance payments. Advance CWB payments are added to the list of amounts in subsection (3) in relation to which the payment of interest will not be made.

This amendment applies to the 2023 and subsequent taxation years.

Clause 57

Revoked charity to file returns

ITA
189(6.1)

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

This amendment applies in respect of taxation years that end after August 9, 2022.

Provisions applicable to Part

ITA
189(8)

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

This amendment comes into force on August 9, 2022.

Clause 58

Undeducted RRSP premiums

ITA
204.2(1.2)

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

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

This amendment applies to the 2018 and subsequent taxation years.

Clause 59

Registered investments

ITA
204.5

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

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

This amendment comes into force on August 9, 2022.

Clause 60

Taxes in respect of registered plans - "advantage"

ITA
207.01(1)

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

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

This amendment comes into force on August 9, 2022.

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

This amendment applies to the 2018 and subsequent taxation years.

ITA
207.01(2)

New subsection 207.01(2) is added to the Act so that the rules in Part X1.01 that apply to income earned on non-qualified investments held by registered plans will be consistent with similar rules appearing in Part 1 of the Act. Specifically, the new requirement in subsection 207.01(2) that "income includes dividends described in section 83" is consistent with the requirement in subsections 146(10.1), 146.1(5), 146.2(6), 146.3(9), 146.4(5) and 146.6(3).

This amendment applies to dividends received on or after August 9, 2022.

Clause 61

Excess EPSP amounts

ITA
207.8(2)

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

Variable B of the formula in subsection 207.8(2) adds a tax rate equivalent to a provincial tax rate, or a 14 per cent tax rate in the case of a non-resident specified employee. Paragraph (c) of variable B is being amended as a result of the introduction (in 2016) of a 33 per cent marginal tax rate. Specifically, the reference to "14 per cent" is replaced by the percentage (rounded to the nearest half percentage) that is determined by multiplying the "highest individual percentage" (currently 33 per cent) by the percentage under subsection 120(1) (currently 48 per cent) that is used to determine the federal surtax.

This amendment applies to the 2022 and subsequent taxation years.

Clause 62

Application of Part XIII tax — payer subject to Part I

ITA
212(13.2)

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

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

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

Subsection 212(13.2) is also amended to address amounts paid or credited by a non-resident person to a partnership (other than a Canadian partnership) where such amounts are deductible in computing that non-resident person's income that is taxed under Part I. In those circumstances, it deems the payer non-resident person to be a person resident in Canada. Under paragraph 212(13.1)(b), the payee partnership is then deemed, in respect of the amount, to be a non-resident person for the purposes of Part XIII.

These amendments apply to amounts paid or credited after 2022.

Application of Part XIII to authorized foreign bank

ITA
212(13.3)

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

212(13.3), an authorized foreign bank is also deemed to be resident in Canada with respect to the application of the definition “Canadian partnership” in paragraph 212(13.1)(b), with respect to a partnership interest held by the bank in the course of its Canadian banking business.

Subsection 212(13.3) is amended in two respects. First, the preamble is amended to clarify that the subsection treats an authorized foreign bank as being a person resident in Canada. Second, consequential on the amendments to subsection 212(13.2), which also refers to the definition “Canadian partnership”, paragraph 212(13.3)(b) is amended to make reference to that provision.

These amendments apply to amounts paid or credited after 2022.

Clause 63

Foreign affiliate dumping – paid-up capital reinstatement

ITA
212.3(9)(b)(ii)

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

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

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

The description of A is amended in two main respects.

First, clause (B) of the description of A is amended to correct a typographical error by replacing the reference to the “subject shares” with “shares of the capital stock of the subject corporation”.

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

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

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

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

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

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

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

Finally, the description of A is amended to clarify that the term "recipient corporation" refers to either the particular corporation or a corporation resident in Canada that does not deal at arm's length with the particular corporation, for the purposes of applying the description of A.
If multiple properties are received on a transaction or event described in any of subclauses (A)(I) to (III), PUC reinstatement is denied only in respect of those properties that are acquired "as a result of" an investment to which an exception in subsection 212.3(16) or (18) applies. For example, if a particular corporation transfers shares of a subject corporation to another subject

corporation under subsection 85.1(3), in exchange for a combination of shares of the other subject corporation and non-share consideration (e.g., cash), the non-share consideration would not be considered to have been received "as a result of" an investment to which subsection 212.3(18) applies. Thus, PUC reinstatement would be denied to the extent of the fair market value of the shares of the other subject corporation received on the transfer.

This amendment applies in respect of transactions and events that occur on or after August 9, 2022.

Clause 64

Deemed payments

ITA
214(3)(g)

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

This amendment comes into force on royal assent.

Clause 65

Assessment

ITA
227(10)(b)

Subsection 227(10) of the Act empowers the Minister of National Revenue to assess a person for various amounts, including penalties and other amounts payable by the person in respect of the failure to comply with the various provisions of the Act.

Consequential on the addition of sections 237.4 and 237.5 to the Act, paragraph 227(10)(b) is amended to include references to the penalty provisions set out in those new sections.

This amendment comes into force on royal assent.

Clause 66

Foreign reporting – definitions

ITA
233.3(1)

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

“specified Canadian entity”

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

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

This amendment applies to taxation years and fiscal periods that end after August 9, 2022.

“specified foreign property”

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

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

This amendment applies to taxation years and fiscal periods that end after August 9, 2022.

Clause 67

Social Insurance Number

ITA
237(1)(b)

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

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

This amendment comes into force on royal assent.

Clause 68

Definitions

ITA
237.3(1)

Subsection 237.3(1) of the Act contains definitions that are relevant for the purposes of the "reportable transaction" rules in section 237.3(1).

"solicitor-client privilege"

"Solicitor-client privilege" has the meaning assigned by subsection 232(1). This definition is relevant to determine whether a person who is a lawyer and an advisor in respect of a reportable transaction has a reporting obligation in respect of any particular information that has to be disclosed to the Minister of National Revenue under new section 237.3.

Consequential on the amendment to subsection 237.3(17) which provides that, for greater certainty, information is not required to be disclosed for the purposes of section 237.3 if it is reasonable to believe that the information is subject to solicitor-client privilege, the definition "solicitor client privilege" in subsection 237.3(1) is repealed.

This amendment applies to reportable transactions entered into after royal assent.

"avoidance transaction"

The term "avoidance transaction" in subsection 237.3(1) of the Act currently has the same meaning as it does under the General Anti-Avoidance Rule (GAAR) in section 245.

The definition "avoidance transaction" is amended to mean a transaction if it may reasonably be considered that one of the main purposes of the transaction, or of a series of transactions of which the transaction is a part, is to obtain a tax benefit. This provides a lower threshold for there to be an avoidance transaction under the reportable transaction rules than under the GAAR, which uses a primary purpose test.

This amendment, in conjunction with the amendments to the definition “reportable transaction”, are expected to result in an increase in the reporting of reportable transactions. The increase in reporting is aligned with the policy goal of this information reporting regime, which is meant to require the disclosure to the Minister of National Revenue in a timely manner of aggressive tax avoidance transactions. At the same time, it remains important to ensure that the expanded reporting obligations are appropriate to the circumstances and do not result in unnecessary compliance burden. Normal commercial transactions that do not pose an increased risk of abuse, in and of themselves, are not intended to result in a reporting obligation under these rules. It is expected that, over time, administrative guidance will be provided by the Canada Revenue Agency to assist taxpayers and tax professionals with the application of these rules.

“contractual protection”

The term “contractual protection” in respect of a transaction or series contemplates:

- a tax-result protection in any form (other than standard professional liability insurance) under which a person is compensated or indemnified should the tax benefit from the transaction or series not be achieved under the law; and
- any undertaking by a promoter (or a person who does not deal at arm’s length with the promoter) to assist a person in the course of a dispute in respect of a tax benefit from the transaction or series, even if done for no consideration, including situations where the promoter offers to provide to a person relevant documentation and guidance to dispute an assessment or file an appeal of any court’s decision in respect of the transaction or series.

Contractual protection is relevant to the conditions (i.e., hallmarks) that are outlined in paragraph (c) of the definition “reportable transaction” in subsection (1). That definition currently requires an avoidance transaction to present at least two of the three possible hallmarks to be considered a reportable transaction.

In conjunction with the amendment to the definition “reportable transaction” that requires an avoidance transaction to present only one of the hallmarks to be a reportable transaction, the definition “contractual protection” is amended to exclude any form of insurance or other protection, including an indemnity, compensation or a guarantee, that is integral to an agreement between persons acting at arm’s length for the sale or transfer of all or part of a business, directly or indirectly, where it is reasonable to consider that the insurance or protection

- is intended to ensure that the purchase price paid under the agreement takes into account any liabilities of the business immediately prior to the sale or transfer, and
- is obtained primarily for purposes other than to achieve any tax benefit from the transaction or series.

This exception confirms that standard representations, warranties and guarantees between a vendor and purchaser, as well as traditional representations and warranties insurance policies, that are generally obtained in the ordinary commercial context of mergers and acquisitions

transactions to protect a purchaser from pre-sale liabilities (including tax liabilities), are not expected to give rise to reporting requirements for reportable transactions.

This exception would not extend to other insurance or protections that may be obtained to cover specific identified tax risks, including, for example, through the use of tax liability insurance policies in relation to avoidance transactions. The existence of such insurance may often be an indication of aggressive tax planning.

“reportable transaction”

A “reportable transaction” means an avoidance transaction entered into by or for the benefit of a person, and each transaction entered into by or for the benefit of a person that is part of a series of transactions that includes the avoidance transaction, where at any time, any two of paragraphs (a) to (c) of that definition are applicable in respect of the avoidance transaction or series.

The definition “reportable transaction” is amended to provide that only one of the conditions described in paragraphs (a) to (c) of this definition need be present in order for a transaction to be a reportable transaction. (See also the discussion of the amendment to the definition “avoidance transaction”.)

Paragraph (a) of the definition “reportable transaction” refers to circumstances in which an “advisor” or “promoter” (within the meanings assigned by subsection (1)), or any person who is not dealing at arm’s length with an advisor or promoter, is entitled to certain types of “fees”.

Fees that are contemplated in paragraph (a) are:

- under subparagraph (i), a fee of an advisor or promoter the computation of which is to any extent based on the amount of a tax benefit that could result from an avoidance transaction or series of transactions that includes the avoidance transaction;
- under subparagraph (ii), a fee of an advisor or promoter for which the advisor or promoter has or had an entitlement that is contingent upon the obtaining of, or the failure to obtain, a tax benefit from an avoidance transaction or series of transactions that includes the avoidance transaction; or
- under subparagraph (iii), a fee that is attributable to the number of persons who enter into an avoidance transaction or series (or a similar avoidance transaction or series), or who have been provided access to advice or an opinion given by the advisor or promoter regarding the tax consequences from the avoidance transaction or series (or a similar avoidance transaction or series).

Paragraph (a) of the definition “reportable transaction” is amended to exclude the consideration of fees for the preparation of Scientific Research and Experimental Development (SR&ED) claims, including such fees that are contingent on the tax benefits resulting from the SR&ED claim, from the determination of a reportable transaction. This exception to the conditions that impose reporting obligations for reportable transactions is provided on the basis that relevant

information is separately collected in respect of these transactions through the SR&ED forms prescribed for purposes of subsection 37(11), including the collection of “claim preparer information” (defined in subsection 162(5.3)) such as the identity of a claim preparer and the arrangement under which the claim preparer agrees to accept consideration for the preparation of the form.

Budget 2021 announced a consultation process in respect of proposals to enhance the mandatory disclosure rules, and additional consultations were undertaken since that time in respect of the resulting draft legislative amendments. Through these consultations, the Department of Finance was provided the opportunity to consider certain billing practices and common approaches that would not generally be expected to result in a reporting obligation for an advisor, absent additional facts or circumstances that would suggest an alternate result in relation to the application of the fee hallmark in paragraph (a) of the definition of “reportable transaction”.

For instance, a reporting obligation is not expected to arise under paragraph (a) solely as a result of fee that is based solely on the value of the services provided in respect of a transaction or series and determined without reference to the tax results of the transaction or series. This would cover, for example, the practice of “value billing” by professionals such as lawyers and accountants, in which a fee is agreed to at the time of billing, and is based on criteria (other than the value of the tax benefit resulting from the transaction or series) which might include:

- the level of training and experience of the persons engaged in the work;
- the time expended by the persons engaged in the work;
- the degree of risk and responsibility which the work entails;
- the priority and importance of the work to the client; and
- the value of the work to the client.

Additionally, a contingent litigation fee arrangement in relation to an appeal of a tax assessment by a lawyer in respect of a tax benefit from a completed transaction or series would not, on its own, generally constitute the provision of a contractual protection for purposes of paragraph (e) of the definition “fee” in subsection (1). Therefore, the litigator would not generally be an advisor in respect of a transaction or series solely because of the existence of the contingent litigation fee arrangement that is implemented after the completion of the transaction or series that is the subject of an appeal.

However, a reporting obligation would be expected to arise for a litigator in relation to a contingent litigation fee arrangement that is put in place with a taxpayer, advisor or promoter in respect of a transaction or series prior to the completion of the transaction or series. This is intended to result in a treatment consistent with prior guidance in respect of “contractual protection” in relation to paragraph (c) of “reportable transactions”, where a reporting obligation would arise in situations where a taxpayer would be entitled to be compensated for any fees to be incurred during the course of an audit, an objection to an assessment, reassessment, additional

assessment or determination pursuant to subsection 152(1.11), an appeal of an assessment to the Tax Court of Canada or any other subsequent appeal to a court of higher jurisdiction, in respect of a tax benefit which could result from an avoidance transaction or series of transactions.

Other examples of billing practices and circumstances that would not, absent other facts to the contrary, result in a reporting obligation for an advisor in respect of an avoidance transaction on the basis of the fee hallmark in paragraph (a) would include the collection of a standard fee (i.e., generally available to the public under normal commercial terms and in comparable circumstances) by a financial institution:

- for the establishment and ongoing administration of a financial account, such as a registered retirement savings account, or a financial instrument, such as a related segregated fund investment, including where the fee is determined in relation to the amount of the investment;
- where the fee offered to a particular client is discounted in relation to the number of financial accounts maintained by the financial institution for the particular client; or
- as a normal per-transaction charge for each security trade in the context of a year-end tax-loss selling program operated by the financial institution.

In this regard, it is intended that normal commercial transactions that do not pose an increased risk of abuse, in and of themselves, would not result in a reporting obligation under these rules. On this basis, no reporting obligation would generally arise for a financial institution that collects a standard fee in relation to the provision of an ordinary financial account that is broadly offered in a normal commercial or investment context in which parties deal with each other at arm's length and act prudently, knowledgeably and willingly. However, a reporting obligation would be expected to arise for the financial institution if other facts and circumstances demonstrate that the financial institution is otherwise considered an advisor in respect of the transaction or series, including where the financial institution can reasonably be expected to know that the financial account will be used in a transaction or series that is a reportable transaction to their client. (See commentary in respect of the due diligence rule in subsection 237.3(11).)

Paragraph (b) of the definition "reportable transaction" refers to circumstances in which an "advisor" or "promoter" obtains "confidential protection" in respect of an avoidance transaction or series of transactions that includes the avoidance transaction.

Paragraph (b) of the definition "reportable transaction" is amended to stipulate that the confidential protection obtained, and the prohibition on disclosure provided under the confidential protection, is to be in respect of a tax treatment in relation to the avoidance transaction. This amendment therefore provides that the protection of trade secrets that do not relate to tax do not give rise to a reporting requirement.

"tax treatment"

The new definition "tax treatment" is primarily relevant to paragraph 237.3(2)(a) of the Act, which provides the reporting obligation in respect of reportable transactions.

The term generally refers to a tax filing position taken by a person, and is largely modeled upon the definitions "tax treatment" and "uncertain tax treatment" in IFRIC Interpretation 23, as developed by the International Financial Reporting Standards (IFRS) Interpretations Committee.

