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# **Explanatory Notes Relating to the Income Tax Act and Other Legislation**

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## **Preface**

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

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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 the Income Tax Act and Other Legislation

## Clause 2

### Investment tax credit

*Income Tax Act* (the Act or ITA)  
12(1)(t)

The amount deducted from tax in respect of an investment tax credit may reduce the tax basis of a related expenditure — that is, the undepreciated capital cost of depreciable property, the adjusted cost base of certain interests in a partnership or a trust, the amount of deductible scientific research expenditures, or the amount of Canadian exploration expenses. To the extent that such reductions in tax basis do not take place, paragraph 12(1)(t) requires the amount of any tax credit claimed to be included in the taxpayer's income.

Paragraph 12(1)(t) is amended to reflect the introduction of the new clean electricity investment tax credit by adding a reference to new section 127.491 under which the new investment tax credit is provided. References are also added to new subparagraph 53(2)(c)(vi.5), which applies cost base reductions to partners claiming the new tax credit.

This amendment applies on or after April 16, 2024.

## Clause 3

### Deemed capital cost of certain property

ITA  
13(7.1)

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

Subsection 13(7.1) provides for reductions in the capital cost of a depreciable property equal to the amounts of deducted investment tax credits and certain other assistance from government in respect of the property but does not apply to amounts described in paragraphs (a) to (b.2).

Subsection (7.1) is amended by adding a reference to new section 127.491 in the preamble and in paragraph (e). These amendments are consequential to the introduction of the new clean electricity investment tax credit under section 127.491.

This amendment applies on or after April 16, 2024.

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## Definitions

ITA  
13(21)

### *“undepreciated capital cost”*

Subsection 13(21) contains a number of definitions that apply for the purposes of section 13, including the definition “undepreciated capital cost”, which also applies for the purposes of the Act by operation of subsection 248(1). A taxpayer’s undepreciated capital cost (UCC) of depreciable property of a prescribed class is determined by the formula in this definition.

This definition is amended to add new variable E.2, which incorporates into the formula any reductions in the UCC of depreciable property of a class that are required by new subsection 81(6). For more information, see the commentary to that subsection.

The amendments to add new variable E.2 to the definition “undepreciated capital cost” are deemed to have come into force on December 31, 2023.

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

Element I of the definition is amended by adding a reference to new subsection 127.491(10) consequential to the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

## Loss restriction event

ITA  
13(24)(a)

Subsection 13(24) is a special rule that applies where a corporation or partnership of which a corporation is a majority interest partner has acquired a depreciable property within the 12-month period ending immediately before a change of control of the corporation and the property was not used, or acquired for use, in a business carried on before that period. Under this rule, the capital cost of property acquired in the 12-month period is not included in computing undepreciated capital cost until after the change of control. Also, for the purposes of the investment tax credit and refundable investment tax credit rules in sections 127, 127.1, 127.44,

127.45, 127.48 and 127.49, the property will be considered not to have been acquired until after the change of control.

Where the property was disposed of and not reacquired before the change of control, the property is treated for capital cost allowance purposes as having been acquired immediately before the disposition. The purpose of this special rule is to prevent the transfer of depreciable property in contemplation of a change of control to reduce taxable income where the person acquiring control would not themselves be in a position to use the capital cost allowance or investment tax credit on the property.

Paragraph 13(24)(a) is amended to add a reference to new section 127.491 consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

#### **Clause 4**

ITA  
18.2

Section 18.2, together with section 18.21 and paragraph 12(1)(1.2), is the core rule of the excessive interest and financing expenses limitation (“EIFEL”) regime.

#### **Definitions**

ITA  
18.2(1)

Subsection 18.2(1) defines a number of terms that apply for the purposes of sections 18.2 and 18.21 in determining the application of the excessive interest and financing expenses limitation.

#### ***“adjusted taxable income”***

A taxpayer’s adjusted taxable income is a measure of its earnings before interest, taxes, depreciation and is determined based on tax, rather than accounting, concepts. It is relevant to the EIFEL rules.

Paragraph (g) of variable B is amended in order that amounts attributable to amounts that are not deductible because of subsection 18.2(2) are excluded from the deduction add back under subsection 104(6) in the adjusted taxable income computation. This amendment addresses a possible circularity issue by ensuring that the effect of subsection 18.2(2) is excluded from the deduction add back under subsection 104(6) within the adjusted taxable income computation.

Variable E of the definition “adjusted taxable income” is also amended by adding a new paragraph (a.1). This amendment is intended to ensure that the use of carried-over losses is properly accounted for in the computation of a taxpayer’s adjusted taxable income, by reducing

that amount by the portion of any such losses claimed by the taxpayer for the year that does not reduce the taxpayer's taxable income (as determined for the purpose of paragraph (b) of variable D) for the taxation year.

The situation addressed by paragraph (a.1) will occur where, as a result of an interest deduction being denied under the EIFEL rules, the taxpayer's taxable income (before taking into account its loss carryovers) is higher than it otherwise would be, and the taxpayer claims additional loss carryovers in the year to offset that additional taxable income. These additional loss carryovers are not reflected in the taxpayer's taxable income determined for the purpose of paragraph (b) of variable D, as that amount is computed without reference to the EIFEL rules. This amendment ensures that the taxpayer's adjusted taxable income computation fully reflects all loss carryovers claimed by the taxpayer in the year.

These amendments apply to taxation years that end after August 15, 2025.

Paragraph (1) of Variable B includes in adjusted taxable income an amount deducted under subsection 127(5) or (6), 127.44(3), 127.45(6), 127.48(3) and 127.49(6) that was not included in income under paragraph 12(1)(t) and was not included in calculating adjusted taxable income for a preceding year, to the extent that the amount is included in an amount determined under paragraph 13(7.1)(e), subparagraphs 53(2)(c)(vi) to (c)(vi.4) or (h)(ii), or for I in the definition "undepreciated capital cost" in subsection 13(21).

Paragraph (1) of Variable B is amended to add a reference to subsection 127.491(10) and subparagraph 53(2)(c)(vi.5), consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

## Clause 5

### **Scientific research and experimental development**

ITA  
37

The scientific research and experimental development (SR&ED) program delivers support to businesses through, among other things, an immediate deduction against income under section 37. Currently, eligible expenditures under the SR&ED program are generally limited to certain expenditures of a current nature. Capital expenditures were removed from eligibility under the SR&ED program for expenditures made after 2013.

The 2024 Fall Economic Statement proposed to restore the eligibility of capital expenditures for the deduction against income under the SR&ED program. The rules would be generally the same as those that existed prior to 2014. Section 37 is amended in several respects to effect this change.

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## **Scientific research and experimental development**

ITA  
37(1)

Subsection 37(1) is amended in two respects. First, subsection 37(1) is amended to add paragraph (b) to restore the eligibility of certain capital expenditures for the deduction against income under the SR&ED program. In general, paragraph 37(1)(b) describes expenditures of a capital nature made by a taxpayer on SR&ED carried on in Canada, where the SR&ED is directly undertaken by or on behalf of the taxpayer and is related to the taxpayer's business.

Second, paragraph 37(1)(d) is amended to ensure that it will apply in respect of expenditures described in paragraph 37(1)(b) made on or after December 16, 2024.

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

## **Expenditures of a capital nature**

ITA  
37(6)

Subsection 37(6) treats amounts claimed under subsection 37(1) in respect of expenditures of a capital nature as capital cost allowance allowed to the taxpayer in respect of the property only if the property is acquired before 2014.