These amendments and the new definition apply to reportable transactions entered into after royal assent.

Application

ITA
237.3(2)(a)

Subsection 237.3(2) of the Act imposes an obligation on certain persons to file an information return in respect of reportable transactions. Currently, this obligation will apply if, in general terms, any of paragraphs (a) to (c) of the definition "reportable transaction" are applicable in respect of an avoidance transaction or series of transactions that includes the avoidance transaction.

Paragraph 237.3(2)(a) of the Act is replaced to provide that an information return in prescribed form and containing prescribed information in respect of a reportable transaction must be filed with the Minister by every person for whom a tax benefit results from any of the sources set out in subparagraphs (i) to (iii). It also requires reporting by a person for whom a tax benefit is expected to result based on the person's tax treatment of the reportable transaction. This is intended to ensure that reporting is required in circumstances where a person's filing position is successfully challenged. The three sources are:

- the reportable transaction;
- any other reportable transaction that is part of a series of transactions that includes the reportable transaction; and
- a series of transactions that includes the reportable transaction.

This amendment applies to reportable transactions entered into after royal assent.

Clerical or secretarial services

ITA
237.3(4)

Subsection 237.3(4) of the Act currently provides that if more than one person is required to file an information return under subsection (2) in respect of a reportable transaction, the filing of an information return with full and accurate disclosure in prescribed form by one person satisfies the requirement to file for any other person who is also subject to a reporting obligation for the same transaction.

Subsection 237.3(4) is replaced with a new rule which provides for greater certainty that the reporting obligations imposed under subsection (2) do not apply to a person solely because the

person provided clerical services or secretarial services with respect to a reportable transaction. This rule is included only for greater certainty, since typically a person who provides only administrative or clerical services would not be expected to receive the type of fee described in paragraph (2)(c), and therefore would not have a reporting obligation even absent this rule. (See also the commentary on due diligence in subsection 237.3(11)).

This amendment applies to reportable transactions entered into after royal assent.

Time for filing return

ITA
237.3(5)

Subsection 237.3(5) of the Act sets out the time period within which a person who is required to file an information return under subsection 237.3(2) in respect of a reportable transaction must file the return with the Minister of National Revenue.

Subsection 237.3(5) of the Act is amended to provide that an information return for a reportable transaction under subsection 237.3(2) is required to be filed with the Minister

- by a particular person described in paragraph 237.3(2)(a), within 90 days of the earlier of:
    - the day the particular person becomes contractually obligated to enter into the transaction (or a person described in paragraph 237.3(2)(b) becomes contractually obligated to enter into the transaction for the benefit of the particular person); and
    - the day the particular person enters into the transaction (or a person described in paragraph 237.3(2)(b) enters into the transaction for the benefit of the particular person). This is intended to reflect situations where there is no contractual obligation to enter into the transaction before the date the transaction is entered into (for example, if the reportable transaction is an "event");
- by a particular person described in paragraph 237.3(2)(b), within 90 days of the earlier of:
    - the day the particular person becomes contractually obligated to enter into the transaction for the benefit of a person described in paragraph 237.3(2)(a); and
    - the day the particular person enters into the transaction for the benefit of a person described in paragraph 237.3(2)(a); and
- by a person described in paragraph 237.3(2)(c) or (d), within 90 days of the earlier of the day that a particular person described in paragraph 237.3(2)(a) or (b) becomes contractually obligated to enter into the transaction, and the day the particular person enters into the transaction.

This amendment applies to reportable transactions entered into after royal assent.

Tax benefits disallowed

ITA
237.3(6)

Subsection 237.3(6) of the Act applies when an information return in respect of a reportable transaction is not filed in accordance with subsection 237.3(2) and when any resulting penalty under subsection 237.3(8) and any interest on that penalty are unpaid. Where subsection (6) currently applies, the General Anti-Avoidance Rule (the GAAR) in subsection 245(2) is deemed to apply, regardless of whether the misuse or abuse test in subsection 245(4) is met.

Consequential on amendments to the definition “avoidance transaction” in subsection 237.3(1), which delink that definition from the “avoidance transaction” definition used under the GAAR, subsection 237.3(6) is amended so that when it applies, section 245 is to be read without reference to the misuse or abuse test in subsection 245(4). As a result, a transaction would need to be an avoidance transaction as defined in subsection 245(3) for the deeming rule in subsection 237.3(6) to cause the GAAR to apply.

This amendment applies to reportable transactions entered into after royal assent.

Penalty

ITA
237.3(8)

When an information return in respect of a reportable transaction or, in the case of a series of transactions, each reportable transaction that is part of the series, is not filed in accordance with subsection 237.3(2) and subsection 237.3(5) of the Act, every person who has failed to file an information return in respect of the reportable transaction or of each reportable transaction that is part of the series is liable to pay a penalty.

Subsection 237.3(8) of the Act is amended to provide different penalties for different circumstances. In particular, when a person fails to file an information return in respect of a reportable transaction as required under subsection 237.3(2) on or before the day required under subsection 237.3(5), they are liable to a late-filing penalty equal to

- in the case of a person for whom a tax benefit results, or – based on the person’s tax treatment of the transaction – is expected to result, from the reportable transaction, as well as another who enters into the reportable transaction for the benefit of that person
  - $500 per week for each failure to report a reportable transaction, up to the greater of $25,000 and 25% of the tax benefit, or
  - for a corporation with assets having a total carrying value of $50 million or more for its last taxation year that ends prior to the day on which the information return is required to be filed, a penalty of $2,000 per week for each failure to report a reportable transaction, up to the greater of $100,000 and 25% of the tax benefit; and
- in the case of advisors and promoters, as well as any other person who does not deal with them at arm’s length and is entitled to a fee in respect of the reportable transaction or any transaction in a series that includes the reportable transaction, the total of
  - the amount of the fees charged by that person in respect of the reportable transaction,

- $10,000, and
- $1,000 per day that the person fails to report the reportable transaction, up to a maximum of $100,000.

For greater certainty, where a person enters into a reportable transaction for the benefit of a particular person, the amount of the tax benefit is the amount of the tax benefit for the particular person.

This amendment applies to reportable transactions entered into after royal assent. Current subsection (8) continues to apply with respect to reportable transactions entered into before royal assent.

Penalty – deeming rule

ITA
237.3(8.1)

New subsection (8.1) sets out a deeming rule relating to persons subject to penalties under subsection (8). It is possible for a person to be described in both paragraphs 237.3(2)(b) and (d) in respect of a reportable transaction. Subsection (8) provides different penalty computations for people described in those two paragraphs.

New subsection (8.1) provides that if a person described in both paragraphs 237.3(2)(b) and (d) fails to file an information return in respect of a reportable transaction as required by subsection 237.3(2) on or before the day required under subsection 237.3(5), that person is liable to a penalty equal to the greater of the amounts determined under paragraphs 237.3(8)(a) and (b).

New subsection 237.3(8.1) applies to reportable transactions entered into after royal assent.

Carrying value

ITA
237.3(8.2)

The penalty under subsection 237.3(8) of the Act is determined in part for certain corporations by reference to the carrying value of the corporation's assets.

New subsection (8.2) provides that, for the purpose of subparagraph 237.3(8)(a)(i), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). In effect, the carrying value of the assets of a corporation is based on the corporation's balance sheet.

New subsection 237.3(8.2) applies to reportable transactions entered into after royal assent.

Joint and several liability

ITA
237.3(9)

Current subsection 237.3(9) provides that if more than one person is liable to a penalty under subsection (8) in respect of a reportable transaction, each of those persons are jointly and severally, or solidarily, liable to pay the penalty.

Current subsection (9) is repealed as of royal assent, but continues to apply to reportable transactions entered into prior to royal assent.

Joint and several liability – special cases

ITA
237.3(10)

Consequential on the repeal of the joint and several liability provision set out in current subsection 237.3(9), the rule set out in current subsection 237.3(10), which relates to the calculation of the joint and several liability penalties, is also repealed.

Current subsection (10) is repealed as of royal assent, but continues to apply to reportable transactions entered into prior to royal assent.

Application of sections 231 to 231.3

ITA
237.3(13)

Subsection 237.3(13) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to any person who is required to file an information return in respect of a reportable transaction under subsection (2) notwithstanding that, at the time of such audit or inspection, a return of income may not have been filed for the taxation year in which a tax benefit results from the reportable transaction or series of transactions that includes the reportable transaction.

Consequential on the amendments to section 237.3, subsection (13) is amended to update its language and ensure that the provision applies to the year in which a transaction that is relevant to a tax benefit occurs, even if the tax benefit results in a subsequent year. This may be the case where, for example, a transaction creates a tax attribute that is to be used in a later year.

This amendment applies to reportable transactions entered into after royal assent.

Solicitor-client privilege

ITA
237.3(17)

Subsection 237.3(17) provides that, for greater certainty, information is not required to be disclosed for the purposes of section 237.3 if it is reasonable to believe that the information is subject to solicitor-client privilege. Subsection 237.3(17) is amended to modernize its language.

This amendment applies to reportable transactions entered into after royal assent.

Clause 69

Notifiable Transactions

ITA
237.4

New section 237.4 of the Act requires certain persons to report to the Minister of National Revenue prescribed information in respect of a notifiable transaction (as defined in subsection 237.4(1)).

New section 237.4 applies to notifiable transactions entered into after royal assent.

Definitions

ITA
237.4(1)

New subsection 237.4(1) of the Act provides a number of definitions that apply for the purposes of section 237.4.

“advisor”

The definition “advisor” is relevant in determining whether a person is required to file an information return in respect of a notifiable transaction, and the amount of the penalty to which that person may be liable under new subsection 237.4(12).

An “advisor” in respect of a notifiable transaction means each person who provides any assistance or advice with respect to creating, developing, planning, organizing or implementing the notifiable transaction to another person (including any person who enters into the notifiable transaction for the benefit of another person).

A person can also be an advisor in respect of a notifiable transaction if that person provides assistance or advice to any promoter or any other advisor in respect of the transaction, even though the person does not provide assistance or advice directly to the person who entered into the transaction or series. Therefore, although an advisor would generally be a person whose business is to provide professional services or contractual protection to a person entering into a notifiable transaction, other persons can also be considered to be an “advisor” in respect of the transaction or series. More than one person may be an advisor in respect of a particular notifiable transaction or series of transactions.

A person or partnership that provides advice or representation to a person only in respect of an audit or tax dispute in relation to a particular notifiable transaction would not be an advisor in respect of that notifiable transaction, if they were neither involved in the creation, development, planning, organizing or implementation of the transaction, nor in the providing of contractual protection.

“fee”

A “fee”, in respect of a notifiable transaction, has the same meaning as in subsection 237.3(1) of the Act.

“notifiable transaction”

New subsection 237.4(3) of the Act gives the Minister of National Revenue the authority to designate transactions or series of transactions for the purposes of section 237.4. This designation is to be made with the concurrence of the Minister of Finance. Subsection 237.4(4) provides a requirement to report notifiable transactions.

The definition “notifiable transaction” incorporates the transactions and series of transactions designated by the Minister of National Revenue into the reporting requirement rules in section 237.4. In particular, a notifiable transaction is a transaction that is the same as, or substantially similar to, a designated transaction, or a transaction in a series of transactions that is the same as, or substantially similar to, a designated series of transactions.

Subsection 237.4(2) sets out an interpretative rule that applies with respect to the term “substantially similar” for the purposes of notifiable transactions.

“person”

“Person” includes a partnership. This ensures that partnerships are subject to the notifiable transaction rules.

“promoter”

“Promoter” in respect of a notifiable transaction, has the same meaning as in subsection 237.3(1) of the Act.

“tax benefit”

“Tax benefit” has the same meaning as in subsection 245(1) of the Act, which contains the General Anti-Avoidance Rule.

“tax treatment”

“Tax treatment” has the same meaning as in subsection 237.3(1) of the Act. For more information, see the commentary on that definition.

“transaction”

“Transaction” has the same meaning as in subsection 245(1) of the Act and, as a result, includes an arrangement or event.

Interpretation – substantially similar

ITA
237.4(2)

New subsection 237.4(2) of the Act sets out an interpretation rule regarding the application of the phrase “substantially similar”, which is used in the definition “notifiable transaction” in subsection 237.4(1). Two transactions (or series of transactions) are substantially similar if they are expected to obtain the same or similar types of “tax consequences” (as defined in subsection 245(1)) to one or more persons and the transactions (or series of transactions) are either factually similar or based on the same or similar tax strategy.

The phrase “substantially similar” is to be interpreted broadly in favour of disclosure, such that the purpose of the obligation to report is not frustrated by slight variations in facts, tax consequences, or tax strategy. To this end, any background information provided in the Minister of National Revenue’s publications setting out the notifiable transactions could be relevant.

Example Notifiable Transaction

Assume that the Minister designates the following series of transactions to require reporting in situations where taxpayers attempt to “break” Canadian-controlled private corporation (CCPC) status in order to avoid the application of certain anti-deferral rules in the Act that otherwise apply to CCPCs earning or realizing investment income (planning that is addressed through new proposed rules targeting “substantive CCPCs”).

Foreign Continuance

A taxpayer’s corporation that holds investment assets, or assets that subsequently become investment assets, and that is initially incorporated in Canada is later continued under the laws of a foreign jurisdiction. As a result, it ceases to be a CCPC by virtue of it no longer being a “Canadian corporation”. However, by ensuring that the central management and control of the corporation are exercised in Canada and that subsection 250(5) does not apply, the corporation remains resident in Canada and, as a result, it is not considered to have emigrated and it is not subject to the foreign accrual property income (FAPI) regime.

Examples of Substantially Similar Transactions

The following three examples (Foreign Incorporation, “Skinny” Voting Shares, and Option to Acquire Control) illustrate other series of transactions that are “substantially similar” to the example notifiable transaction provided above describing a foreign continuance to break CCPC status in order to avoid the application of certain anti-deferral rules in the Act. This is because

each example:

- obtains the same tax consequences, with the corporation avoiding the anti-deferral rules that apply to CCPCs and not being subject to the FAPI regime; and
- is factually similar, in that each takes the same or a slightly different path, through manipulation of either "Canadian corporation" status or "Canadian-controlled" status, to rely on technical provisions of the Act to break the CCPC status while remaining, in substance, a Canadian-controlled private corporation that is ultimately controlled (in law or in fact) by Canadian resident individuals.

Foreign Incorporation

A taxpayer initially incorporates a corporation in a foreign jurisdiction and capitalizes it with investment assets, or assets that subsequently become investment assets. Such a corporation would not be a CCPC by virtue of it not being a "Canadian corporation". However, by ensuring that the central management and control of the corporation are exercised in Canada, the corporation is taxed as a resident of Canada with the result that it is not subject to the foreign accrual property income regime.

"Skinny" Voting Shares

On or after incorporation, a corporation that holds or is capitalized with investment assets, or assets that subsequently become investment assets, issues a majority of special voting shares, redeemable for a nominal amount (also known as "skinny" voting shares), to a non-resident person in order to cause the corporation to not be "Canadian-controlled" and, as such, to not be a CCPC. The non-resident person who owns the voting shares is often (but not necessarily) an entity owned and controlled by Canadian residents.

Alternatively, the skinny voting shares could be issued to a public corporation instead of a non-resident person.

Option to Acquire Control

A corporation that holds investment assets, or assets that subsequently become investment assets, issues an option to a non-resident person for the acquisition of a majority of the voting shares of a corporation in order to cause the corporation to not be "Canadian-controlled" and, as such, to not be a CCPC. This right to acquire control through the majority of the voting shares is often (but not necessarily) held by a non-resident entity that is owned by Canadian residents or accommodating non-resident persons.

Alternatively, the option to acquire control could be issued to a public corporation instead of a non-resident person.