Consequential on the addition of paragraph 37(1)(b), subsection 37(6) is amended to ensure that it applies in respect of property described in paragraph 37(1)(b) that is acquired on or after December 16, 2024.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

## **Loss restriction event**

ITA  
37(6.1)

Subsection 37(6.1), together with paragraph 37(1)(h), restricts a taxpayer's ability to carry forward its pool of unused SR&ED deductions where there has been an acquisition of control of the taxpayer. In general terms, the undeducted portion of SR&ED expenditures made before control is acquired may be carried forward to be deducted in computing income for a subsequent taxation year only if certain conditions are met.

ITA  
37(6.1)(a)(i)(B)

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Consequential on the addition of paragraph 37(1)(b), clause 37(6.1)(a)(i)(B) is amended to ensure that subsection 37(6.1) applies in respect of expenditures and property described in paragraph 37(1)(b) made or acquired on or after December 16, 2024.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Interpretation**

ITA  
37(8)

Generally, subsection 37(8) provides rules for determining which expenditures incurred in respect of SR&ED are eligible for inclusion in subsection 37(1), in the case of expenditures incurred in Canada, and subsection 37(2), in the case of expenditures incurred outside Canada.

ITA  
37(8)(a)

Subparagraph 37(8)(a)(ii) provides rules for interpreting the expression “expenditures on or in respect of scientific research and experimental development” incurred in Canada.

Subclauses 37(8)(a)(ii)(A)(III) and 37(8)(a)(ii)(B)(I), (III) and (VI) are added consequential on the addition of paragraph 37(1)(b). Subclause 37(8)(a)(ii)(B)(II) is also amended to ensure that it applies to expenditures of a capital nature.

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

ITA  
37(8)(e)

Paragraph 37(8)(e) is added consequential on the addition of paragraph 37(1)(b) to provide, among other things, that a capital expenditure made in respect of the acquisition of a building or a leasehold interest therein (other than a prescribed special-purpose building) does not qualify as an expenditure on, or in respect of, SR&ED. Section 2903 of the Regulations describes a prescribed special-purpose building for these purposes.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Look-through rule**

ITA  
37(14)

Subsection 37(14) provides a look-through rule to ensure that expenditures incurred by a taxpayer in respect of SR&ED performed on behalf of the taxpayer or by third-party entities include only expenditures of a current nature.

Subsection 37(14) is repealed consequential on the addition of paragraph 37(1)(b).

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Reporting of certain payments**

ITA  
37(15)

Subsection 37(15) provides that where a taxpayer is required to reduce an expenditure because of the expenditure look-through rule in subsection 37(14), the SR&ED performer (the person or the partnership referred to in subsection 37(14)) is required to inform the taxpayer in writing of the amount of the reduction.

Subsection 37(15) is repealed consequential on the addition of paragraph 37(1)(b).

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Clause 6**

#### **Deduction from business investment loss**

ITA  
39(9)(b)(i)

Pursuant to subsection 39(9), in computing a business investment loss of a taxpayer that is an individual (other than a trust), the taxpayer is required to deduct, from the amount of the business investment loss otherwise determined, the lesser of the amount of the business investment loss and the taxpayer's capital gains in respect of which a deduction was claimed under section 110.6, to the extent that such gains have not been used to reduce other business investment losses.

Subparagraph 39(9)(b)(i) is amended to add a reference to section 110.61 and new section 110.62, which provide capital gain exemptions for dispositions of shares pursuant to a qualifying business transfer and a qualifying cooperative conversion, respectively.

This amendment is deemed to have come into force on January 1, 2024.

### **Clause 7**

## **General rules**

ITA  
40(1)(a)(iii)

Subparagraph 40(1)(a)(iii) is amended to add a reference to new subsection (1.4), which extends the general five-year period for capital gains reserve claims to 10 years for dispositions of shares pursuant to a qualifying cooperative conversion. For more information, see the commentary to new subsection (1.4) of the Act.

This amendment applies in respect of transactions that occur on or after January 1, 2024.

### **Reserve – dispositions to employee ownership trusts**

ITA  
40(1.3)

Subsection 40(1.3) provides an extension of the 5-year capital gains reserve under subparagraph 40(1)(a)(iii) to 10 years for dispositions of shares pursuant to a qualifying business transfer. In computing the taxpayer's gain from the disposition of shares, the taxpayer may claim a reserve over up to ten years whereby a minimum of ten per cent of the gain is included in the taxpayer's income each year.

Subsection (1.3) is amended to clarify that the extended reserve is available to the taxpayer from the time of the disposition of the shares pursuant to a qualifying business transfer.

This amendment applies in respect of transactions that occur on or after January 1, 2024.

### **Reserve – dispositions to worker cooperatives**

ITA  
40(1.4)

Where a taxpayer disposes of capital property in a taxation year, the gain otherwise determined may be reduced under subparagraph 40(1)(a)(iii) by a reasonable reserve in respect of proceeds of disposition that are not due to the taxpayer until after the end of the year. However, the gain from the disposition is fully recognized over the first five (or, in some cases, ten) taxation years of the taxpayer ending after the time of disposition.

New subsection (1.4) provides an extension of the application of subparagraph 40(1)(a)(iii) for dispositions of shares pursuant to a qualifying cooperative conversion. In computing the taxpayer's gain from the disposition of shares, the taxpayer may claim a reserve over up to ten years whereby a minimum of ten per cent of the gain is included in the taxpayer's income each year.

The extension of the ten-year capital gains reserve to qualifying cooperative conversions is intended to facilitate the sale of businesses to worker cooperatives.

For more information, see the commentary on subparagraph 40(1)(a)(iii) and the definitions “worker cooperative” and “qualifying cooperative conversion” in subsection 248(1).

These amendments apply in respect of transactions that occur on or after January 1, 2024.

## Clause 8

### Definitions

ITA  
44.1(1)

The existing definition “common share” is currently relevant for the purposes of the definition “eligible small business corporation share” and subsection 44.1(7). A common share is a share prescribed by the *Income Tax Regulations* for the purpose of paragraph 110(1)(d).

The definition “common share” is repealed consequential on the removal of the requirement that an eligible small business corporation share be a common share.

This amendment applies as of January 1, 2025.

The definition “eligible small business corporation share” of an individual is relevant for the purposes of the term “qualifying disposition” of an individual and subsections 44.1(6) and (7). An eligible small business corporation share of an individual is currently a common share issued by a corporation to the individual where at the time the share is issued, the corporation was an eligible small business corporation and immediately before and after that time the total carrying value of its assets and the assets of corporations related to it does not exceed \$50 million.

The definition “eligible small business corporation share” is amended to remove the requirement that an eligible small business corporation share of an individual be a common share.

In addition, paragraph (b) of the definition is amended to increase the existing limit of the total carrying value of the corporation’s assets and the assets of corporations related to it from \$50 million to \$100 million.

These amendments apply to dispositions that occur on or after January 1, 2025.

The definition “qualifying disposition” of an individual is relevant for the purposes of the term “permitted deferral” and subsection 44.1(2). An individual is entitled to a capital gain deferral only in respect a gain arising on a qualifying disposition of the individual. A qualifying disposition of an individual is a disposition of shares of the capital stock of a corporation owned by the individual where each such share was an eligible small business corporation share of the

individual, was a common share of the capital stock of an active business corporation throughout the time it was owned by the individual and was owned by the individual throughout the 185-day period that ended immediately before the disposition.

The definition “qualifying disposition” is amended to remove the requirement that the share be a common share throughout the time it was owned by the individual.

This amendment applies to dispositions that occur on or after January 1, 2025.

The definition “replacement share” of an individual is relevant for the purposes of the term “permitted deferral”. A replacement share of an individual in respect of a particular qualifying disposition of the individual in a taxation year means a share of an eligible small business corporation that was designated by the individual in the individual's return of income to be a replacement share of the individual in respect of the qualifying disposition and that was acquired by the individual in the year the qualifying disposition was made or within 120 days after the end of that year.

Paragraph (a) of the definition “replacement share” is amended to extend the time for acquiring replacement shares to any time in the year in which the qualifying disposition is made or within the following calendar year.

In addition, paragraph (b) of this definition is amended to correct a grammatical error in the cross reference to the French language version of this definition at the end of the paragraph (« action de remplacement »).

This amendment applies to dispositions that occur on or after January 1, 2025.

### **Special rule — active business corporation share exchanges**

ITA  
44.1(7)

Subsection 44.1(7) provides special rules where an individual, in a qualifying disposition, disposes of common shares of an active business corporation for consideration consisting only of new common shares of another active business corporation issued to the individual. Where the individual's proceeds of disposition for the exchanged shares equals the individual's adjusted cost base of those shares and section 51, paragraph 85(1)(h), subsection 85.1(1), section 86 or subsection 87(4) applies to the individual in respect of the new shares, the new shares are deemed to be eligible small business shares of the individual that were owned by the individual throughout the period that the exchanged shares were owned by the individual and the new shares are deemed to be shares of an active business corporation that were owned by the individual throughout the period that the exchanged shares were owned by the individual. In effect, the individual's eligibility to claim a permitted deferral with respect to a capital gain arising on a disposition of the exchanged shares is rolled over to new shares.

This subsection is amended to remove the requirements that the disposed of shares, and the shares received in consideration, be common shares.

This amendment applies to dispositions that occur on or after January 1, 2025.

### **Special rule — qualifying disposition**

ITA  
44.1(9)

Subsection 44.1(9) is relevant in determining whether a disposition is a qualifying disposition. Currently, a disposition of a common share of an active business corporation by an individual that would otherwise be a qualifying disposition is deemed not to be a qualifying disposition unless the active business of the corporation referred to in paragraph (a) of the definition “active business corporation” was carried on primarily in Canada, at all times in the period that began when the individual last acquired the share and ended when the disposition occurred (the “ownership period”), if that period is less than 730 days. In any other case that active business has to be carried on primarily in Canada for at least 730 days during the ownership period.

Subsection 44.1(9) is amended to remove the requirement that the share disposed of be a common share.

This amendment applies to dispositions that occur on or after January 1, 2025.

### **Clause 9**

#### **Adjustments to cost base**

ITA  
53(1)(e)(ix)

Paragraph 53(1)(e) provides that the adjusted cost base of a taxpayer's interest in a partnership is increased by various amounts, including the taxpayer's share of governmental assistance related to a Canadian resource property or an exploration or development expense incurred in Canada. The reason for such increase under subparagraph 53(1)(e)(ix) is that such assistance is recognized through a reduction in the taxpayer's cumulative Canadian exploration expense (CEE), cumulative Canadian development expense (CDE) or cumulative Canadian oil and gas property expense (COGPE).

Clause 53(1)(e)(ix)(A) is amended to provide that an amount that is received as an “excluded loan” as defined in subsection 12(11) will not be treated as government assistance for these purposes. This parallels the related change to the definition “assistance” in subsection 66(15).

This amendment comes into force on January 1, 2020 and applies to loans made after December 31, 2019.

ITA  
53(1)(e)(xiii)

Subparagraph 53(1)(e)(xiii) provides additions to the adjusted cost base of a taxpayer's partnership interest where investment tax credits have been recaptured (added to the taxpayer's tax otherwise payable) as required by subsection 127(30) or 127.45(17), section 127.48, subsection 127.49(17) or section 211.92. Where an investment tax credit is recaptured, the adjusted cost base of a partnership interest is increased to reflect the amount recaptured.

Subparagraph 53(1)(e)(xiii) is amended to add a reference to section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

**Amounts to be deducted**

ITA  
53(2)(c)

Paragraph 53(2)(c) provides for certain amounts that must be deducted in computing the adjusted cost base to a taxpayer of a partnership interest.

New subparagraph 53(2)(c)(vi.5) is added to the paragraph to require that a deduction be made for that part of a clean electricity investment tax credit deducted by a taxpayer pursuant to subsection 127.491(10) which can reasonably be attributed to the taxpayer's share of a partnership's clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

ITA  
53(2)(k)(i)

Paragraph 53(2)(k) provides that the adjusted cost base of a property is reduced by the amount of government assistance received or receivable.

Subparagraph 53(2)(k)(i) is amended by adding new clause (E), which provides that an amount received as an "excluded loan" (as defined in subsection 12(11)) does not result in a reduction of the adjusted cost base of the property.

This amendment comes into force on January 1, 2020 and applies to loans made after December 31, 2019.

**Clause 10**

**Applicable rules**

ITA  
55(5)(c)

Paragraph 55(5)(c) provides that the income earned or realized by a corporation (“safe income”) for the period in which it was a private corporation is its income otherwise determined for the period without deducting amounts under former section 37.1 or former paragraph 20(1)(gg) (both now repealed). These existing adjustments to safe income are moved to new subparagraph (i).

New subparagraph (ii) is also added for taxation years that begin on or after April 7, 2022, consequential upon the introduction of new paragraph (h) of the “capital dividend account” (CDA) definition in subsection 89(1) which addresses the integration of certain after-tax earnings of foreign affiliates repatriated to a corporation resident in Canada. To prevent double counting of the same earnings in both safe income and CDA, new subparagraph 55(5)(c)(ii) specifies that safe income is determined on the assumption that any amount deductible by a corporation under section 113 and included in its CDA under paragraph (h), was not included in its income.

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

## **Clause 11**

### **Amounts to be included in income**

ITA  
56(1)(a)(i)

Subparagraph 56(1)(a)(i) of the Act includes in the income of a taxpayer certain pension benefits received in the year, with the exceptions listed in clauses (D) to (G). Subparagraph 56(1)(a)(i) is amended by adding clause (H), a new exception for an amount paid or transferred from a registered pension plan to an unclaimed property authority in respect of an unlocated individual.

A corresponding amendment is made to the definition of “superannuation or pension benefit” under subsection 248(1) of the Act to require that when the unclaimed property authority subsequently pays the property to an eligible taxpayer, that payment is included in the income of the taxpayer (reported via T4A slip).

See the additional commentary on the new definitions “unclaimed property authority” and “unlocated individual” in subsection 248(1) of the Act.

This amendment applies in respect of amounts paid or transferred to an unclaimed property authority after December 31, 2026.

## **Clause 12**

### **Disability supports deduction**

ITA  
64

Section 64 permits the deduction of disability supports expenses incurred to enable the taxpayer to work, to attend secondary school or to attend a designated educational institution, unless they have been reimbursed by a non-taxable payment.