Designation of notifiable transactions

ITA
237.4(3)

New subsection 237.4(3) of the Act authorizes the Minister of National Revenue to designate transactions, or series of transactions, for the purposes of section 237.4. Due to the definition "notifiable transaction" in subsection (1), transactions that have been designated or that are included in a series of transactions that have been designated (including substantially similar transactions or series, as the case may be) are required to be reported under subsection (4).

Transactions can be designated in the manner that the Minister of National Revenue considers appropriate, such as on the Canada Revenue Agency webpages. The designations are to be made with the concurrence of the Minister of Finance.

Requirement to file return

ITA
237.4(4)

New subsection 237.4(4) of the Act imposes an obligation on certain persons to file an information return in respect of a notifiable transaction. More specifically, the persons required to file information returns are as follows:

- every person for whom a tax benefit results, or for whom a tax benefit is expected to result based on the person's tax treatment of the notifiable transaction, from
    - the notifiable transaction,
    - any other notifiable transaction that is part of a series of transactions that includes the notifiable transaction, or
    - a series of transactions that includes the notifiable transaction;
- every person who has entered into, for the benefit of a person for whom a tax benefit results, or for whom a tax benefit is expected to result based on the person's tax treatment of the transaction, a notifiable transaction;
- every advisor or promoter in respect of the notifiable transaction; and
- every person who is not dealing at arm's length with an advisor or promoter in respect of the notifiable transaction and who is or was entitled, either immediately or in the future and either absolutely or contingently, to a fee in respect of the notifiable transaction.

The reporting requirements apply on a transaction-by-transaction basis. In other words, reporting is required in respect of each transaction that is part of a series of transactions that includes the notifiable transaction. However, subsection 237.4(10) provides that if the reporting of a notifiable transaction describes each transaction in the series, the requirement to report each transaction in the series will be met. More than one person may have a reporting requirement in respect of the same notifiable transaction. As well, every person described in paragraphs 237.4(4)(a) to (d) is required to file an information return for each notifiable transaction in respect of each person for whom a tax benefit could result from the notifiable transaction, or from the series of transactions that includes the notifiable transaction.

Unless information returns in respect of a notifiable transaction are filed with the Minister of National Revenue, the Minister can deny any tax benefit that could result from the notifiable transaction, and impose a penalty on each person who failed to report any notifiable transaction, to which they would be jointly and severally, or solidarily, liable. Moreover, unless and until an information return in respect of a notifiable transaction is filed as and when required, the Minister of National Revenue may reassess a participant in a notifiable transaction outside of the normal reassessment period for a taxation year in respect of the transaction.

The information return must contain prescribed information as determined by the Minister of National Revenue. Every person who is subject to a reporting requirement would be expected to make reasonable and good faith efforts to identify the information to be reported and ensure that such information is provided to the Minister of National Revenue in order to satisfy that person’s reporting obligation in respect of a notifiable transaction.

Application

ITA
237.4(5)

New subsection 237.4(5) alleviates reporting obligations for employees, as well as for partners, in respect of a notifiable transaction where the employer or partnership has filed the required information return.

This subsection provides that the reporting obligations under paragraph (4)(c) or (d) that would otherwise be imposed upon employees of an employer, or upon partners of a partnership, in respect of a notifiable transaction do not apply if an information return is filed by the employer, or by the partnership, in respect of the notifiable transaction under subsection (4) in prescribed form and manner. If such an information return is filed by an employer, or a partnership, in respect of a particular notifiable transaction, then for the purposes of paragraphs (4)(c) and (d) of section 237.4, that filing is deemed to have been made by each employee of the employer, or each partner of the partnership, to whom subsection (4) applies in respect of the transaction.

As a corollary, new subsection 237.4(14) removes liability for penalties under subsection (12) in respect of the relevant transaction for those taxpayers that were deemed to have filed an information return under this subsection.

Due diligence

ITA
237.4(6)

New subsection 237.4(6) provides that paragraphs (4)(a) and (b) do not apply to a person in respect of a notifiable transaction if the person has exercised the degree of care, diligence and skill to determine whether a transaction is a notifiable transaction that a reasonably prudent person would have exercised in comparable circumstances.

In the case of persons for whom a tax benefit results, or would result but for section 245, from the notifiable transaction (and people acting on their behalf), they would generally meet their due diligence obligations by asking their advisors about potential reporting obligations that might arise from the transactions (and being informed by their advisors that no such reporting obligations will arise on account of the transaction being a notifiable transaction or substantially similar to a notifiable transaction).

Reasonable expectation to know

ITA
237.4(7)

New subsection 237.4(7) provides that paragraphs (4)(c) and (d) do not apply to a person that is an advisor or promoter, or a person acting on behalf of an advisor or promoter, in respect of a notifiable transaction unless the person knows or should reasonably be expected to know that the transaction was a notifiable transaction or was substantially similar to a notifiable transaction.

The test of what a person should "reasonably be expected to know" is to be determined from an objective standpoint by reference to all the facts and circumstances and without reference to the subjective intention of the person involved. The test will therefore be satisfied where a reasonable person in the same position would be aware of this information.

While the definition of "advisor" is broad, subsection (7) is intended to narrow the scope of advisors who are required to file. The definition of advisor extends beyond those who provide tax advice. Accordingly, advisors (and promoters) who are not themselves tax experts may be required to file. For example, an investment banker who plays a leading role in managing the implementation of a notifiable transaction for a client would typically be expected to know that the transaction is a notifiable transaction even if the individual may not be a tax expert, as it is expected that the individual would be aware of the purpose and objectives of the transaction. On the other hand, advisors who provide more ancillary services or have narrow mandates in respect of a notifiable transaction may not be expected to know that the transaction is a notifiable transaction, depending on the nature of their involvement and expertise.

Subsection (7) is also intended to limit the individuals who have a reporting obligation within a particular organization to those individuals who should reasonably be expected to know that a transaction is a notifiable transaction. For example, an accounting firm may be engaged to plan and implement a notifiable transaction. Both the firm itself, as well as individual employees or partners, may be advisors in respect of the notifiable transaction. However, it is reasonable to expect that some of those people may not have a reporting obligation, for example, due to the limited nature of their knowledge or involvement. This is expected to be the case particularly with respect to more junior employees and those who have limited roles that do not give them visibility of the broader transaction or series, as well as the associated tax treatment and tax benefit. (It is also important to note that, in this example, subsection (5) would deem those partners and employees who are advisors to have met their reporting obligations if the firm properly reports the notifiable transaction. Effectively, subsection (7) would become relevant in this example only where the firm has failed to do so.)

Clerical or secretarial services

ITA
237.4(8)

New subsection (8) provides that the reporting obligations imposed under subsection (4) do not apply to a person solely because the person provided clerical services or secretarial services with respect to the notifiable transaction. This subsection is included for greater certainty, as typically a person who solely provides clerical or secretarial services would not be considered an advisor or would not have a filing obligation due to subsection (7).

Time for filing return

ITA
237.4(9)

New subsection 237.4(9) of the Act provides two deadlines for the information return required by subsection 237.4(4) to be filed with the Minister for a notifiable transaction, depending on the person required to file the return.

A person for whom a tax benefit results from the notifiable transaction (or is expected to result based on the person's tax treatment of the notifiable transaction), as well as a particular person who enters into the notifiable transaction for the benefit of that person, must file on or before the particular day that is 90 days after the earliest of

- the day on which the person becomes contractually obligated to enter into the notifiable transaction,
- the day on which the person enters into the notifiable transaction, and
- if the person is a person for whom a tax benefit results (or is expected to result based on the person's tax treatment of the notifiable transaction) and another person enters into the notifiable transaction for the benefit of that person, the day on which the notifiable transaction is entered into.

An advisor or promoter in respect of the notifiable transaction (as well as a person who does not deal at arm's length with the advisor or promoter and is or was entitled to a fee) must file no later than the earliest deadline for a person described above in respect of the notifiable transaction.

Clarification of reporting transactions in series

ITA
237.4(10)

New subsection 237.4(10) of the Act provides that the filing of a full and accurate information return under subsection 237.4(4) by a person in respect of a notifiable transaction that is part of a series that includes the notifiable transaction, and which accurately describes each transaction

that is part of the series, will satisfy the person's reporting obligation in respect of each transaction that is part of the series.

Assessments

ITA
237.4(11)

New subsection 237.4(11) of the Act provides the Minister of National Revenue with the authority to make such assessments, determinations and redeterminations that are necessary to give effect to the new rules in subsection 237.4(12), which impose penalties for late-filing in respect of the notifiable transaction reporting obligation imposed under new subsection 237.4(4).

Penalty

ITA
237.4(12)

New subsection 237.4(12) of the Act provides penalties for the failure to file an information return in respect of a notifiable transaction as required under subsection (4) by the deadline provided in subsection (9). If it applies, a person is liable to a late-filing penalty equal to

- in the case of a person for whom a tax benefit results, or – based on the person's tax treatment of the transaction – is expected to result, from the notifiable transaction, as well as another who enters into the notifiable transaction for the benefit of that person
    - $500 per week for each failure to report a notifiable transaction up to the greater of $25,000 and 25% of the tax benefit, or
    - for a corporation that has assets that have a total carrying value of $50 million or more for its last taxation year that ends prior to the day on which the information return is required to be filed, a penalty of $2,000 per week for each failure to report a notifiable transaction, up to the greater of $100,000 and 25% of the tax benefit; and
- in the case of advisors and promoters, as well as any other person who does not deal with them at arm's length and is entitled to a fee in respect of the notifiable transaction, the total of
    - the amount of the fees charged by that person in respect of the notifiable transaction,
    - $10,000, and
    - $1,000 per day that the person fails to report the notifiable transaction, up to a maximum of $100,000.

Penalty – deeming rule

ITA
237.4(13)

Under new subsection 237.4(13) of the Act, if a person is liable to a penalty under paragraph 237.4(4)(b) on account of having entered into a notifiable transaction for the benefit of a person for whom a tax benefit results (or, based on the person's tax treatment of the transaction, is expected to result) as well as under paragraph 237.4(4)(d) on account of their entitlement to a fee from their dealings with an advisor or promoter in respect of the notifiable transaction, the amount of that person's penalty is deemed to be equal to the greater of the amounts determined under paragraphs 237.4(12)(a) and (b).

Penalty – non-application

ITA
237.4(14)

New subsection 237.4(5) alleviates reporting obligations of employees, as well as partners, in respect of a notifiable transaction where the employer or partnership has made the required filing.

Consequential on the addition of subsection 237.4(5), new subsection 237.4(14) confirms that if any employee or partner is deemed to have filed an information return in prescribed form and manner in respect of a particular notifiable transaction under subsection (5), that employee or partner is not liable to a penalty under subsection (12) in respect of the particular transaction.

Carrying value

ITA
237.4(15)

The penalty under subsection 237.4(12) of the Act is determined in part for certain corporations by reference to the carrying value of the corporation's assets.

New subsection 237.4(15) provides that, for the purpose of new subparagraph 237.4(12)(a)(i), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). In effect, the carrying value of the assets of a corporation is based on the corporation's balance sheet.

Return – not an admission

ITA
237.4(16)

New subsection 237.4(16) of the Act provides that the filing of an information return under new subsection 237.4(4) in respect of a notifiable transaction is not an admission by the person that any transaction is part of a series of transactions. This is similar to paragraph 237.3(12)(b), which applies to reportable transactions.

Application of sections 231 to 231.3

ITA
237.4(17)

New subsection 237.4(17) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to any person who is required to file an information return in respect of a notifiable transaction, and regardless of whether a return of income has been filed for the taxation year in which the tax benefit results (or is expected to result) from the notifiable transaction.

The language in subsection 237.4(17) also ensures that the provision applies to the year in which a transaction that is relevant to a tax benefit occurs, even if the tax benefit results in a subsequent year. This may be the case where, for example, a transaction creates a tax attribute that is to be used in a later year.

Solicitor-client privilege

ITA
237.4(18)

New subsection 237.4(18) provides that, for greater certainty, information is not required to be disclosed for the purposes of section 237.4 if it is reasonable to believe that the information is subject to solicitor-client privilege. Subsection 237.4(18) is similar to subsection 237.3(17), which is amended to modernize its language.

Clause 70

Reportable Uncertain Tax Treatments

ITA
237.5

New section 237.5 of the Act requires certain corporations to report to the Minister of National Revenue in respect of reportable uncertain tax treatments.

New section 237.5 applies to taxation years that begin after 2022, except that the penalty under subsection 237.5(5) does not apply to taxation years that begin before the date on which the enacting legislation receives royal assent.

Definitions

ITA
237.5(1)

New subsection 237.5(1) of the Act provides a number of definitions that apply for the purposes of section 237.5.

“consolidated financial statements”

“Consolidated financial statements” has the meaning assigned by subsection 233.8(1) of the Act. It means financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity.

“person”

“Person” includes a partnership. This makes possible the consideration of partnerships within consolidated groups, for purposes of the definition “relevant financial statements”.

“relevant financial statements”

“Relevant financial statements” of a corporation for a taxation year means audited financial statements that are

- in respect of the corporation, or a consolidated group of which the corporation is a member (for this purpose, a consolidated group is a group of two or more persons required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles);
- prepared in accordance with International Financial Reporting Standards, or other country-specific generally accepted accounting principles (GAAP) relevant for corporations that are listed on a stock exchange outside Canada; and
- prepared for a period of time that ends in the year.

“reportable uncertain tax treatment”

A “reportable uncertain tax treatment” of a corporation for a taxation year is a tax treatment of the corporation in respect of which uncertainty is reflected in relevant financial statements of the corporation for the year.

Relevant financial statements of a corporation are generally audited financial statements of the corporation, or audited consolidated financial statements of a group of which the corporation is a member, that are prepared in accordance with International Financial Reporting Standards or other country-specific generally accepted accounting principles (GAAP) relevant for domestic public companies (e.g., U.S. GAAP). For more information, see the commentary on the definition “relevant financial statements”.

As noted in the commentary on the definition “tax treatment”, the meaning of tax treatment is largely modeled upon the definitions “tax treatment” and “uncertain tax treatment” in IFRIC Interpretation 23, as developed by the IFRS Interpretations Committee.

Uncertainty is considered to be reflected in financial statements when the tax attributes used in the financial statements (e.g., taxable profit, tax loss, tax bases, unused tax losses, unused tax credits, tax rates) are not consistent with the tax treatment. For example, regarding financial statements prepared in accordance with IFRS, pursuant to IFRIC Interpretation 23:

- an uncertain tax treatment is a tax treatment for which there is uncertainty over whether the relevant taxation authority (in the Canadian context, this ultimately refers to the courts) will accept the tax treatment under tax law;
- if an entity concludes it is not probable that the taxation authority will accept an uncertain tax treatment, the entity shall reflect the effect of uncertainty in determining the related taxable profit (tax loss), tax bases, unused tax losses, unused tax credits or tax rates; and
- an entity shall reflect the effect of uncertainty for each uncertain tax treatment that it concludes is not probable that the taxation authority will accept by using the most likely amount or the expected value amount, rather than the tax treatment.

As another example, uncertainty would be considered to be reported in financial statements prepared in accordance with U.S. GAAP when a reserve with respect to a tax position taken in a tax return (which is similar in meaning to a tax treatment) has been recorded in the financial statements. For example, pursuant to Accounting Standards Codification (ASC) 740, if it is not more likely than not that a tax position taken in a tax return will be sustained upon examination, an unrecognized tax benefit is established in the financial statements for the entire tax benefit.

“reporting corporation”

A “reporting corporation” for a taxation year is a corporation that has prepared relevant financial statements for the year, has assets that have a total carrying value of $50 million or more at the end of the year and is required to file a return of income for the year under section 150 of the Act.

A corporation that is a resident of Canada, or a non-resident with a taxable presence in Canada, is required to file a return of income under section 150, and as such would be a reporting corporation if the other criteria described above are met.

Pursuant to subsection 237.5(9), the determination of whether the carrying value of a corporation’s assets is greater than or equal to $50 million at the end of a taxation year (the “asset threshold”) is to be made in accordance with paragraphs 181(3)(a) and (b).

For this purpose, relevant financial statements are generally audited financial statements of a corporation, or audited consolidated financial statements of a group of which the corporation is a member (referred to as the corporation’s “group”), that are prepared in accordance with International Financial Reporting Standards or other country-specific generally accepted accounting principles (GAAP) relevant for domestic public companies (e.g., U.S. GAAP).

Canadian GAAP requires that the audited financial statements of public corporations be prepared in accordance with IFRS. As a result, Canadian public corporations would generally be reporting corporations, subject to the asset threshold. Since IFRS require that a public corporation’s financial statements be prepared on a consolidated basis with those corporations that it controls, each corporation that is controlled by a Canadian public corporation would also be a reporting corporation (subject to the asset threshold, and assuming it is required to file a return of income under section 150).

A reporting corporation also includes a private corporation that meets the asset threshold if it, or its group, has audited financial statements prepared in accordance with IFRS. While normally a private corporation would not have audited financial statements prepared in accordance with IFRS, where it does, those statements would be presented on a consolidated basis with those corporations it controls and would, when appropriate, reflect uncertainty pertaining to uncertain tax treatments relating to those corporations.

A reporting corporation also includes a corporation that meets the asset threshold if it, or its group, has audited financial statements prepared in accordance with another country-specific GAAP relevant for domestic public corporations (e.g., U.S. GAAP). For example, a U.S.-resident corporation with audited financial statements prepared in accordance with U.S. GAAP would be a reporting corporation if the carrying value of its assets is greater than or equal to $50 million at the end of the year and it is required to file a Canadian tax return. This is meant to ensure that the requirement to disclose reportable uncertain tax treatments will apply appropriately where a corporation is a Canadian corporation controlled by a non-resident corporation, or is a non-resident corporation carrying on business in Canada through a permanent establishment.

“tax treatment”

“Tax treatment” of a corporation means a treatment in respect of a transaction, or series of transactions, that the corporation uses, or plans to use, in a return of income or an information return (or would use in a return of income or an information return if a return of income or an information return were filed), and includes the corporation’s decision not to include a particular amount in a return of income or an information return. This definition is largely modeled upon the definitions “tax treatment” and “uncertain tax treatment” in IFRIC Interpretation 23, as developed by the IFRS Interpretations Committee.

“transaction”

“Transaction” has the same meaning as in subsection 245(1) of the Act and, as a result, includes an arrangement or event.

Filing requirement

ITA
237.5(2)

New subsection 237.5(2) of the Act provides that a reporting corporation that has one or more reportable uncertain tax treatments for a taxation year shall file with the Minister of National Revenue an information return in prescribed form and containing prescribed information in respect of each reportable uncertain tax treatment. This information is expected to be readily available given the need to analyze uncertain tax treatments as part of the preparation of relevant financial statements.

Filing requirement – deadline

ITA
237.5(3)

New subsection 237.5(3) of the Act provides that a corporation required to file an information return under new subsection 237.5(2), in respect of a reportable uncertain tax treatment of the corporation for a taxation year, must file the return with the Minister of National Revenue on or before the corporation's filing-due date for the year.

Assessments

ITA
237.5(4)

New subsection 237.5(4) of the Act provides the Minister of National Revenue with the authority to make such assessments, determinations and redeterminations as are necessary to give effect to new subsection 237.5(5), which provides a penalty for late-filing in respect of the reportable uncertain tax treatment reporting obligation imposed under new subsection 237.5(2).

Penalty

ITA
237.5(5)

New subsection 237.5(5) of the Act provides that when a corporation fails to file, on or before the day required under new subsection 237.5(3), an information return in respect of a reportable uncertain tax treatment, the corporation is liable to a penalty equal to $2,000 for each week during which the failure continues, up to a maximum of $100,000.

Due diligence

ITA
237.5(6)

Under new subsection 237.5(6) of the Act, a corporation will not be liable for a penalty under new subsection 237.5(5) if the corporation has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances. Whether a corporation has exercised the degree of care, diligence and skill required will be based on the facts and circumstances of each case.

Return – not an admission

ITA
237.5(7)

New subsection 237.5(7) of the Act provides that the filing of an information return under new subsection 237.5(2) in respect of a reportable uncertain tax treatment is not an admission by the

corporation that the tax treatment is not in accordance with the Act and the *Income Tax Regulations,* or that any transaction is part of a series of transactions. This is similar to paragraph 237.3(12), which applies to reportable transactions.

Application of sections 231 to 231.3

ITA
237.5(8)

New subsection 237.5(8) of the Act ensures that the provisions of sections 231 to 231.3 dealing with audits, inspections and powers of enforcement apply to a corporation that is required to file, under new subsection 237.5(2), an information return in respect of a reportable uncertain tax treatment for a taxation year, notwithstanding that, at the time of such audit or inspection, a return of income might not have been filed for the year.

Carrying value

ITA
237.5(9)

New subsection 237.5(9) of the Act provides that, for the purposes of the definition "reporting corporation" in new subsection 237.5(1), the carrying value of the assets of a corporation is to be determined in accordance with paragraphs 181(3)(a) and (b). As such, the carrying value of a corporation's assets is to be based on the corporation's balance sheet.

Clause 71

Canadian Dental Care Plan

ITA
241(4)(d)(xx.1)

Subsection 241(4) authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes. New subparagraph 241(4)(d)(xx.1) is added so that taxpayer information may be provided to an official of the Department of Employment and Social Development Canada and the Department of Health for the purpose of administering or enforcing the Canadian Dental Care Plan and to an official of the Department of Health for the evaluation or formulation of policy for the Canadian Dental Care Plan.

This amendment comes into force on royal assent.

Clause 72

Date when electronic notice sent

ITA
244(14.1)

Subsection 244(14.1) of the Act allows for the electronic communication of certain notices.

For security reasons, a notice is conveyed electronically through secure portals such as My Account and My Business Account. Subsection 244(14.1) provides generally that for the purposes of the Act a notice or other communication will be presumed to be sent by the Minister of National Revenue and received by a person or partnership on the date that an electronic message, informing the person or partnership that a notice or other communication is available in their secure electronic account, is sent to the person or partnership's electronic address.

The notice or other communication is presumed to be sent and received on the date the electronic message is sent if the message is sent to the electronic address most recently provided by the person or partnership to the Minister of National Revenue before that date.

Consequential on the introduction of new subsection (14.2), subsection (14.1) is amended to limit its application to notices or other communications sent electronically by the Minister of National Revenue to individuals through the My Account for Individuals service. Subsection (14.1) is also amended to recognize that an individual's electronic address maintained by the Minister of National Revenue may be updated on the same day as, but prior to the sending of the Minister's electronic message to inform the individual of a notice or other communication made available in the individual's secure electronic account (My Account for Individuals). For example, once an individual's electronic address is updated through the electronic filing process, it is appropriate for the Minister to send subsequent electronic messages to the individual's updated electronic address, including on the day that the address is updated with the Minister.

See also new subsection 150.1(4.1) which, notwithstanding subsection 244(14.1), allows the Minister of National Revenue to send by electronic means a notice of assessment in respect of an individual's return of income in certain circumstances.

This amendment comes into force on royal assent.

Date when electronic notice sent – My Business Account

ITA
244(14.2)

New subsection 244(14.2) changes the default method of correspondence for taxpayers that use the CRA's My Business Account service.

Subsection (14.2) provides that a notice or other communication that refers to the business number of a person of partnership is presumed to be sent and received by the person or partnership on the date that it is posted in the secure electronic account (My Business Account) in respect of the business number. With 30 days' notice, a person or partnership may request in

the prescribed manner that notices or other communications making reference to the business number be sent by mail.

This measure comes into force on royal assent.

Clause 73

Definitions

ITA
248(1)

Subsection 248(1) of the Act defines various terms that apply for the purposes of the Act. Consequential on the repeal of sections 15.1 and 15.2, the definitions "small business bond" and "small business development bond" that are relevant for those sections are repealed.

This amendment comes into force on royal assent.

Several definitions are amended, and one new definition is introduced, as described below.

"dividend rental arrangement"

The definition "dividend rental arrangement" in subsection 248(1) is amended to add new paragraph (b.1), which provides that a dividend rental arrangement of a person includes any "specified hedging transaction" in respect of a DRA share of the person. A "DRA share" is defined in subsection 248(1) and includes any share owned by the person.

Paragraph (c) of the definition of "dividend rental arrangement" is amended to refer to a "synthetic equity arrangement" other than a "specified hedging transaction". Where a transaction or series of transactions satisfies the conditions in the definition of a "specified hedging transaction", the transaction or series will be a "dividend rental arrangement" as a result of paragraph (b.1) (and not paragraph (c)).

These amendments are relevant for the purposes of subsection 112(2.3). Under subsection 112(2.3), amounts received as a dividend on a share are not deductible by the recipient corporation under subsection 112(1) where there is a dividend rental arrangement in respect of the share, unless the exception in subsection 112(2.31) applies.

"term preferred share"

In general, a "term preferred share" is a share which can reasonably be regarded as a debt substitute. Under subsection 112(2.1) of the Act, dividends received by a specified financial institution on a term preferred share acquired by it in the ordinary course of its business are not deductible in computing its taxable income – they do not qualify for the intercorporate dividend deduction. Subsection 138(6) provides for the same result for dividends received by a life insurer. Paragraphs (i.1) and (j) of the definition "term preferred share" in subsection 248(1)

contain specific anti-avoidance rules (SARs) that address situations where steps are taken with the intent of avoiding the application of subsection 112(2.1) or 138(6).

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

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

These amendments apply in respect of amounts received on or after August 9, 2022.

"specified hedging transaction"

Subsection 248(1) is also amended to add the definition "specified hedging transaction". A "specified hedging transaction" in respect of a DRA share of a person or partnership (referred to in the definition as the "particular person") means a transaction or series of transactions that satisfies the conditions in paragraphs (a) to (d) of the definition.

Paragraph (a) of the definition provides that a "specified hedging transaction" is a transaction or series entered into by either (i) a registered securities dealer (or, a partnership, each member of which is a registered securities dealer) or (ii) a registered securities dealer or such partnership (referred to as the "connected dealer") that does not deal at arm's length with, or is affiliated with, the particular person.

Paragraph (b) of the definition requires that a specified hedging transaction has the effect, or would have the effect if each transaction entered into by a connected dealer were entered into by the particular person, of eliminating all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share. A corporate group may eliminate its economic exposure to a share owned by one corporation in the group if a registered securities dealer elsewhere in the group borrows identical shares under a securities loan, and sells those shares short (see Example 1). The effect required in paragraph (b) is determined without regard to any other transaction that may have been entered into in respect of the DRA share (see Example 2).

Paragraph (c) of the definition requires that an amount in respect of the transaction or series would, but for these provisions, be deductible by the particular person or the connected dealer under paragraph 260(6)(a). Paragraph 260(6)(a) generally permits a registered securities dealer to deduct up to 2/3 of the amount of certain dividend compensation payments made by the registered securities dealer where the amount is deemed to have been received by another person as a taxable dividend under subsection 260(5.1). This condition requires that a 2/3 deduction is available to the registered securities dealer in respect of any amount paid by it to another person in respect of the transaction or series where that amount is deemed to have been received by the other person as a taxable dividend on the underlying share to which the dividend compensation payment relates.

Paragraph (d) of the definition provides that where a transaction or series is entered into by a connected dealer, it must be reasonable to consider that the particular person or the connected dealer knew or ought to have known that the effect described in paragraph (b) of the definition would result (that is, the elimination of all or substantially all of the risk of loss and opportunity for gain or profit in respect of the DRA share). A transaction or series should generally not be a specified hedging transaction where a connected dealer enters into the transaction or series objectively unaware that the transaction or series eliminates the economic exposure of the DRA share held by the particular person.

These amendments apply in respect of dividends that are paid or become payable on or after April 7, 2022 (unless the relevant specified hedging transaction was entered into before April 7, 2022, in which case the amendment would apply to dividends that are paid after September 2022).

Example 1

A Canadian bank owns certain Canadian shares (a long position). A registered securities dealer in the bank's corporate group borrows identical shares from a third party lender under a securities loan and sells the borrowed shares to a third party buyer (a short position). The registered securities dealer keeps the short position open during the period that the Canadian bank maintains the long position in the Canadian shares. The economic exposure of the bank's corporate group to the Canadian shares is eliminated – the Canadian shares are hedged on a group basis.

The transactions entered into by the registered securities dealer are a "specified hedging transaction" in respect of the Canadian shares and a "dividend rental arrangement" in respect of those shares. As a result, the Canadian bank will be denied the dividend received deduction under subsection 112(2.3) in respect of any dividends received on the Canadian shares.

However, the registered securities dealer will be permitted to deduct, under subsection 260(6.2), the entire amount of any dividend compensation payments made by it to the third party lender (and not the 2/3 deduction under paragraph 260(6)(a)). This has the appropriate result for the bank group as a whole - an income inclusion in respect of any dividends received by the Canadian bank on the Canadian shares and an offsetting deduction for the equivalent amount of any dividend compensation payments made by the registered securities dealer to the third party lender in respect of the Canadian shares.

Example 2

A registered securities dealer in the same corporate group as a Canadian bank borrows Canadian shares from a third party lender under a securities loan and sells the borrowed shares to the Canadian bank. As a result of these transactions, the Canadian bank has a long position with respect to the Canadian shares, and the registered securities dealer has a short position with respect to those same shares. The corporate group as a whole has no economic exposure to the Canadian shares – the Canadian shares are hedged on a group basis.

However, on an entity basis, each of the Canadian bank (the long position) and the registered securities dealer (the short position) have economic exposure to the Canadian shares. In addition to the transactions described above, the Canadian bank may also enter into an equity derivative with a third party acquiring a short position in identical Canadian shares, and the registered securities dealer may also enter into an equity derivative with a third party acquiring a long position in identical Canadian shares, with the result that each has no economic exposure to the Canadian shares on an entity basis (in addition to the corporate group having no economic exposure to the Canadian shares). Alternatively, the Canadian bank and the registered securities dealer may enter into the equity derivative with each other.

The transactions are a "specified hedging transaction" in respect of the Canadian shares, and a "dividend rental arrangement" in respect of those shares. As a result, the Canadian bank will be denied the dividend received deduction under subsection 112(2.3) for any dividends received on the Canadian shares.

However, the registered securities dealer will be permitted to deduct, under subsection 260(6.2), the entire amount of any dividend compensation payment made by it to the third party lender (and not the 2/3 deduction under paragraph 260(6)(a)).

Any payment made by the Canadian bank to the third party under its equity derivative in respect of any dividend paid on the Canadian shares should be fully deductible in computing the bank's taxable income. Any payment received by the registered securities dealer from the third party under its equity derivative in respect of any dividend paid on the Canadian shares should be included in computing the taxable income of the registered securities dealer.

This has the appropriate result for the bank group as a whole - an income inclusion in respect of any dividend received by the Canadian bank on the Canadian shares, an offsetting deduction for any dividend equivalent payment made by the Canadian bank under the equity derivative, an income inclusion in respect of any dividend equivalent payment received by the registered securities dealer under the equity derivative, and an offsetting deduction for the equivalent amount of the dividend compensation payment made by the registered securities dealer to the third party lender.

Clause 74

Interpretation

ITA
249.1(1)

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

This amendment comes into force applies on royal assent.

Clause 75

Corporate tax-attribute trading

ITA
256.1

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

Definitions

ITA
256.1(1)

"attribute trading restriction"

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

"specified provision"

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

These amendments come into force on August 9, 2022.

Deemed acquisition of control

ITA
256.1(6)

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

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

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

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

This amendment comes into force on August 9, 2022.