Section 64 is amended to expand the list of expenses eligible for the disability supports deduction by adding amounts paid for:

- the cost of an ergonomic work chair (prescribed by a medical practitioner) for an individual who has a severe and prolonged impairment in physical functions, including amounts paid for an ergonomic assessment (to a person engaged in the business of providing such services);
- the cost of a bed positioning device (prescribed by a medical practitioner) for an individual who has a severe and prolonged impairment in physical functions, including amounts paid for an ergonomic assessment (to a person engaged in the business of providing such services);
- the cost of a mobile computer cart (prescribed by a medical practitioner) for an individual who has a severe and prolonged impairment in physical functions;
- the cost of an alternative input device (prescribed by a medical practitioner) for an individual who has an impairment in physical or mental functions to allow them to use a computer;
- the cost of a digital pen device (prescribed by a medical practitioner) for an individual who has an impairment in physical or mental functions to allow them to use a computer;
- the cost of a navigation device for low vision (prescribed by a medical practitioner) for an individual who has a vision impairment;
- the cost of memory or organizational aids (prescribed by a medical practitioner) for an individual who has an impairment in mental functions; and
- the cost of a specially trained service animal (prescribed by a medical practitioner), including certain related costs, for an individual who suffers from one or more specified disabilities.

These changes apply to the 2024 and subsequent taxation years.

### **Clause 13**

#### **Definitions**

ITA  
66(15)

*“assistance”*

Subsection 66(15) provides a definition of “assistance”, which may apply for the purposes of calculating a taxpayer’s cumulative Canadian exploration expense, cumulative Canadian development expense and cumulative Canadian oil and gas property expense.

The definition is amended to provide that an “excluded loan” (as defined in subsection 12(11)) is not government assistance.

This amendment comes into force on January 1, 2020 and applies to loans made after December 31, 2019.

## Clause 14

### **Deduction for cumulative Canadian development expenses**

Section 66.2 of the Act is amended to provide for an accelerated deduction of qualifying Canadian development expenses that are incurred after 2024 and before 2034 (referred to as “reaccelerated Canadian development expenses”). These amendments are deemed to come into force on January 1, 2025.

ITA

66.2(2)(e)

Subsection 66.2(2) allows a taxpayer a deduction for a taxation year in respect of its “cumulative Canadian development expense” (CCDE) at the end of the year, as determined under that definition in subsection 66.2(5). A taxpayer's CCDE represents the cumulative total of the additions to the taxpayer's CCDE (elements A to D.1, which include Canadian development expenses incurred, in element A) less reductions to the taxpayer's CCDE (elements E to O, which include deductions in respect of CCDE, in element E). A taxpayer is permitted a deduction with respect to a positive CCDE balance. A negative CCDE balance is included in a taxpayer's income under subsection 66.2(1).

Subsection 66.2(2) is amended by introducing new paragraph (e), which provides for a deduction in respect of a taxpayer's “reaccelerated Canadian development expense”, as newly defined in subsection 66.2(5).

New paragraph 66.2(2)(e) essentially provides an additional first-year Canadian development expense deduction to a taxpayer in respect of its “reaccelerated Canadian development expense”. The amount of the deduction for a taxation year is determined by the formula  $A \times (B - C)$ .

Variable A of the formula provides for deduction rates as follows:

- 15% for taxation years that end before 2030;
- 7.5% for taxation years that begin after 2029; and
- A proration of the two rates for taxation years that straddle the end of 2029, based on the amount of such expenses incurred before and after the end of 2029.

Variable B of the formula is the total of all reaccelerated Canadian development expenses incurred by the taxpayer in the taxation year.

Variable C is determined by the formula  $(D - E) - (F - G - H)$ .

The additional amount that a taxpayer can claim in respect of CCDE for a taxation year is determined by subtracting the reductions to CCDE for the year from the additions to CCDE for the year that qualify as reaccelerated Canadian development expenses. The formula for variable C ensures that reductions  $(D - E)$  to CCDE in the taxation year are first applied against additions  $(F - G)$  to CCDE in the taxation year other than reaccelerated Canadian development expenses  $(H)$  incurred in the taxation year. It should be noted that variable E is based on CCDE at the beginning of the current taxation year rather than the end of the prior year in order to ensure that the prior year's claim is taken into account.

## Definitions

ITA  
66.2(5)

### ***“accelerated Canadian development expense”***

The definition “accelerated Canadian development expense” is relevant for the purpose of calculating the deduction under paragraph 66.2(2)(d).

As a consequence of the introduction of new paragraph 66.2(2)(e) and the new definition “reaccelerated Canadian development expense” in subsection 66.2(5), the accelerated Canadian development expense is phased out for expenses that are incurred after 2024 (see amended paragraph (b) of the definition). Expenses incurred after 2024 that would have qualified as accelerated Canadian development expenses before this amendment would now qualify as reaccelerated Canadian development expenses.

### ***“reaccelerated Canadian development expense”***

The new definition “reaccelerated Canadian development expense” is relevant for the purpose of calculating the deduction under new paragraph 66.2(2)(e).

The definition provides the start and end dates for expenses that can qualify for the deduction under new paragraph 66.2(2)(e). A reaccelerated Canadian development expense is generally a Canadian development expense of a taxpayer that is incurred after 2024 and before 2034. A reaccelerated Canadian development expense does not include an expense that is a successored Canadian development expense or that is a cost in respect of a Canadian resource property acquired by the taxpayer, or a partnership of which the taxpayer is a member, from a person or partnership with which the taxpayer does not deal at arm's length.

However, a reaccelerated Canadian development expense does include a Canadian development expense that has been renounced to a shareholder under a flow-through share agreement, if the flow-through share agreement has been entered into after 2024.

## Clause 15

### **Deduction for cumulative Canadian oil and gas property expense**

Section 66.4 of the Act is amended to provide for an accelerated deduction of qualifying Canadian oil and gas property expenses that are incurred after 2024 and before 2034 (referred to as “reaccelerated Canadian oil and gas property expenses”). These amendments are deemed to come into force on January 1, 2025.

ITA  
66.4(2)

Subsection 66.4(2) allows a taxpayer a deduction for a taxation year in respect of its “cumulative Canadian oil and gas property expense” (CCOGPE) at the end of the year, as determined under that definition in subsection 66.4(5).

Subsection 66.4(2) is amended by introducing new paragraph (d), which provides for a deduction in respect of a taxpayer's “reaccelerated Canadian oil and gas property expense”, as newly defined in subsection 66.4(5).

The amendments to this section parallel those made to section 66.2 relating to the reaccelerated Canadian development expense.

New paragraph 66.4(2)(d) essentially provides an additional first-year Canadian oil and gas property expense deduction to a taxpayer in respect of its “reaccelerated Canadian oil and gas property expense”. The amount of the deduction is determined by the formula  $A \times (B - C)$ .

Variable A of the formula provides for the deduction rates as follows:

- 5% for taxation years that end before 2030;
- 2.5% for taxation years that begin after 2029; and
- A proration of the two rates for taxation years that straddle the end of 2029, based on the amount of such expenses incurred before and after the end of 2029.

Variable B of the formula is the total of all reaccelerated Canadian oil and gas property expenses incurred by the taxpayer in the taxation year.

Variable C is determined by the formula  $(D - E) - (F - G - H)$ .