Clause 76

Deductibility

ITA
260(6)(a)

Subsection 260(6) sets out rules regarding the deductibility of certain dividend compensation payments made under the securities lending arrangement rules.

Paragraph 260(6)(a) provides that a registered securities dealer may deduct up to 2/3 of an amount paid as a dividend compensation payment, unless that amount is deductible under subsection 260(6.1).

Paragraph (a) is amended to confirm that this 2/3 deduction is also subject to the amount not being deductible under new subsection 260(6.2). New subsection 260(6.2) generally provides a deduction for certain dividend compensation payments made by a registered securities dealer in respect of a specified hedging transaction where the related dividend in respect of a DRA share is not deductible because of subsection 112(2.3).

This amendment applies in respect of dividend compensation payments made on or after April 7, 2022.

Deductible amount for registered securities dealer

ITA
260(6.2)

New subsection 260(6.2) provides a deduction for dividend compensation payments made by a registered securities dealer in connection with certain specified hedging transactions.

The amount deductible is the lesser of the amount the registered securities dealer is obligated to pay as a dividend compensation payment under a specified hedging transaction and the amount of the dividends received by the registered securities dealer or a non-arm’s length or affiliated

person in respect of that transaction which are not deductible because of subsection 112(2.3). This amendment permits the registered securities dealer to claim a deduction for the full amount of a dividend compensation payment, rather than the 2/3 deduction provided for in subsection 260(6), where the dividend compensation payment is made in respect of a specified hedging transaction and the dividends received on the DRA share are not deductible.

This amendment applies in respect of an amount paid as a dividend compensation payment on or after April 7, 2022.

Dividend Refund

ITA
260(7)

Subsection 260(7) provides that, where a corporation makes a payment to another person for which no deduction may be claimed under subsection 260(6.1) and that is deemed by subsection 260(5.1) to have been received by the other person as a taxable dividend, the corporation will also be entitled to treat an amount as the payment of a taxable dividend for the purposes of section 129. This enables a private corporation to obtain a refund of its refundable dividend tax on hand with respect to the payment of certain dividend compensation payments made by the corporation.

Subsection 260(7) is amended to add a reference to new subsection 260(6.2). Accordingly, if a corporation makes a payment to another person for which a deduction is available under subsection 260(6.2), subsection 260(7) will not apply to deem that payment to be a taxable dividend for the purposes of section 129.

This amendment applies in respect of amounts paid on or after April 7, 2022.

Corporate members of partnerships

ITA
260(11)

Subsection 260(11) ensures appropriate treatment for dividend compensation payments where a corporation or an individual is a member of a partnership.

Paragraphs 260(11)(b) and (c) are amended to add references to new subsection 260(6.2).

This amendment applies in respect of amounts paid on or after April 7, 2022.

Clause 77

Functional currency tax reporting – “qualifying currency”

ITA
261(1)

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

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

This amendment applies to taxation years that begin after 2019.

Anti-avoidance
ITA
261(18)

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

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

This amendment applies in respect of transfers of property that occur on or after August 9, 2022.

Functional currency stop-loss rule

ITA
261(20)

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

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

This amendment applies in respect of "accrual periods", within the meaning of subsection 261(20), that begin on or after August 9, 2022.

Clause 78

Reporting Rules for Digital Platform Operators

The following new Part implements the reporting and due diligence standards of the Model Rules for Reporting by Platform Operators developed by the Organisation for Economic Cooperation and Development. Implementation of the Model Rules entails the introduction of rules that require platform operators to report certain information to the Canada Revenue Agency and to follow due diligence procedures as set out in this Part.

New Part XX of the Act comes into force on January 1, 2024.

Definitions

ITA
282(1)

Subsection 282(1) defines certain terms for purposes of Part XX of the Act, and sets our certain rules relating to the interpretation and application of the provisions in this Part.

"active seller"

An "active seller" is a seller that provides relevant services or sells goods during the reportable period or is paid or credited consideration in connection with relevant activities during the reportable period (see definitions of "seller", "relevant services", "goods", "consideration", "relevant activities" and "reportable period" in this section).

Pursuant to section 289, a reporting platform operator may elect to complete due diligence procedures in respect of active sellers only.

Active sellers may be reportable (see definition of "reportable seller" in this section).

"consideration"

"Consideration" is compensation in any form paid or credited to a seller in connection with relevant activities (see definitions of "seller" and "relevant activities" in this section). The amount of consideration must be known or be reasonably knowable by the reporting platform operator, however, to be treated as consideration for the purposes of this definition.

Consequently, amounts that cannot be reasonably knowable to the reporting platform operator, in light of its business model or the type of consideration, would not be treated as consideration. Consideration can take any form including money, cryptocurrencies or payments in kind. It includes tips, gratuities and incentives paid or credited to a seller.

Compensation is considered to be paid or credited to a seller if it is paid or credited to an account specified by the seller, even if such account is not in the name of the seller. As consideration is defined as the compensation paid or credited to the seller, the amount of the consideration is the amount net of any fees, commissions or taxes withheld or charged by the reporting platform operator.

Pursuant to subsection 291(6), where consideration in exchange for a relevant activity is paid or credited to a seller in any form other than fiat currency, it should be reported in the local currency of Canada, converted or valued in a manner that is consistently determined by the reporting platform operator.

Depending on the business model of the reporting platform operator in question, consideration may flow directly between users and sellers or may be subject to intermediation by the reporting platform operator. This includes cases where the reporting platform operator acts as a collecting agent on behalf of the seller (i.e., collects consideration in respect of relevant activities on behalf of the seller.)

Circumstances where amounts paid or credited to a seller in connection with relevant activities are reasonably knowable by a reporting platform operator include those where the reporting platform operator withholds or receives a fee, commission or taxes set in reference to the amounts paid by users in respect of relevant activities.

"entity"

An "entity" is defined consistent with the definition at subsection 270(1) to be a person (other than a natural person) or a legal arrangement, including a corporation, a partnership, a trust or a foundation.

“excluded platform operator”

An “excluded platform operator” is a platform operator that meets certain criteria to be not subject to due diligence and reporting requirements that would otherwise apply under this Part, in respect of a particular reporting period.

The exclusion in paragraph (a) applies in respect of a platform operator if the platform’s entire underlying business model is such that sellers cannot derive a profit from compensation in connection with relevant activities through the platform. For example, this would include platforms that facilitate cost-sharing services, such as ride-sharing, involving arrangements to ensure that sellers cannot derive a profit from relevant activities.

The exclusion in paragraph (b) applies to platform operators that facilitate relevant activities through the platform only for sellers that are not reportable sellers. For instance, this would be the case when a platform operator only allows excluded sellers, such as large-scale hotels or governmental entities, to access the platform, thereby ensuring that there are no reportable sellers under these rules.

Excluded platform operators must demonstrate to the satisfaction of the Minister that they satisfy the exclusion criteria in paragraph (a) or (b).

“excluded seller”

The definition “excluded seller” includes four categories of sellers that represent a limited compliance risk and are therefore carved out from the scope of the reporting requirements. The exclusion in paragraph (a) is intended to exclude large providers of hotel accommodation that provide accommodation at a high frequency (i.e., at least 2,000 relevant services per year in respect of a property listing). (See definition of “property listing” in this section.)

The exclusion in paragraph (b) applies to governmental entities as defined in subsection 270(1) (i.e., the government of a jurisdiction, a political subdivision or a local authority of a jurisdiction and, subject to conditions, a wholly owned agency, controlled entity or instrumentality of a jurisdiction).

The exclusion in paragraph (c) applies to a seller that is an entity, or a related entity of the entity, the stock of which is regularly traded on an established securities market. (See definitions of “related entity” and “established securities market” in subsection 270(1).

The exclusion in paragraph (d) applies to sellers for which the platform operator facilitated less than 30 relevant activities for the sale of goods and for which the total amount of consideration paid or credited did not exceed 2,800 Canadian dollars during the reportable period.

“fiat currency”

A “fiat currency” is defined as a currency that is used by a country and is designated as legal tender in that country.

“financial account identifier”

A “financial account identifier” is the unique identifying number or reference, available to the reporting platform operator, of the bank account or other type of payment account to which the consideration is paid or credited. This term is relevant for the reporting requirements under section 292 and includes the IBAN number, sort code and account number, and payment account identifier that the reporting platform operator uses for transferring the consideration in respect to a reportable seller.

A financial account identifier is considered to be available to a reporting platform operator when it is available to another platform operator of the same platform, as well as any third-party service provider.

“goods”

“Goods” means any tangible property or, for civil law, any corporeal property. Sale of goods is a “relevant activity” which may be reportable.

The sale of intangible assets, such as energy rights or vouchers, are not captured by the term “goods” for purposes of Part XX.

“government verification service”

Some jurisdictions may provide government verification services to assist platform operators in ascertaining the identity and residence of platform sellers. In cases where it relies on a government verification service to ascertain the identity and residence of a seller, a reporting platform operator is not required to collect this information.

“immovable property”

“Immovable property” means any real or immovable property. The rental of immovable property is a “relevant service” and a “relevant activity” which may be reportable. Immovable property includes both residential and commercial property, as well as other immovable property and parking spaces.

“partner jurisdiction”

The term “partner jurisdiction” is used in respect of jurisdictions where there is an agreement in place to share the information that is collected pursuant to the Model Rules for Reporting by Platform Operators. The definition “partner jurisdiction” means each jurisdiction that will be identified by the Minister of National Revenue on the Internet website of the Canada Revenue Agency or by any other means that the Minister considers appropriate.

“personal service”

A “personal service” is a service involving time- or task-based work performed by one or more individuals at the request of a consumer using a platform, unless the work is purely ancillary to the overall transaction. A personal service is a “relevant service” and a “relevant activity”, which may be subject to reporting obligations under Part XX.

Personal service includes a wide scope of services, such as transportation and delivery services, manual labour, tutoring, copywriting, data manipulation as well as clerical, legal or accounting tasks, provided they are carried out following a specific request of a particular user or set of users. Publicly-accessible transportation services operated in accordance with a pre-determined timetable, such as coach, train and airplane services, are not carried out following a specific user request and do not constitute a personal service.

Personal service does not include a service provided by a seller pursuant to a legally-recognized employment relationship with the platform operator or a related entity (within the meaning of related entity at subsection 270(1)) of the platform operator.

“platform”

Platform operators may be subject to reporting obligations under Part XX.

“Platform” means any software, including all or part of a website, and applications, including mobile applications, accessible by users and allowing sellers to be connected to other users for the provision of relevant services or the sale of goods (see definitions of “sellers”, “relevant services” and “goods” in this subsection).

The definition of “platform” requires that the allocation of opportunities for sellers to engage in relevant activities with users is supported by an application or other platform technology, irrespective of whether such relevant activities are performed directly by third-party sellers for such users or whether, for example, the platform first purchases services or goods and then offers them in its own name to users. For example, a food delivery platform that “buys-in” the services of third-party sellers to deliver food to its users in its own name, would be considered a platform.

The definition of “platform” also encompasses operations to collect consideration from users, with a view to then paying out such consideration to the seller, either partly or wholly prior to, or after the provision of the relevant service.

The term “platform” does not, however, include software that exclusively facilitates the processing of payments in relation to relevant activities, the mere listing or advertising of relevant activities or the transfer of users to another platform, provided in each case that there is no further intervention in the provision of relevant activities. This is to clarify that pure payment processors, classified ads boards and online aggregators do not meet the definition of “platform”, given that they do not immediately intermediate the linking-up between sellers and other users for the provision of relevant activities and the collection of consideration for the relevant activities.

“platform operator”

The definition “platform operator” means an entity that contracts with sellers to make available a platform to sellers.

Platform operators are reporting platform operators, subject to reporting obligations under this Part, unless they are excluded platform operators. (See definitions of “entity”, “seller”, “platform”, “reporting platform operator” and “excluded platform operator” in this section.)

“primary address”

The definition “primary address” is the address that is an individual’s principal place of residence, as well as the address that is an entity’s registered office. Pursuant to section 286, a seller is generally considered resident in the jurisdiction of the seller’s primary address.

Where, in the course of on-boarding individual sellers, a reporting platform operator collects “home”, “billing” or “residential” address information with the intention of treating such information as the primary address, the reporting platform operator should ensure that the seller is made aware that the address sought is that at which the seller lives and considers its primary residence.

While, in many cases, the seller’s home address is likely to correspond to the seller’s billing address, where these two information items differ, the home address should be treated as the seller’s primary address. However, in cases where the reporting platform operator only collects billing address information, such address can be treated as the seller’s primary address.

“property listing”

The definition “property listing” includes all immovable property units located at the same street address and offered for rent on a platform by the same seller.

Reporting platform operators must collect and report information in respect of each property listing that is rented on the platform, pursuant to section 287 and paragraph 292(c). Large providers of hotel accommodation that provide accommodation at a high frequency (i.e., at least 2,000 relevant services per year in respect of a property listing) are excluded from reporting (see definition of “excluded seller”).

For the purposes of the definition of property listing, an “immovable property unit” can include a hotel room, apartment, house, parking space or other form of immovable property rented via a platform. Multiple hotel rooms rented by a seller as part of a hotel with the same street address are treated as a single property listing. Similarly, separate apartment units rented in a building with a single street address by the same seller are also treated as a property listing.

“relevant activity”

The term “relevant activity” means a relevant service or the sale of goods for consideration (see definitions of “relevant service” and “goods”).

Relevant activities may be subject to reporting requirements under Part XX.

“relevant service”

The term “relevant service” means the rental of either real or immovable property or a means of transport, a personal service, as well as a prescribed service, when these services are provided for consideration. (See the commentary on the definitions “immovable property, “personal service” and “goods”.)

Rental of immovable property includes both short and long-term rentals of immovable property, irrespective of the nature of the rights (freehold, leasehold, rental, usufruct or other) held by the seller over the rented immovable property.

A “relevant service” is included in “relevant activity”, which may be subject to reporting requirements under Part XX.

“reportable jurisdiction”

In the case of a platform operator that is resident in Canada, “reportable jurisdiction” means Canada and each partner jurisdiction of Canada.

Alternatively, “reportable jurisdiction” means Canada in the case of a platform operator that is resident, incorporated or managed in a partner jurisdiction, or in the case of a platform operator that is not resident in Canada or a partner jurisdiction but that facilitates the provision of relevant activities by sellers resident in Canada or with respect to rental of immovable property located in Canada. (See definition of “partner jurisdiction”.)

“reportable period”

The definition “reportable period” means any calendar year with respect to which a platform operator is a reporting platform operator. As such, any year in which a platform operator is a reporting platform operator, at any time in the year, will be a reportable period for that reporting platform operator.

“reportable seller”

A “reportable seller” is any active seller during a reportable period, other than an excluded seller, that is determined by the platform operator to:

- be resident in a reportable jurisdiction;
- have provided relevant services for the rental of immovable property located in a reportable jurisdiction; or
- have been paid or credited consideration in connection with relevant services for the rental of immovable property located in a reportable jurisdiction.

(See definitions of "active seller", "excluded seller", "reportable jurisdiction", "relevant service", "immovable property" and "consideration".)

Whether an active seller is a reportable seller is determined on the basis of the due diligence procedures set out in sections 283 to 287.

"reporting platform operator"

A "reporting platform operator" is subject to information reporting obligations under this Part.

Reporting platform operators are platform operators that are:

- resident in Canada;
- resident, incorporated or managed in a partner jurisdiction and that facilitate the provision of relevant activities by sellers resident in Canada or with respect to rental of immovable property located in Canada and that elect to be reporting platform operators; or
- not resident in Canada or a partner jurisdiction, but that facilitate the provision of relevant activities by sellers resident in Canada or with respect to rental of immovable property located in Canada.

A platform operator is exempted from the reporting obligations if it satisfies the requirements of the definition "excluded platform operator".

"seller"

The term "seller" means a platform user that is registered at any time during the reportable period on the platform for the provision of relevant services or the sale of goods.

For this purpose, registered includes instances where a user has created a profile or account on the platform as well as entered into a contractual relationship with the platform operator of the platform.

See also definitions of "active seller", "reportable seller" and "excluded seller".

"TIN"

A "TIN" is a unique combination of letters or numbers that is generally assigned by a jurisdiction to an individual or an entity and used to identify the individual or entity for purposes of administering the tax laws of that jurisdiction.

In respect of Canada, a TIN is the number used by the Minister of National Revenue to identify an individual or entity, including a social insurance number, a business number, and an account number issued to a trust.

In respect of a jurisdiction other than Canada, a TIN is a taxpayer identification number used in that other jurisdiction to identify an individual or entity (or a functional equivalent in the absence of a taxpayer identification number).

Interpretation

ITA
282(2)

New subsection 282(2) provides an interpretive rule that applies for the purposes of Part XX.

This Part is drafted in a manner that is intended to be generally consistent with the Model Rules for Reporting by Platform Operators. This forms the context in which the text of the provisions is to be interpreted.

This rule clarifies that taxpayers should interpret the provisions of Part XX, unless the context otherwise requires, consistently with the Model Rules and associated commentary that was published by the Organisation for Economic Co-Operation and Development (and as amended from time to time), available at following link: https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm.

These are relevant in addition to the guidance to be published by the Canada Revenue Agency.

Excluded seller

ITA
283(1)

Subsection 283(1) provides that a reporting platform operator may rely on its available records in order to determine whether a seller is an "excluded seller" by virtue of being a large-scale hotel business or a small-scale seller of goods pursuant to paragraphs (a) or (d), respectively, in the definition excluded seller in subsection 282(1). An excluded seller is not subject to reporting under Part XX.

Excluded entity seller

ITA
283(2)

Subsection 283(2) provides that reporting platform operators may rely on publicly available information or a confirmation from a seller that is an entity in order to identify the seller as a governmental entity or a publicly-traded entity contemplated under paragraph (b) or (c) of the definition excluded seller in subsection 282(1). An excluded seller is not subject to reporting under Part XX.

Individual seller information

ITA
284(1)

Subject to subsections 284(3) and (4), subsection 284(1) requires that reporting platform operators must report the following information to the Minister with respect to each seller, other than an excluded seller, that is a natural person:

(a) the first and last name of the individual;
(b) the primary address of the individual;
(c) the TIN issued to the individual, including the jurisdiction of issuance; and
(d) the date of birth of the individual.

See related definitions “primary address” and “TIN” in subsection 282(1).

Entity seller information

ITA
284(2)

Subject to subsections 284(3) and (4), subsection 284(2) requires that reporting platform operators must report the following information to the Minister with respect to each seller, other than an excluded seller or a seller described in subsection (1):

(a) the legal name of the entity;
(b) the primary address of the entity;
(c) the TIN issued to the entity, including the jurisdiction of issuance; and
(d) the business registration number of the entity.

See the definitions “entity”, “primary address” and “TIN” in subsection 282(1).

Government verification services

ITA
284(3)

Subsection 284(3) provides that where the reporting platform operator relies on a government verification service to ascertain the identity and tax residence of a seller, the platform operator is not required to collect this information in respect of the seller.

See the definition “government verification service” in subsection 282(1).

TIN collection

ITA
284(4)

Subsection 284(4) provides an exception to the obligations to collect information in subsections (1) and (2). If a particular reportable jurisdiction does not issue a TIN or business registration number to a seller, or the domestic law of the particular reportable jurisdiction does not require the collection of the TIN or business registration number issued to a seller, the reporting platform operator is not required to collect the TIN or business registration number in respect of the seller.

See definitions of “TIN” and “reportable jurisdiction” in 282(1).

Verification of seller information

ITA
285(1)

New subsection 285(1) provides that the reporting platform operator must determine whether the information collected pursuant to subsection 283(2) and sections 284 and 287 is reliable. In addition to using all records available to the reporting platform operator, the platform must use any publicly available electronic interface to ascertain the validity of the TIN. Such information includes information the Reporting Platform Operator maintains or collects for AML/KYC procedures, as part of its on-boarding or re-documentation procedures, for payment purposes or other commercial or regulatory ends.

Due diligence

ITA
285(2)

Notwithstanding subsection 285(1), subsection (2) provides special rules with respect to sellers that were already active on the platform prior to the entry into effect of these rules (or at the time when the platform operator became a reporting platform operator).

Unless the reporting platform operator has reason to know that the information collected in respect of a seller under subsection 283(2) or sections 284 and 287 is or has become incorrect or unreliable, the reporting platform operator may determine whether the information collected pursuant to subsection 283(2) and sections 284 and 287 is reliable using only electronically searchable records already available to the reporting platform operator.

Verifying accuracy

ITA
285(3)

Subsection 285(3) requires a special verification procedure in the case where a reporting platform operator is informed by the Canada Revenue Agency that certain or all information

items that the reporting platform operator previously collected and verified may be inaccurate. This would, for instance, be the case when a jurisdiction that has received information pursuant to an exchange of information agreement has informed the Canada Revenue Agency that it was not able to match a record to a taxpayer or that it otherwise has reason to consider that the information is inaccurate.

Residence

ITA
286(1)

Subsection 286(1) provides that a reporting platform operator must consider a seller resident in the jurisdiction of the seller’s primary address (except, pursuant to subsection (2), in situations where a government verification service is applied to ascertain the residency of a seller).

Government verification service

ITA
286(2)

Where a government verification service is used to ascertain the residency of a seller, subsection 286(2) provides that the reporting platform operator must consider a seller resident in each jurisdiction confirmed by a government verification service notwithstanding the default rule under subsection (1).

Rented immovable property

ITA
287

Section 287 applies where a seller provides relevant services for the rental of immovable property. In this case, the reporting platform operator must collect the address of each property listing, including the jurisdiction of each property listing. See definition “property listing” in subsection 282(1).

Due diligence

ITA
288(1)

Subsection 288(1) provides that a reporting platform operator must complete the due diligence procedures set out in sections 283 to 287 by December 31 of each reportable period (except, pursuant to subsection (2), where transitional relief is provided to new reporting platform operators).

Previously registered accounts

ITA
288(2)

Subsection 288(2) provides transitional relief to new reporting platform operators. It provides that the due diligence procedures set out in sections 283 to 287 are only required to be completed by December 31 of the second reportable period in which the entity becomes a reporting platform operator. This relief applies in respect of sellers that were already registered on the platform as of January 1, 2024 or the date that an entity becomes a reporting platform operator.

Previous due diligence

ITA
288(3)

Subsection 288(3) provides that reporting platform operators may continue to rely on the due diligence procedures conducted in respect of previous reportable periods provided that the primary address of each seller has been either collected and verified or confirmed within the last 36 months and that the reporting platform operator does not have reason to know that the information collected is or has become incorrect or unreliable.

Active sellers

ITA
289

Section 289 provides that a reporting platform operator may elect to complete the due diligence procedures set out in sections 283 to 288 in respect of active sellers only.

An active seller is a seller that either provides relevant services or sells goods during the reportable period or is paid or credited consideration in connection with relevant activities during the reportable period. See definitions of “active seller” and “seller” in subsection 282(1).

Due diligence by third parties

ITA
290(1)

Subsection 290(1) provides that while a reporting platform operator may use service providers (including other platform operators) to fulfil the reporting and due diligence obligations imposed in sections 291 and 292, these obligations shall remain the responsibility of the reporting platform operator.

Partner jurisdiction

ITA
290(2)

Subsection 290(2) provides that where a platform operator resident in a particular partner jurisdiction fulfils the due diligence obligations pursuant to subsection 290(1) for a reporting platform operator with respect to the same platform, that platform operator may carry out the due diligence procedures pursuant to substantially similar rules in the partner jurisdiction.

This is to ensure that a platform operator can rely on the rules in its own jurisdiction when it applies the due diligence procedures for a reporting platform operator with respect to the same platform, provided that these rules are substantially similar.

Reporting to Minister

ITA
291(1)

Subsection 291(1) provides that a reporting platform operator must report to the Minister the information set out in section 292 with respect to the reportable period, no later than January 31of the year following the calendar year in which the seller is identified as a reportable seller.

In the context of the transitional relief granted in respect of the due diligence procedures pursuant to subsection 288(2), this means that a seller that is identified as a reportable seller only in the second reportable period for the reporting platform operator would only be reportable in respect of the second reportable period, with information being due to be reported by January 31 of the year following that second reportable period.

Reporting to seller

ITA
291(2)

Subsection 291(2) requires that reporting platform operators provide the information set out in section 292 to the applicable reportable seller by the same deadlines that apply to information provided to the Minister under subsection (1).

This provision seeks to ensure that reportable sellers are aware of the information provided on their behalf to the Canada Revenue Agency and that it may be used by the reportable sellers when filing their annual tax returns.

Reporting not required

ITA
291(3)

Subsection 291(3) seeks to avoid duplicative reporting in case there is more than one reporting platform operator in respect of the same relevant activities performed by the same reportable seller.

Notwithstanding subsections (1) and (2), no reporting is required where the reporting platform operator has obtained adequate assurances that another platform operator has or will fulfil the reporting obligations of sections 291 and 292:

(a) with respect to the reportable seller pursuant to the rules in Canada; or
(b) with respect to the reportable seller, other than a reportable seller resident in Canada,

under substantially similar rules in a partner jurisdiction.

Reporting
ITA
291(4)

Subsection 291(4) provides that information must be reported in prescribed form. It is expected that the information is to be reported in the standardised extensible markup schema developed by the Organisation for Economic Co-Operation and Development.

Electronic filing

ITA
291(5)

Subsection 291(5) provides that information must be reported by way of electronic filing.

Currency

ITA
291(6)

Subsection 291(6) provides that the information with respect to the consideration paid or credited in a fiat currency must be reported in the currency in which it was paid or credited. In case the consideration was paid or credited in a form other than fiat currency, it should be reported in Canadian dollars, converted or valued in a manner that is determined consistently by the reporting platform operator.

Reporting in respect of quarter

ITA
291(7)

Subsection 291(7) provides that the information with respect to the consideration and other amounts must be reported in respect of the quarter in which the consideration was paid or credited.

Information to be reported

ITA
292

Pursuant to section 292, each reporting platform operator must report certain information items. Under paragraph (a), the reporting platform operator must report its name, registered office address, TIN, as well as the business names of platforms in respect of which the reporting platform operator is reporting.

Under paragraphs (b) and (c), the reporting platform operator must report specified information items needed to identify each reportable seller and the jurisdictions to which that reportable seller is linked for reporting purposes. It also requires the reporting platform operator to report specified information items in respect of the consideration paid to the reportable seller in connection with relevant activities.

For the purposes of the reporting on the identity of reportable sellers under subparagraphs (b)(i) and (c)(i), reporting platform operators should rely on information items they were required to collect pursuant to section 284.

In addition, under subparagraphs (b)(ii) and (c)(ii), reporting platform operators should also report any other TIN issued by the jurisdiction of residence of the seller, including the jurisdiction of issuance, that they were not required to collect under this Part, if they have such TINs available to them, for instance because the information items were collected for other regulatory or commercial purposes. Where, for instance, a reporting platform operator has collected both a VAT/GST number and a direct tax identification number, both numbers should be reported.

Subparagraphs (b)(iii) and (c)(iii) provide that the financial account identifiers to which the consideration is paid or credited should be reported, if available and if the jurisdiction of the reportable seller's residence (or for relevant services for the rental of immovable property, the jurisdiction in which the immovable property is located) is specified by the Minister. Not all jurisdictions' tax administrations will be in a position to use financial account identifiers for purposes of matching of a reportable seller to the taxpayer database of the tax administration. For that reason, the financial account identifier should only be reported when the jurisdiction is specified.

Subparagraphs (b)(iv) and (c)(iv) provide that, where the reportable seller's name is different from the name of the holder of the financial account to which the consideration is paid or credited, the reporting platform operator must report the name of the person or entity holding that financial account, if available to the reporting platform operator, as well as any other identifying information available to the reporting platform operator with respect to that account holder. This provision seeks to ensure that the relevant tax administration can identify the actual recipient of the consideration in connection with relevant activities.

Subparagraphs (b)(v) and (c)(v) require that the jurisdiction in which the reportable seller is resident on the basis of the procedures set out in section 286 is identified.

Subparagraphs (b)(vi) and (c)(vii) require that reporting platform operators report the total consideration received by quarter.

Subparagraph (c)(vi) requires that the address of each property listing, as determined on the basis of the procedures set out in section 287, and, if available, the land registration number of the property listing are to be reported. For these purposes, the land registration number includes functional equivalents, such as a cadastral number.

Subparagraphs (b)(vii) and (c)(viii) require that the reporting platform operator reports any fees, commissions or taxes withheld or charged by the reporting platform operator by quarter. For rental of immovable property, these amounts are to be reported per property listing.

Subparagraph (c)(ix) requires, in the context of rental of immovable property services, that the number of days each property listing was rented during the reportable period and the type of each property listing (e.g., hotel, apartment, parking space) are reported, provided such information is available to the reporting platform operator. This is to ensure that tax administrations can determine whether the rentals are occasional or regular, as well as to allow the determinations of national or local levies and accommodation-related taxes, provided this use is permitted under the relevant international exchange agreement or arrangement and applicable domestic law.

Production of TIN

ITA
293(1)

Subsection 293(1) provides that a reportable seller's TIN (the number used by the Minister to identify an individual or entity) must be provided at the request of a reporting platform operator required to make an information return requiring the TIN.

Confidentiality of TIN

ITA
293(2)

Subsection 293(2) provides that a reporting platform operator that is required to make an information return requiring a reportable seller's TIN shall not knowingly use, communicate or allow to be communicated, otherwise than as required or authorized under the Act or regulations, the TIN, without written consent of the reportable seller.

Penalty for failure to provide TIN

ITA
293(3)

Subsection 293(3) provides a $500 penalty for a failure by a reportable seller to provide on request their TIN to any reporting platform operator that is required to make an information return in respect of the reportable seller.

This new penalty will not apply where

- an application is made for the TIN within 90 days of the request and the TIN is subsequently provided to the reporting platform operator within 15 days of receipt by the reportable seller, or
- the reportable seller is not eligible to obtain a TIN from the relevant reportable jurisdiction (for instance because the relevant reportable jurisdiction does not issue TINs).

Assessment

ITA
293(4)

Subsection 293(4) empowers the Minister of National Revenue to assess the penalty provided for under subsection 293(3) and provides that the administrative provisions of Division I and J will apply. However, by excluding subsections 164(1.1) to (1.3), reportable sellers will not be entitled to any repayment of a penalty in dispute by filing an objection.

Record Keeping

ITA
294(1)

Subsection 294(1) requires every reporting platform operator to maintain adequate records, including records of documentary evidence, to enable the Minister of National Revenue to determine whether the reporting platform operator has complied with its obligations under Part XX.

Form of Records

ITA
294(2)

Subsection 294(2) requires every reporting platform operator that keeps records in an electronic format to retain the records in an electronically readable format for the retention period referred to in subsection 294(3).

Retention of Records

ITA
294(3)

Subsection 294(3) requires every reporting platform operator that keeps, obtains or creates records for the purpose of complying with Part XX to retain those records for six years from the end of the last calendar year in respect of which the record is relevant.

Anti-avoidance

ITA
295

Section 295 provides an anti-avoidance rule. This rule provides that where a person enters into an arrangement or engages in a practice, the primary purpose of which is to avoid an obligation under Part XX, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

Clause 79

Schedule – Listed corporations

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

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

This amendment comes into force on January 9, 2017.

Amendments to the Excise Tax Act (“ETA”)

Clause 80

Evidence

ETA
106.1

Existing section 106.1 of the *Excise Tax Act* (the “Act”) provides a number of evidentiary and procedural rules dealing with the administration and enforcement of this Act (which means the Act except Part IX and Schedules V to X).