The additional amount that a taxpayer can claim in respect of CCOGPE for a taxation year is determined by subtracting the reductions to CCOGPE for the year from the additions to CCOGPE for the year that qualify as reaccelerated Canadian oil and gas property expenses. The

formula for variable C ensures that reductions (D – E) to the CCOGPE in the taxation year are first applied against additions (F – G) to CCOGPE in the taxation year other than reaccelerated Canadian oil and gas property expense (H) incurred in the taxation year. It should be noted that variable E is based on CCOGPE at the beginning of the current taxation year rather than the end of the prior year in order to ensure that the prior year's claim is taken into account.

## **Definitions**

ITA  
66.4(5)

### ***“accelerated Canadian oil and gas property expense”***

The definition “accelerated Canadian oil and gas property expense” is relevant for the purpose of calculating the deduction under paragraph 66.4(2)(c).

As a consequence of the introduction of new paragraph 66.4(2)(d) and the new definition “reaccelerated Canadian oil and gas property expense” in subsection 66.4(5), the accelerated Canadian oil and gas property expense is phased out for expenses that are incurred after 2024 (see amended paragraph (b) of the definition). Expenses incurred after 2024 that would have qualified as accelerated Canadian oil and gas property expenses before this amendment would now qualify as reaccelerated Canadian oil and gas property expenses.

### ***“reaccelerated Canadian oil and gas property expense”***

The new definition “reaccelerated Canadian oil and gas property expense” is relevant for the purpose of calculating the deduction under new paragraph 66.4(2)(d).

The definition provides the start and end dates for expenses that can qualify for the deduction under new paragraph 66.4(2)(d). A reaccelerated Canadian oil and gas property expense is generally a Canadian oil and gas property expense of a taxpayer that is incurred after 2024 and before 2034.

A reaccelerated Canadian oil and gas property expense does not include an expense that is a successored Canadian oil and gas property expense or that is a cost in respect of a Canadian resource property acquired by the taxpayer, or a partnership of which the taxpayer is a member, from a person or partnership with which the taxpayer does not deal at arm's length.

## **Clause 16**

### **Resource expenses of limited partner**

ITA  
66.8(1)(a)(ii)(B)(I)

Subsection 66.8(1) provides for the reduction of a taxpayer's share of a partnership's resource expenditures incurred in a fiscal period in certain cases where the taxpayer's share of such resource expenditures exceeds the taxpayer's "at-risk amount" at the end of the fiscal period in respect of the partnership.

Subclause 66.8(1)(a)(ii)(B)(I) provides a further adjustment in respect of the amount required by subsection 127(8), 127.44(11), 127.45(8), 127.48(12) and 127.49(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer in respect of the fiscal period. The result is that investment tax credits are subtracted from the "at-risk amount" in making the determination in subsection 66.8(1).

This subclause is amended to adjust for amounts required by subsection 127.491(12) in respect of the partnership to be added in computing the clean electricity investment tax credit of the taxpayer in respect of the fiscal period.

This amendment applies on or after April 16, 2024.

## **Clause 17**

### **Deemed proceeds of disposition**

ITA

69(11)(a)(i)

In general terms, subsection 69(11) is an anti-avoidance rule that is intended to prevent a vendor from disposing of property on a tax-deferred basis as part of a series of transactions one of the main purposes of which is to obtain the benefit of tax deductions or other entitlements available to an unaffiliated person in respect of a subsequent disposition of the property within 3 years of the original disposition. Where it applies, subsection 69(11) denies the benefit of the rollover on the original disposition by deeming the vendor's proceeds of disposition to be equal to the fair market value of the property disposed of.

Subsection 69(11) has certain rules to ensure that it does not apply to a taxpayer for certain deductions in respect of the lifetime capital gains exemption for qualified small business corporation shares. Paragraph 69(11)(a) provides that a tax deduction does not include a deduction under subsection 110.6(2.1) (the existing lifetime capitals gains exemption) where the deduction is in respect of a capital gain arising from the disposition of a share acquired by the taxpayer as a result of an acquisition under subsection 85(3) or 98(3).

Subparagraph 69(11)(a)(i) is amended to add a reference to section 110.61 and new section 110.62, which provide capital gain exemptions for dispositions of shares pursuant to a qualifying business transfer and a qualifying cooperative conversion, respectively. This amendment provides that subsection 69(11) does not apply to a deduction under section 110.6, 110.61 or 110.62 in respect of a capital gain from a disposition of a share acquired by the taxpayer in an acquisition to which subsection 85(3) or 98(3) applied.

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This amendment is deemed to have come into force on January 1, 2024.

## **Clause 18**

### **Deemed gain or loss**

ITA  
74.2(2)

Subsection 74.2(2) provides that taxable capital gains and allowable capital losses attributed to an individual in a taxation year under certain provisions of the Act will be treated, for the purposes of the lifetime capital gains exemption, as having arisen on a disposition in the year of property by the individual.

Paragraphs 74.2(2)(a) and (b) are amended, effective for the 2024 and subsequent taxation years, to add references to the capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or a qualifying cooperative conversion under section 110.61 and new section 110.62, respectively.

This amendment applies to the 2024 and subsequent taxation years.

## **Clause 19**

### **Where ss. 74.1 to 74.3 do not apply**

ITA  
74.5(12)

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

Paragraph 74.5(12)(d) is intended to exempt contributions to a first home savings account (FHSA) from the spousal attribution rules. However, as individuals are unable to contribute to a spouse's or common-law partner's FHSA directly, the amendment repeals paragraph (d) and replaces it with an amendment to paragraph (c) in order to appropriately ensure that investment income earned in an FHSA will not be attributed back to the transferor individual.

Paragraph (c) currently provides an exception from the spousal attribution rules under sections 74.1 to 74.3 for a transfer of property by an individual to the individual's spouse or common-law partner where the transferred property is contributed to a tax-free savings account (TFSA) of which the spouse or common-law partner is the holder. Paragraph (c) is amended to extend the same exception in relation to an FHSA. In particular, the exception from the attribution rules applies only while the transferred property (or any substituted property) remains in a FHSA and only to the extent that the contribution does not result in an excess FHSA amount.

This amendment is deemed to have come into force on April 1, 2023.

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## Clause 20

### **Ship of resident corporations – gains**

ITA  
81(1)(c.2)

Subsection 81(1) of the Act provides that certain amounts are not included in income and therefore are exempt from income tax. Paragraph 81(1)(c) provides a longstanding exemption for non-residents' international shipping income, and paragraph 81(1)(c.1) extends this exemption to certain Canadian-resident corporations.

A capital gain realized by a non-resident from the disposition of a ship used principally in international traffic is generally not subject to tax in Canada, because such a ship is not taxable Canadian property of the non-resident. To improve alignment between the treatment of the gains of non-residents and the gains of residents, new paragraph 81(1)(c.2) is added to exempt from tax the portion of a capital gain earned from the disposition of a vessel (including the furniture, fittings, radiocommunication equipment and other equipment attached to the vessel) that can reasonably be considered to have accrued while the vessel was property of a corporation resident in Canada that can benefit from the exemption in paragraph 81(1)(c.1) and the vessel was used by the corporation solely to earn income from international shipping.

This amendment applies to the portion of a taxable capital gain that accrues on or after December 31, 2023.

### **Property pertaining to ships**

ITA  
81(1)(c.3)

New paragraph 81(1)(c.3) exempts from tax capital gains earned from the disposition of personal or movable property that pertained solely to the operation of vessels while the vessels were used to earn exempt international shipping income. Since capital gains realized by non-resident taxpayers from the disposition of personal or movable property that pertains to the operation of ships used principally in international traffic is generally not subject to tax in Canada (because such property is not taxable Canadian property) the exemption in new paragraph 81(1)(c.3) improves alignment between the treatment of the gains of non-resident taxpayers and the gains of Canadian-resident taxpayers.

This amendment applies to the portion of a taxable capital gain that accrues on or after December 31, 2023.

### **Ship of resident corporations – excess recapture**

ITA

#### 81(1)(c.4)

Since new subsection 81(6) and new variable E.2 in the definition “undepreciated capital cost” in subsection 13(21) require reductions to the undepreciated capital cost of a vessel for years during which the income from the vessel is exempt, new paragraph 81(1)(c.4) is added to exempt from tax a portion of a corporation’s recapture on the disposition of a vessel that was used by the corporation to earn exempt international shipping income (under paragraph 81(1)(c.1)). Pursuant to new subsection 1101(2d) of the Regulations, each such ship will be included in a separate prescribed Class 7.

The amount of recapture that is exempt from tax is the portion of the recapture under subsection 13(1) proportional to the reductions to undepreciated capital cost required by subsection 81(6) (i.e., new variable E.2) over the sum of those reductions and the depreciation allowed to the taxpayer (i.e., the sum of variables E.2 and E of the definition “undepreciated capital cost”). This proportion reflects the reductions to undepreciated capital cost that were taken in years when the income from the ship was exempt over all reductions to undepreciated capital cost that are in respect of tax depreciation.

This amendment is deemed to have come into force on December 31, 2023.

#### **Disability benefits**

##### ITA 81(1)(u)

Section 81 lists various amounts which are not included in computing a taxpayer’s income. New paragraph 81(1)(u) exempts from income amounts received under the new *Canada Disability Benefit Act*.

This amendment applies to taxation years that begin after 2024.

#### **Ship of resident corporations – undepreciated capital cost**

##### ITA 81(6)

An outlay or expense that is made or incurred for the purpose of gaining or producing exempt income is not deductible in computing a taxpayer’s income from a business or property because of paragraph 18(1)(c). As a result, a corporation resident in Canada that benefits from the exemption in paragraph 81(1)(c.1) in a year is precluded from claiming capital cost allowance in respect of a ship that is used that year to earn its exempt income from international shipping.

New subsection 81(6), in combination with new variable E.2 in the definition “undepreciated capital cost” in subsection 13(21), requires a taxpayer to reduce the undepreciated capital cost of a prescribed class that includes a vessel it used to earn exempt income from international shipping by the greatest amount it could have claimed under paragraph 20(1)(a), but for

paragraph 18(1)(c). This subsection would ensure that the appropriate capital cost allowance is available where a ship is used to earn exempt income during some years and non-exempt income during other years. Pursuant to new subsection 1101(2d) of the Regulations, each such vessel will be included in a separate class prescribed in Class 7 in Schedule II to the Regulations.

This amendment is deemed to have come into force on December 31, 2023.

## Clause 21

### Immediate Intergenerational Business Transfer

ITA

84.1(2.31)(f)(ii)

Subparagraph 84.1(2.31)(f)(ii) provides a condition for paragraph 84.1(2)(e) to apply to a disposition of subject shares by an individual taxpayer to a purchaser corporation controlled by the individual's child or children that would otherwise be subject to subsection 84.1(1).

Subparagraph (f)(ii) requires that, for a minimum period of 36 months after the disposition of subject shares by the taxpayer to the purchaser corporation controlled by their child or children, the child (or at least one member of the group of children) is actively engaged on a regular, continuous and substantial basis in the underlying active business. A child working at least an average of 20 hours per week during the portion of the year the active business operates is deemed to satisfy this condition per the provision's reference to paragraph 120.4(1.1)(a).

Subparagraph(f)(ii) is amended to clarify that a child who does not work a minimum of 20 hours per week during the operating hours of the business may, depending on the particular facts and circumstances, still be considered to be actively engaged on a regular, continuous and substantial basis in the underlying active business. For example, an adult child working full-time in a business that operates year-round is unable to continue working for a period of two months in the year due to a severe short-term illness. In this situation, the child could, depending on the particular facts and circumstances, still be considered actively engaged on a regular, continuous and substantial basis in the underlying active business.

This amendment is deemed to come into force as of January 1, 2024.

ITA

84.1(2.31)g)

Subsection 84.1(2.31) is intended to accommodate the intergenerational transfer of an active business from an individual owner-manager to their adult owner-manager child (within the meaning provided in paragraph 84.1(2.3)(a)) in a manner that protects the integrity of the anti-avoidance rule in subsection 84.1(1). It provides conditions for paragraph 84.1(2)(e) to apply to a disposition of subject shares by an individual taxpayer to a purchaser corporation controlled by the individual's child that would otherwise be subject to subsection (1). An individual taxpayer and their child may elect to satisfy the conditions of either subsection (2.31) or subsection (2.32) in order for the exception in paragraph (2)(e) to apply.

Paragraph 84.1(2.31)(g) is intended to ensure that management of the underlying active business is transferred to the taxpayer's child (or at least one member of the group of children). Paragraph (g) requires that, before a certain period has elapsed, the taxpayer (and a spouse or common-law partner of the taxpayer):

- transfer to their child (or at least one member of the group of children) the management of each active business of the subject corporation and any relevant group entity, and
- permanently cease to manage such business.

The wording of paragraph 84.1(2.31)(g) is amended to clarify that the provision is intended to specify only the time by which reasonable steps must have been taken by the taxpayer and their spouse to transfer management of the business to their child. In other words, the provision could be satisfied if reasonable steps to transfer management of the business to the child were taken before the disposition time.

However, if other hallmarks of a genuine intergenerational business transfer under subsection (2.31) have already been fulfilled prior to the disposition time (such as a child who already controls the subject corporation prior to the disposition time), a question may arise under the general anti-avoidance rule regarding whether the disposition of the subject shares to the purchaser corporation was undertaken for the purpose of transferring a business to the next generation or merely to facilitate the payment of a corporate distribution in the form of a capital gain.

This amendment is deemed to have come into force on January 1, 2024.

### **Gradual Intergenerational Business Transfer**

ITA

84.1(2.32)(g)(ii)

Subparagraph 84.1(2.32)(g)(ii) provides a condition for paragraph 84.1(2)(e) to apply to a disposition of subject shares by an individual taxpayer to a purchaser corporation controlled by the individual's child or children that would otherwise be subject to subsection 84.1(1).

Subparagraph (g)(ii) requires that, for a minimum period of 60 months after the disposition of subject shares by the taxpayer to the purchaser corporation controlled by their child or children, the child (or at least one member of the group of children) is actively engaged on a regular, continuous and substantial basis in the underlying active business. A child working at least an average of 20 hours per week during the portion of the year the active business operates is deemed to satisfy this condition per the provision's reference to paragraph 120.4(1.1)(a).

Subparagraph (g)(ii) is amended to clarify that a child who does not work a minimum of 20 hours per week during the operating hours of the business may, depending on the particular facts and circumstances, still be considered to be actively engaged on a regular, continuous and substantial basis in the underlying active business. For example, an adult child working full-time in a business that operates year-round is unable to continue working for a period of two months

in the year due to a severe short-term illness. In this situation, the child could, depending on the particular facts and circumstances, still be considered actively engaged on a regular, continuous and substantial basis in the underlying active business.