106.1(3.1) – Date electronic notice sent

Subsection 106.1(3.1) allows for the electronic communication of certain notices.

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 106.1(3.1) provides that a notice or other communication will be, for the purposes of this Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 106.1(3.2), subsection 106.1(3.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

Subsection 106.1(3.1) is also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

106.1(3.2) – Date electronic notice sent – business account

New subsection 106.1(3.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection 106.1(3.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of the person. With at least 30 days notice, the person may request in a manner specified by the Minister that notices or other communications making reference to the business number of the person be sent by mail.

This amendment comes into force on royal assent.

Clause 81

Large payments

ETA
278

Existing section 278 of the Act provides that goods and services tax/harmonized sales tax (GST/HST) payments or remittances be made to the Receiver General.

Subclause 81(1)

Definition of *electronic payment*

ETA
278(0.1)

New subsection 278(0.1) sets out the definition “electronic payment”. Electronic payment means any payment or remittance to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 278(3)(a) to (d) or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of payments and remittances made after 2023.

Subclause 81(2)

Electronic payment

ETA
278(3)

Existing subsection 278(3) provides that GST/HST remittances of $50,000 or more be made to the account of the Receiver General at a financial institution.

Amended subsection 278(3) imposes a requirement to make payments and remittances to the Receiver General through electronic means where the amount of the payment or remittance exceeds $10,000, unless the payor or remitter cannot reasonably pay or remit the amount in that manner.

This amendment applies in respect of payments and remittances made after 2023.
Clause 82

Penalty – electronic payments

ETA
280.12

New section 280.12 of the Act provides a penalty of $100 for each failure to make an electronic payment or remittance as required under subsection 278(3) of the Act.

This amendment applies in respect of payments and remittances made after 2023.

Clause 83

Canadian Dental Care Plan

ETA
295(5)(d)(xi.1)

Subsection 295(5) of the Act authorizes the communication of confidential information obtained under the Act to specified persons for specific purposes.

New subparagraph 295(5)(d)(xi.1) is added so that confidential information may be provided to an official of the Department of Employment and Social Development or the Department of Health for the purpose of the administration or enforcement of the Canadian Dental Care Plan, and to an official of the Department of Health for the evaluation or formulation of policy for the Canadian Dental Care Plan.

This amendment comes into force on royal assent.

Clause 84

Evidence

ETA
335

Existing section 335 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX of the Act.

335(10.1) – Date electronic notice sent

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 335(10.1) provides that a notice or other communication will be, for the purposes of Part IX of the Act, presumed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 335(10.2), subsection 335(10.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

335(10.2) – Date electronic notice sent – business account

New subsection 335(10.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection 335(10.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of the person. With at least 30 days notice, the person may request in a manner specified by the Minister that notices or other communications making reference to the business number of the person be sent by mail.
This amendment comes into force on royal assent.

Amendments to the Tax Rebate Discounting Act

Clause 85

Failure to file disclosure statement

Tax Rebate Discounting Act
4(2)

Subsection 4(2) of the Tax Rebate Discounting Act makes it an offence for a discounter to file a return on behalf of a client without including a true copy of a statement in prescribed form describing the discounting transaction, as provided to the client and signed by the client. It is also an offence for a discounter to file a return on behalf of a client without providing the signed true copy of the prescribed statement to such persons as the Minister of National Revenue may specify.

To facilitate the use of electronic signatures, paragraphs 4(2)(a) and (b) are amended to remove the requirement for the statement to be signed by the client.

This amendment comes into force on royal assent.

Amendments to the Air Travellers Security Charge Act ("ATSCA")

Clause 86

Large payments

ATSCA
20
Existing section 20 of the *Air Travellers Security Charge Act* (the "Act") provides that every person required under the Act to pay $50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution.
Section 20 is replaced by subsections 20(1) and 20(2).

New subsection 20(1) sets out the definition “electronic payment”. Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 20(2)(a) to (d) or by any electronic means specified by the Minister of National Revenue.

New subsection 20(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 87

Penalty – electronic payments

ATSCA
54

New section 54 of the Act provides a penalty of $100 for each failure to make an electronic payment as required under subsection 20(2) of the Act.

This amendment applies in respect of payments made after 2023.

Clause 88

Evidence

ATSCA
83

Existing section 83 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

83(9.1) – Date electronic notice sent

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 83(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 83(9.2), subsection 83(9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

Subsection 83(9.1) is also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

83(9.2) – Date electronic notice sent – business account

New subsection 83(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection 83(9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of the person. With at least 30 days notice, the person may request in a manner specified by the Minister that notices or other communications making reference to the business number of the person be sent by mail.

This amendment comes into force on royal assent.

Amendments to the Excise Act, 2001 ("EA, 2011")

Clause 89

Large payments

EA, 2001
163

Existing section 163 of the *Excise Act, 2001* (the "Act") provides that every person required by the Act to pay $50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution. Existing section 163 is replaced by subsections 163(1) and 163(2).

New subsection 163(1) sets out the definition "electronic payment". Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 163(2)(a) to (e) or by any electronic means specified by the Minister of National Revenue.

New subsection 163(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 90

Canadian Dental Care Plan

EA, 2001
211(6)(e)(xii.1)

Subsection 211(6) of the Act authorizes the communication of confidential information obtained under the Act to specified persons for specific purposes.

New subparagraph 211(6)(e)(xii.1) is added so that confidential information may be provided to an official of the Department of Employment and Social Development or the Department of Health for the purpose of the administration or enforcement of the Canadian Dental Care Plan, and to an official of the Department of Health for the evaluation or formulation of policy for the Canadian Dental Care Plan.

This amendment comes into force on royal assent.

Clause 91

Penalty – electronic payments

EA, 2001
251.11

New section 251.11 of the Act provides a penalty of $100 for each failure to make an electronic payment as required under subsection 163(2) of the Act.

This amendment applies in respect of payments made after 2023.

Clause 92

Evidence

EA, 2001
301

Existing section 301 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

301(9.1) – Date electronic notice sent

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 301(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other

communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 301(9.2), subsection 301(9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.
Subsection 301(9.1) is also amended to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

301(9.2) – Date electronic notice sent – business account

New subsection 301(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection 301(9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of the person. With at least 30 days notice, the person may request in a manner specified by the Minister that notices or other communications making reference to the business number of the person be sent by mail.

This amendment comes into force on royal assent.

Amendments to the Greenhouse Gas Pollution Pricing Act ("GGPPA")

Clause 93

Large payments

GGPPA
86

Existing section 86 of the *Greenhouse Gas Pollution Pricing Act* (the "Act") provides that every person required under Part 1 of the Act to pay $50,000 or more in a single payment to the Receiver General is required to pay the amount at a financial institution. Existing section 86 is replaced by subsections 86(1) and 86(2).

New subsection 86(1) sets out the definition "electronic payment". Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 86(2)(a) to (d) or by any electronic means specified by the Minister of National Revenue.

New subsection 86(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 94

Penalty – electronic payments

GGPPA
123.1

New section 123.1 of the Act provides a penalty of $100 for each failure to make an electronic payment as required under subsection 86(2) of the Act.

This amendment applies in respect of payments made after 2023.

Clause 95

Evidence

GGPPA
164

Existing section 164 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part 1 of the Act.

164(12) – Date electronic notice sent

Existing subsection 164(12) provides that a notice or other communication will be, for the purposes of Part 1 of the Act, presumed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 164(12.1), subsection 164(12) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

164(12.1) – Date electronic notice sent – business account

New subsection 164(12.1) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection 164(12.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of the person. With at least 30 days notice, the person may request in a manner specified by the Minister that notices or other communications making reference to the business number of the person be sent by mail.

This amendment comes into force on royal assent.

Amendments to the Income Tax Regulations (the "Regulations" or "ITR")

Clause 96

Non-resident payer carrying on business in Canada

ITR
202(6)

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

This amendment applies to amounts paid or credited after 2022.

Clause 97

Date returns to be filed

ITR
205(3)

The Act and the Regulations impose various reporting obligations, including the requirement for certain taxpayers to file information returns with the Canada Revenue Agency by a specific date. The Act provides, with some exceptions, that when a person fails to file an information return on time, a penalty equal to $25 per day may apply, subject to a $100 minimum and a $2,500 maximum. The penalty is applicable to each information return that is filed late.

Recognizing that this penalty could be excessive in cases where a large number of returns of the same type are required to be filed, subsection 162(7.01) of the Act provides for a separate, lower, graduated penalty that would be applicable where information returns prescribed in subsection 205(3), were filed late.

Subsection 205(3) is amended to add the Digital Platform Operators information return to the list of prescribed returns for purposes of subsection 162(7.01).

This amendment comes into force on January 1, 2024.

Clause 98

Electronic filing

ITR
205.1(1)

Subsection 205.1(1) of the Regulations provides that where an information return is prescribed and where over 50 of one type of a prescribed information return are filed by a taxpayer in a calendar year, the returns must be filed electronically.

Subsection 205.1 is amended to provide that where over five of one type of a prescribed information return are filed by a taxpayer in a calendar year, the returns must be filed electronically. The reference to filing electronically is intended to modernize the language while remaining consistent with the existing subsection.

This amendment applies in respect of information returns filed after 2023.

Electronic filing

ITR
205.1(2)

Subsection 205.1(2) of the Regulations defines a “prescribed corporation” for the purpose of the electronic filing obligation under subsection 150.1(2.1) of the Act. For this purpose, a prescribed corporation is a corporation with gross revenue in excess of $1 million, with the exception of an insurance corporation, a non-resident corporation, a corporation reporting in functional currency or a corporation exempt from tax under section 149 of the Act.

Subsection (2) is amended to remove the exception for corporations with gross revenue of $1 million or less. As a result, any corporation is required to file its return of income electronically under subsection 150.1(2.1) of the Act, with the exception of an insurance corporation, a non-resident corporation, a corporation reporting in functional currency, or a corporation exempt from tax under section 149 of the Act.

This amendment applies to taxation years that begin after 2023.

Clause 99

Distribution of taxpayers’ portions of returns

ITR
209(1)

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

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

This amendment applies to the 2023 and subsequent taxation years.

Distribution of taxpayer’s portions of returns (information slips)

ITR
209(5)

Subsection 209(5) of the Regulations permits the issuer of a T4 slip or Tuition and Enrolment Certificates to provide the information slip to a taxpayer electronically, without having received the taxpayer’s express consent to receive the information slip in this format.

An issuer can provide an information slip electronically only if

- the issuer meets the criteria specified by the Minister of National Revenue pursuant to section 221.01 of the Act;
- the taxpayer has not requested that they be provided with a paper copy of the information slip; and
- at the time the information slip is required to be issued,
    - the taxpayer can reasonably be expected to have access to the electronic information, and
    - in the case of a T4 slip, the taxpayer is a current employee, and is not on extended leave.

Subsection 209(5) is amended to also permit issuers to electronically distribute the Statement of Pension, Retirement, Annuity, and Other Income (T4A) information return and the Statement of Investment Income (T5) information return.

This amendment applies in respect of information returns sent after 2021.

Clause 100

Registered retirement savings plans

ITR
214(1.1)

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

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

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

This amendment applies to the 2023 and subsequent taxation years.

Clause 101

Registered retirement income funds

ITR
215(2.1)

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

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

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

This amendment applies to the 2023 and subsequent taxation years.

Clause 102

Equity property

ITR
2400(1)

Part XXIV of the Regulations sets out special rules for the computation of an insurer's income.

"Canadian equity property"

The definition of "Canadian equity property" is relevant for the purposes of the equity limit in subsection 2400(4), the transitional rule in section 2409 and the minimum net revenue test in section 2411 of the Regulations. Canadian equity property includes, among other items, a small business development or small business bond issued by a person (other than an affiliated corporation) resident in Canada or a Canadian partnership.

Consequential on the repeal of sections 15.1 and 15.2, the definition "Canadian equity property" in subsection 2400(1) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

"Equity property"

The "equity property" of an insurer is defined in subsection 2400(1) of the Regulations includes, among other items, a small business development or small business bond issued by another person (other than an affiliated corporation) or a partnership.

Consequential on the repeal of sections 15.1 and 15.2, the definition "equity property" in subsection 2400(1) is amended to remove references to a small business bond and a small business development bond, which are described under sections 15.1 and 15.2.

This amendment comes into force on royal assent.

Clause 103

Mining Taxes

ITR
3900

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

ITR
3900(2)

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

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

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

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

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

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

<u>EXAMPLE</u>

XCo has mining operations in a province and has a December 31 year-end. XCo self-assessed its mining taxes for 2005-2010 taxation years as shown in the table below. The province audited the mining operations of XCo in 2014 and recalculated XCo’s mining taxes for each of the 2005-2010 taxation years. As a result of the amendments to subsection 3900(2) of the Regulations,

XCo will be permitted to deduct, for the purpose of paragraph 20(1)(v) of the Act, the following amounts in each of the years as follows:

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

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

Notes:

1. The 2005 taxation year is statute-barred and a valid waiver of reassessment beyond the normal reassessment period has not been filed for the 2005 taxation year. The resource allowance was phased-out between 2003 and 2006. As a result, in 2005, XCo was prohibited from deducting 65 per cent of the mining taxes it paid since a deduction of 65 per cent of the otherwise deductible resource allowance was permitted. Amended paragraph 3900(2)(b) permits the deduction of $14 of eligible taxes in 2014, being 35 per cent of $40 and the new paragraph 3900(2)(c) permits the deduction of $2.80 of interest in 2014, being 35 per cent of $8.
2. XCo filed a valid waiver of reassessment of the statue-barred period beyond the normal reassessment period for the 2006 taxation. The resource allowance was phased-out between 2003 and 2006. As a result, in 2006, XCo was prohibited from deducting 35 per cent of the mining taxes it paid since a deduction of 35 per cent of the otherwise deductible resource allowance was permitted. Paragraph 3900(2)(a) permits the deduction of $19.50 of eligible taxes in 2006, being 65 per cent of $30 and the new paragraph 3900(2)(c) permits the deduction of $4.55 of interest in 2014, being 65 per cent of $7.
3. XCo filed a valid waiver of reassessment of the statue-barred period beyond the normal reassessment period for the 2007 taxation year and is therefore able to deduct in 2007, the actual mining taxes paid in the amount of $25 in respect of that taxation year. New paragraph 3900(2)(c) permits the deduction of $6 of interest in 2014.

4. The 2008 and 2009 taxation years are statute-barred and therefore the deduction of both the eligible taxes and interest in respect of those years is permitted by amended paragraph 3900(2)(b) and new paragraph 3900(2)(c) only in 2014, the year of payment.
5. The 2010 taxation year was not beyond the normal reassessment period in 2014, at the time of the conclusion of the audit of mining operations of XCo by the province. The return of income for XCo's 2010 taxation year was reassessed to allow for the deduction of the eligible taxes. The new paragraph 3900(2)(c) permits the deduction of $1 of interest paid in 2014.

This amendment applies to taxation years that end after 2007.

Clause 104

Pension Benefit Guarantee Fund

ITR
4802(1)(f.1)

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

This amendment applies to 2022 and subsequent taxation years.

Borrowing by master trust

ITR
4802(1.2) and (1.3)

Among other things, a master trust (described in subsection 4802(1.1)) holds investments exclusively for beneficiaries that are registered pension plans (RPP) or deferred profit sharing plans. New subsections 4802(1.2) and (1.3) are added to the Regulations, consequential on new subsection 8502(i.2) of the Regulations that provides a limited amount of borrowing capacity for defined benefit provisions of RPPs.

New subsection 4802(1.2) will permit a master trust to borrow amounts on behalf of beneficiaries that are defined benefit RPPs, provided that each time an amount is borrowed, the full amount is apportioned to those beneficiaries in one of two methods (paragraphs 4802(1.2)(a) and (b)). Unless there is written agreement that determines how the total amount borrowed is allocated among the RPP beneficiaries (paragraph (b)), then the formula in paragraph (a) determines the allocation.

Under paragraph 4802(1.2)(a), the proportion of an amount borrowed by the trust that is allocated to each particular defined benefit RPP is determined by the formula $A \times (B \div C)$. Variable A is the total amount borrowed at a particular time. In general terms, variable B divided variable C determines the defined benefit RPP's proportionate interest in the total assets managed by the trust (at the time of the borrowing) on behalf of defined benefit RPPs (and not including assets managed on behalf of deferred profit sharing plans). In the case where the amount borrowed relates specifically to a particular class of trust units, then variable B divided by variable C represents the proportion of the total units of that class (ignoring units held by deferred profit sharing plans) that are held by the defined benefit RPP.

To the extent that subsection 4802(1.2) applies to deem borrowed amounts to be borrowed by the underlying RPP beneficiaries, subsection 4802(1.3) deems the amounts to not be borrowed by the master trust. That way, those borrowings will not cause the master trust to fail to comply with the condition in subparagraph 4802(1.1)(c) that prohibits master trusts from engaging in borrowing for terms exceeding 90 days.

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

Clause 105

Pension credit – money purchase provision

ITR
8301(4)(a)

Paragraph 8301(4)(a) of the Regulations describes the contributions made in a year with respect to an individual under a money purchase provision of a registered pension plan that are included and excluded in determining the individual's pension credit for the year.

Consequential on the introduction under section 147.1 of the Act of new rules related to permitted corrective contributions, paragraph 8301(4)(a) is amended to exclude a contribution made under subsection 147.1(20) from the determination of an individual's pension credit.

For more information on the rules to determine and report a permitted corrective contribution, see the commentary on subsections 147.1(1) and (20) of the Act and on new subsection 8402(4) of the Regulations.

This amendment comes into force on January 1, 2021.

Clause 106

Total Pension Adjustment Reversal

ITR
8304.1(1)

Subsection 8304.1(1) of the Regulations defines, for the purposes of the Act, an individual's "total pension adjustment reversal" for a year as the sum of the individual's pension adjustment reversal determined in connection with the individual's termination in the year from a deferred profit sharing plan or a registered pension plan.

An individual's total pension adjustment reversal for a year is taken into account in determining the individual's "RRSP deduction limit" and "unused RRSP deduction room" (each as defined in subsection 146(1) of the Act). It is also taken into account in determining if an individual has undeducted RRSP contributions that are subject to an overcontribution tax under Part X.1 of the Act.

Consequential on the introduction of new subsection 8304.1(16), subsection 8304.1(1) is amended to define an individual's "total pension adjustment reversal" for a year to mean the sum of the pension adjustment reversal and a pension adjustment correction in respect of the individual for the year.

The subsection is split into paragraphs. Paragraph (a) preserves the traditional pension adjustment reversal that is determined in connection with an individual's termination in the year from a deferred profit sharing plan or a benefit provision of a registered pension plan. Paragraph (b) adds the new pension adjustment correction determined in respect of the individual for the year under new subsection 8304.1(16).

For more information on the rules to determine a pension adjustment correction, see the commentary on new subsection 8304.1(16) of the Regulations.

This amendment comes into force on January 1, 2021.

Pension Adjustment Correction

ITR
8304.1(16)

A registered pension plan becomes a revocable plan if it is not administered in accordance with the terms of the plan as registered. For example, if a contribution to the plan exceeds what is permitted by the plan terms, the plan becomes a revocable plan. Subparagraph 8502(d)(iii) of the Regulations permits a registered pension plan to return contributions made by an individual or employer in order to avoid revocation of the registration of the plan.

New subsection 8304.1(16) requires that a pension adjustment correction be determined for an individual when a distribution described in subparagraph 8502(d)(iii) or subsection 147.1(19) of the Act is made from a money purchase provision.

In general terms, a pension adjustment correction restores an individual's RRSP contribution room in the calendar year of the contribution refund. The amount will be added to an individual's total pension adjustment reversal that is used to determine the individual's "RRSP deduction limit" and the individual's "unused RRSP deduction room" for a calendar year.

An individual's pension adjustment correction is generally the portion of a refund of contributions made in the 10 previous years that reduced the individual's RRSP room (i.e., the portion that did not exceed pension adjustment limits). The pension adjustment correction is the total of formula A – B – C that applies for each of the 10 retroactive years.

Variable A is the pension adjustment reported for the individual under the money purchase provision of the plan for the retroactive year.

Variable B is the amount that should have been contributed to the provision in accordance with the terms of the plan with respect to the individual for the retroactive year.

Variable C is the amount by which an individual's total pension adjustment (i.e., the total pension credits determined under money purchase provisions, defined benefit provisions and deferred profit sharing plans) for the retroactive year exceeds the lesser of the money purchase limit for the retroactive year and 18% of the individual's compensation (as defined in subsection 147.1(1) of the Act) for the year from participating employers.

Variable C reduces an individual's pension adjustment correction by the amount by which the pension adjustment reported for the individual for the year exceeds the individual's pension adjustment limit (being the lesser of 18% of compensation from participating employers or the money purchase limit).

To simplify reporting requirements, the plan administrator is required to report the pension adjustment correction with respect to the individual to the Canada Revenue Agency using a prescribed information return, rather than to amend T4 slips for prior years. For more information on the reporting requirements of a pension adjustment correction, please see the commentary on new subsection 8402.01(4.1) of the Regulations.

For more information on an individual's total pension adjustment reversal for a calendar year, please see the commentary on amendments made to subsection 8304.1(1) of the Regulations.

Illustration of a pension adjustment correction:

Aly earned an annual salary of $115,000 in 2021 and 2022. His employer participates in a money purchase pension plan that requires each employee to contribute 7.5% of earnings and requires the employer to match the employee contribution of 7.5%.

In May 2023, the plan administrator discovered that, in both 2021 and 2022, Aly contributed 10% of his earnings to the plan and the employer contributed an additional 10% of earnings. A pension adjustment of $23,000 was reported on his T4 slips in 2021 and 2022.

As a result of the over-contributions in 2021 and 2022, the plan was not administered in accordance with the terms of the plan and therefore becomes a revocable plan. In order to avoid the revocation, the plan administrator refunded $11,500 from Aly's account ($5,750 paid to Aly and paid $5,750 to the employer).

As a result of the refunds of over-contributions, a pension adjustment correction is required to be determined for Aly, equal to the sum of A – B – C for 2021 plus A – B – C for 2022.

For 2021:
A = $23,000
B = $17,250
C = $23,000 – (lesser of $29,120 and $20,700) = $2,300
A – B – C
= $23,000 – $17,250 – $2,300
= **$3,450**

For 2022, the result of A – B – C will be also be **$3,450** (based on the same calculations as for year 2021).

Aly's pension adjustment correction is $6,900. Therefore, the plan administrator must file the prescribed information return with the Canada Revenue Agency to report the $6,900 amount. The filing deadline for the form is 60 days after the end of the second calendar quarter (or August 29, 2023). As a result of pension adjustment correction and the required form being filed with the CRA, Aly's RRSP room will be increased by $6,900 for taxation year 2023.

The total over-contribution amount for 2021 and 2022 equals $11,500. Both Aly and his employer will receive a tax T4A slip to report the $5,750 over-contribution amount refunded to each of them. The refunds must be reported in their income unless the exemption under clause 56(1)(a)(i)(G) of the Act applies with respect to the refunds.

Although the total contribution refund is $11,500, the pension adjustment correction to restore Aly's RRSP contribution room is limited to $6,900. Aly's pension adjustment limit for each of 2021 and 2022 was $20,700 (18% x $115,000). The pension adjustment reported on his T4 slips in each of those 2 years was $2,300 more than the pension adjustment limits (23,000 – 20,700 = 2,300). The $4,600 of contributions ($2,300 + $2,300) did not reduce his RRSP contribution room and accordingly should not be part of his pension adjustment correction. The $11,500 refund minus the excluded $4,600 portion equals Aly's $6,900 pension adjustment correction (and RRSP room increase).

This amendment comes into force on January 1, 2021.

Clause 107

Conditions – permitted corrective contributions

ITR
8308(5.4)

New subsection 8308(5.4) of the Regulations permits a member of a pension plan to enter into a written commitment with the plan administrator or participating employer to make a permitted corrective contribution by installments.

Subsection 8308(5.4) deems that the permitted corrective contribution is made at the time the written commitment is entered into, for the purpose of the reporting requirements under subsection 8402(4) and for determining the member's "net past service pension adjustment" (as defined in 146(1) of the Act).

That deeming rule has two consequences. First, the full amount of the permitted corrective contribution must be reported under subsection 8402(4) within 120 days after the written commitment is entered into and not each time an installment payment is made. Second, by including it in the member's "net past service pension adjustment" for the year of the written agreement, that full amount reduces the member's RRSP contribution room for the taxation year after the year the member entered into the written commitment.

For more information on the rules to determine and report a permitted corrective contribution, see the commentary on subsections 147.1(1) and 147.1(20) of the Act and subsection 8402(4) of the Regulations.

This amendment comes into force on January 1, 2021.

Clause 108

Permitted corrective contribution

ITR
8402(4)

Section 8402 of the Regulations sets out the reporting requirements when certain past service benefits are increased under registered pension plans.

New subsection 8402(4) requires that if a permitted corrective contribution is made under new subsection 147.1(20) of the Act with respect to an individual, the administrator of the plan must file with the Canada Revenue Agency an information return in prescribed form within 120 days after the contribution is made to the plan.

For more information on the rules to determine a permitted corrective contribution, see the commentary on subsections 147.1(1) and 147.1(20) of the Act.

This amendment comes into force on January 1, 2021.

Permitted corrective contributions made before royal assent do not need to be reported prior to the day that is 60 days after royal assent.

Clause 109

Pension adjustment correction – employer reporting

ITR
8402.01(4.1)

New subsection 8402.01(4.1) requires that if a pension adjustment correction is determined for an individual in connection with a distribution from a money purchase provision of a registered pension plan, the administrator of the plan must file with the Canada Revenue Agency an information return in prescribed form to report the amount.

Paragraph (a) requires that if the distribution occurs in the first, second or third quarter of a calendar year, the prescribed information return must be filed no later than 60 days after the end of the quarter. Paragraph (b) requires that if the distribution occurs in the fourth quarter of a calendar year, the prescribed information return must be filed before February of the following calendar year.

Note that subsection 8402.01(5) defines the first quarter, second quarter, third quarter and fourth quarter of a calendar year.

For more information regarding the determination of a pension adjustment correction, please see the commentary on new subsection 8304.1(16) of the Regulations.

This amendment comes into force on January 1, 2021.

Pension adjustment corrections in respect of contribution refunds made before royal assent do not need to be reported prior to the day that is 60 days after royal assent.

Clause 110

Permissible distributions

ITR
8502(d)(v)

Subparagraph 8502(d)(v) permits a reasonable rate of interest to be added to a return of contributions described in subparagraph 8502(d)(iv). Contributions described in that subparagraph are contributions refunded to an employee from a defined benefit provision of a registered pension plan, where such refund is pursuant to an amendment to a pension plan under which future employee contributions to the provision are reduced.

Subparagraph 8502(d)(v) is amended to add a reference to subparagraph 8502(d)(iii), thereby permitting a reasonable rate of interest to be added to a return of contributions to avoid the revocation of plan registration.

This amendment comes into force on January 1, 2021.

Borrowing

ITR
8502(i)

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

Paragraph 8502(i) is amended consequential on the introduction of new paragraph 8502(i.2), a new borrowing limit applicable to defined benefit RPPs (other than individual pension plans). Specifically, the preamble of paragraph 8502)(i) is amended by adding the phrase "subject to paragraph (i.2)", thereby recognizing the additional borrowing flexibility afforded to defined benefit RPPs in paragraph 8502(i.2).

This amendment comes into force on April 7, 2022.

Borrowing by defined benefit pension plan

ITR
8502(i.2)

New paragraph 8502(i.2) establishes a new borrowing limit applicable to defined benefit provisions of registered pension plans (other than individual pension plans) that is supplementary to paragraph 8502(i) borrowing. The new borrowing capacity is subject to two conditions.

First, subparagraph (i) prohibits new borrowing at any time that the net assets of the defined provision determined at the beginning of the plan year (expressed as A minus B in subparagraph (ii)) exceeds 125% of the defined benefit provision's actuarial liabilities (determined by the most recent actuarial report prepared in respect of the defined benefit provision).

Second, under subparagraph (ii), at any time that a new amount is borrowed, the aggregate of outstanding borrowed amounts (excluding amounts borrowed to acquire real property in accordance with 8502(i)) and the new borrowed amount may not exceed the amount determined by the formula $0.20 \times (A - B)$. Variable A is the value of the plan assets held under the defined benefit provision. Variable B is the amount of all outstanding borrowings in respect of the provision (including borrowing to acquire real property). Variables A and B are determined at the start of the plan's fiscal period in which the borrowing occurs. The result of A minus B is the net assets (net of loan balances) of the defined benefit provision.

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

Illustration of the new borrowing limit

At the start of its 2023 fiscal year, a pension plan has $10 billion of assets, of which $2 billion is real property encumbered by $1 billion of debt (i.e., the net assets are $9 billion). The existing debt meets the conditions in paragraph 8502(i). The plan's actuarial liabilities in respect of the

defined benefit provision determined in a 2022 actuarial valuation report (the plan's most recent actuarial report) was $8 billion. The plan's funded ratio is below 125% ($9 billion of net assets divided by $8 billion of liabilities = 1.125), which does not prohibit the plan from borrowing.

Loan in 2023

On September 1, 2023, the administrator of the plan borrows $1.3 billion.
The limit on borrowed money under subparagraph 8502(i.2)(ii) at the time of the loan is:

$$0.2 \times (A - B) = 0.2 \times (\$10 \text{ billion} - \$1 \text{ billion}) = \$1.8 \text{ billion}$$

The $1.3 billion loan does not exceed the limit of $1.8 billion and thus is permissible.

Excess surplus in 2025

At the start of its 2025 fiscal year, the pension plan has $12.4 billion of assets, $2 billion of which is real property encumbered by $900 million in debt that meets the conditions in paragraph 8502(i). The unpaid balance on the September 2023 loan is $1.1 billion. The most recent actuarial valuation report of January 1, 2025 determines actuarial liabilities to be $8 billion.

The plan's funded ratio exceeds 125%. Net assets of $10.4 billion ($12.4 billion minus $900 million minus $1.1 billion) divided by $8 billion of liabilities is a funded ratio of 1.3. In this case, the plan may not borrow additional amounts in 2025 (and not until a future funded ratio is at or below 125%). The outstanding balance of the 2023 loan ($1.1 billion) does not need to be repaid immediately because that loan was entered into at a time when plan funding was not in an excess surplus position.

Clause 111

Variable payment life annuity

ITR
8506(1)(e.2)

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

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

This amendment comes into force on January 1, 2020.

Amendments to the Electronic Filing and Provision of Information (GST/HST) Regulations

Clause 112

Prescribed person

Electronic Filing and Provision of Information (GST/HST) Regulations
2(a)

Existing section 2 of the *Electronic Filing and Provision of Information (GST/HST) Regulations* lists the prescribed persons required under subsection 278.1(2.1) of the *Excise Tax Act* (the "Act") to file their returns electronically.

Paragraph 2(a) is amended to remove the existing requirement that the person's threshold amount as determined under subsection 249(1) of the Act exceed $1,500,000.

This amendment applies in respect of reporting periods that begin after 2023.

Coordinating Amendments

Clause 113

Bill C-46

This clause provides coordinating amendments related to Bill C-46, which is currently before Parliament and addresses the same subject matter as other clauses of this Act. Its effect is that, if Bill C-46 receives royal assent after or on the same day as this Act receives royal assent, the amendments made in Bill C-46 will be repealed and deemed never to have come into force.