This amendment is deemed to come into force as of January 1, 2024.

ITA  
84.1(2.32)h)

Subsection 84.1(2.32) is intended to accommodate the gradual intergenerational transfer of an active business from an individual owner-manager to their adult owner-manager child (within the meaning provided in paragraph 84.1(2.3)(a)) in a manner that protects the integrity of subsection 84.1(1). New subsection (2.32) provides conditions for paragraph 84.1(2)(e) to apply to a disposition of subject shares by an individual taxpayer to a purchaser corporation controlled by the individual's child that would otherwise be subject to subsection (1). An individual taxpayer and their child may elect to satisfy the conditions of either new subsection (2.32) or new subsection (2.31) in order for the exception in paragraph (2)(e) to apply.

Paragraph 84.1(2.32)(h) is intended to ensure that management of the underlying active business is transferred to the taxpayer's child (or at least one member of the group of children). Paragraph (h) requires that, before a certain period has elapsed, the taxpayer (and a spouse or common-law partner of the taxpayer):

- transfer to their child (or at least one member of the group of children) the management of each active business of the subject corporation and any relevant group entity, and
- permanently cease to manage such business.

The wording of paragraph 84.1(2.32)(h) is amended to clarify that the provision is intended to specify only the time by which reasonable steps must have been taken by the taxpayer and their spouse to transfer management of the business to their child. In other words, the provision could be satisfied if reasonable steps to transfer management of the business to the child were taken before the disposition time.

However, if other hallmarks of a genuine intergenerational business transfer under subsection (2.32) have already been fulfilled prior to the disposition time (such as a child who already controls the subject corporation prior to the disposition time), a question may arise under the general anti-avoidance rule regarding whether the disposition of the subject shares to the purchaser corporation was undertaken for the purpose of transferring a business to the next generation or merely to facilitate the payment of a corporate distribution in the form of a capital gain.

This amendment is deemed to have come into force on January 1, 2024.

**Clause 22**

## Foreign affiliate share-for-share exchange – exception

ITA

85.1(4)

Paragraph 85.1(4)(a) of the Act is an anti-avoidance rule that contains an exception to the rule in subsection 85.1(3), which otherwise allows a taxpayer to transfer the shares of a foreign affiliate (the first affiliate) to another foreign affiliate (the second affiliate) on a “rollover” basis. The exception provides that the rollover in subsection 85.1(3) does not apply to the transfer of a share of the first affiliate where all or substantially all of the first affiliate’s property is excluded property (as defined in subsection 95(1)) and the share is subsequently disposed of as part of a transaction or event, or as part of a series of transactions or events, to an arm’s length person or partnership (other than a foreign affiliate in which the taxpayer has a qualifying interest (as defined in paragraph 95(2)(m) of the Act)).

Paragraph (a) is intended to prevent taxpayers from transferring shares of a directly held foreign affiliate to another foreign affiliate on a rollover basis to defer Canadian taxation of a capital gain on the disposition of the first affiliate shares in certain circumstances. In the absence of this paragraph, such a deferral would be available if the first affiliate shares were excluded property at the time of that disposition because the gain would be included in computing the hybrid surplus of a disposing foreign affiliate, which is generally not subject to tax until it is distributed to a taxpayer.

Paragraph (a) is substantially re-organized and amended to strengthen the existing exception to the subsection 85.1(3) rollover in certain ways, as well as to deny the rollover in cases where there is a disposition to a non-arm’s length non-resident (other than a controlled foreign affiliate, for purposes of section 17, of the taxpayer or a successor corporation of the taxpayer). This latter amendment targets not only the deferral of tax on capital gains, but also transactions that could give rise to the avoidance or deferral of tax in respect of distributions from foreign affiliates.

Subparagraph (a)(i) now provides, as a condition for the application of this subsection, that there must be – as part of a transaction, event or series that includes the disposition to which the rollover under subsection 85.1(3) otherwise applies – a disposition of property that is any of: the share of the particular foreign affiliate, property (other than non-share consideration received on that rollover) substituted for that share or property that derives any of its fair market value from the share or such substituted property. This latter disposition, now referred to throughout paragraph (a) as the “relevant disposition”, may be the initial disposition to which the rollover otherwise applies, or it may be a separate, subsequent disposition.

The main changes to the condition in subparagraph (a)(i) are the express inclusion of dispositions of property that is substituted for the share of the particular affiliate, or that derives any of its fair market value from either the share or substituted property. These changes are intended to address a range of scenarios, including where there is a direct or indirect sale of an interest in the particular foreign affiliate (e.g., through the sale of shares of a holding company), for example following one or more substitutions of property, without the same particular affiliate shares that were originally transferred to the second affiliate being directly disposed of to the acquirer.

Notably, to capture all relevant scenarios, subparagraph (a)(i) does not require a specific person to have substituted, or effected the substitution of, one property for another, or to have disposed of a substituted property (or of the particular affiliate shares or any property that derives any of its value from those shares) to a relevant acquirer.

A relevant disposition only triggers a denial of the rollover if it is to a person or partnership (referred to as the “acquirer”) described in subparagraph (a)(ii).

In general, subparagraph (a)(ii) retains the requirement, now expressed in clause (A), that the acquirer not deal at arm’s length with the taxpayer (with the arm’s length status being tested immediately after the transaction, event or series, as under the existing rule), unless the acquirer is a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) or the property is not excluded property (as defined in subsection 95(1)) of a foreign affiliate of certain relevant taxpayers. These two exceptions, expressed in new subclauses (I) and (II), largely reflect a continuation of the existing rule and policy but with certain changes. First, the time at which the excluded property status is tested is changed from immediately before the initial transfer of the particular foreign affiliate share to the time of the relevant disposition. This change is intended to better target the conversion of a taxable capital gain into tax-deferred hybrid surplus. It is assumed that, if the disposed-of property is not excluded property at the time of the relevant disposition, the relevant disposition will give rise to foreign accrual property income, or other tax consequences (in circumstances where the disposed-of property is not owned by a foreign affiliate), and thus it would not be appropriate to deny the rollover.

Additionally, two new terms are introduced, “particular person” and “successor corporation”, which are both defined in new subsection 85.1(4.2). These definitions are relevant for the arm’s length test, the qualifying interest test and the excluded property test, and generally expand the scope of entities whose status must be considered under these tests to include certain Canadian entities within the taxpayer’s corporate group. Clause (A) now tests whether an acquirer deals at arm’s length with the taxpayer or a person that is a particular person in respect of the taxpayer. Further, the exception for arm’s length acquirers that are qualifying interest foreign affiliates of the taxpayer is now expanded to include qualifying interest foreign affiliates of successor corporations of the taxpayer. Finally, the excluded property test is expanded to consider whether the disposed-of property is excluded property of the taxpayer, a particular person in respect of the taxpayer or a partnership any member of which is the taxpayer or a particular person in respect of the taxpayer. These changes, collectively, recognize that corporate transformations or reorganizations that result in a change in the identity of the taxpayer should not defeat the application of this anti-avoidance rule where the mischief it seeks to address could otherwise arise (subject to the application of the general anti-avoidance rule), nor deny the benefit of the exception for dispositions to qualifying interest foreign affiliates or dispositions of non-excluded property by a foreign affiliate in cases where the policy is not undermined.

Subparagraph (a)(ii) is further amended to include clause (B), which denies the rollover if the acquirer is, immediately after the relevant disposition, a non-resident person or partnership that does not deal at arm’s length with the taxpayer or with a particular person in respect of the taxpayer. Because this clause addresses policy concerns beyond the conversion of taxable capital

gains into hybrid surplus, it is not conditioned on the disposed-of property being excluded property of a foreign affiliate at the time of the relevant disposition. However, clause (B) contains two exceptions, in its subclauses (I) and (II). First, the rollover denial rule does not apply if the acquirer is a non-resident corporation that is a controlled foreign affiliate of the taxpayer, or of a successor corporation of the taxpayer, for the purposes of section 17. Second, it does not apply to a relevant disposition of a share of a corporation resident in Canada, even though such property may be substituted for, or derive its value from, the particular foreign affiliate share. This exception recognizes that a disposition of a share of a corporation resident in Canada is not expected to give rise to the policy concerns that clause (B) seeks to address. As under clause (A), the new definitions “particular person” and “successor corporation” are relevant for the arm’s length test and the section 17 controlled foreign affiliate test under this clause (B).

The amendments to subsection 85.1(4) apply to dispositions that occur on or after August 15, 2025.

In addition, to ensure that subsection 85.1(4) applies appropriately in respect of structures containing partnerships:

- the membership “look-through” rules for tiered partnerships in subsection 93.1(3) are extended to apply for the purposes of subsection 85.1(4.1) (by adding a reference to that subsection in paragraph 93.1(3)(c)); and
- new rules are introduced in new subsection 85.1(4.1), applicable for the purposes of subparagraph 85.1(4)(a)(ii), to determine whether a partnership is dealing, or not, at arm’s length with a person or another partnership.

For more information, see the commentary on subsection 85.1(4.1).

### **Interpretation – partnerships**

ITA

85.1(4.1)

New subsection 85.1(4.1) of the Act provides rules of interpretation for the purposes of applying paragraph 85.1(4)(a). Paragraphs (a) and (b) of the subsection provide rules for determining whether a partnership is dealing, or not, at arm’s length with a person or another partnership for the purposes of clauses 85.1(4)(a)(ii)(A) and (B), respectively. Where a taxpayer transfers shares of a particular foreign affiliate to another foreign affiliate, these new rules apply if either or both of the “relevant taxpayer” (which refers to the taxpayer or a particular person, within the meaning of new subsection 85.1(4.2)) and a subsequent acquirer (referred to as the “acquirer”) of the particular foreign affiliate shares (or property that is substituted for, or derives its value from, those shares) are partnerships.

The first series of rules, in paragraph 85.1(4.1)(a), deem certain parties to be dealing at arm’s length for the purposes of clause 85.1(4)(a)(ii)(A). They provide that, if only one party is a partnership, the relevant taxpayer is deemed to deal at arm’s length with the acquirer if any

member of the partnership deals at arm's length with the other party. If both parties are partnerships, the rule deems the relevant taxpayer to deal at arm's length with the acquirer if any member of one party deals at arm's length with the other party or with a member of the other party.

The second series of rules, in paragraph 85.1(4.1)(b), deem certain acquirers to be non-resident persons with whom the relevant taxpayer does not deal at arm's length for the purposes of clause 85.1(4)(a)(ii)(B). They provide that, if only one party is a partnership, the acquirer is deemed to be a non-resident person with whom the relevant taxpayer does not deal at arm's length if:

- any member of the partnership does not deal at arm's length with the other party; and
- the acquirer is a non-resident person or, if the acquirer is a partnership, any member of the acquirer is a non-resident person.

If both parties are partnerships, the acquirer is deemed to be a non-resident person with whom the relevant taxpayer does not deal at arm's length if:

- one party, or any member of that party, does not deal at arm's length with the other party, or any member of that other party; and
- any member of the acquirer is a non-resident person.

Note that it is possible for both deeming rules to apply in respect of the same acquirer. For example, if the acquirer is a partnership, one member of which deals at arm's length with a relevant taxpayer and another member of which does not deal at arm's length with the relevant taxpayer, the acquirer is deemed to deal at arm's length with the relevant taxpayer for the purposes of clause 85.1(4)(a)(ii)(A) and is deemed not to deal at arm's length with the relevant taxpayer for the purposes of clause 85.1(4)(ii)(B) (further assuming at least one member of the acquirer is a non-resident person). In that case, the rollover is denied under clause 85.1(4)(ii)(B) and, if the disposed-of property is excluded property (as defined in subsection 95(1)), under clause 85.1(4)(ii)(A).

New subsection 85(4.1) applies in respect of dispositions that occur on or after August 15, 2025.

## **Definitions**

ITA  
85.1(4.2)

New subsection 85.1(4.2) of the Act provides two definitions that apply for the purposes of that subsection, subsections 85.1(4) and (4.1).

### ***“particular person”***

The definition “particular person” is relevant for the purposes of subsection 85.1(4), which denies a taxpayer a rollover under subsection 85.1(3) of shares of a foreign affiliate of the taxpayer in certain situations.

A particular person in respect of a taxpayer, at any time, means a person that is, at that time,

- resident in Canada and not dealing at arm's length with the taxpayer;
- a successor corporation of the taxpayer; or
- resident in Canada and not dealing at arm's length with any other particular person in respect of the taxpayer.

Although this definition applies in respect of a taxpayer, the “successor corporation” reference contemplates situations where the taxpayer has been transformed, i.e., through an amalgamation or wind-up such that that taxpayer no longer exists.

### ***“successor corporation”***

The definition “successor corporation” is relevant for the purposes of paragraph 85.1(4)(a), which denies a rollover under subsection 85.1(3) of shares of a foreign affiliate of a taxpayer in certain situations. It is also relevant for the definition “particular person” in this subsection.

A successor corporation, of a particular corporation, means a corporation into which the particular corporation is transformed by means of an amalgamation (within the meaning of subsection 87(1)) or a winding-up under subsection 88(1). This is an iterative concept, which includes multiple such transformations of a particular corporation.

New subsection 85(4.2) applies in respect of dispositions that occur on or after August 15, 2025.

## **Clause 23**

### **Continuing corporation**

ITA  
87(2)(j.6)

Paragraph 87(2)(j.6) provides continuity rules. Specifically, it provides that for the purposes of a number of provisions, including subsection 127(10.2), the corporation formed as the result of an amalgamation is considered to be the same corporation as, and a continuation of, each predecessor corporation. Because of paragraph 88(1)(e.2), these continuity rules also apply in the context of a winding-up to which subsection 88(1) applies.

Paragraph 87(2)(j.6) is amended to add a reference to subsections 127(10.31) and (10.32), which allow Canadian-controlled private corporations (CCPCs) to elect to have their expenditure limit for the enhanced SR&ED investment tax credit determined based on the same revenue phase-out structure as eligible Canadian public corporations (ECPCs).

This amendment applies to taxation years beginning on or after December 16, 2024.

Paragraph 87(2)(j.6) is amended to add references to the definition “qualifying cooperative conversion” in subsection 248(1) and to new section 110.62, which provides the conditions for the application of the capital gains deduction for qualifying cooperative conversions.

This amendment is consequential upon the introduction of new section 110.62. This amendment ensures that an amalgamation (as defined in subsection 87(1)) of a subject corporation and a purchaser corporation (as defined under the definition “qualifying cooperative conversion” in subsection 248(1)) and a winding-up under subsection 88(1) of a subject corporation into a purchaser corporation, are permitted under new section 110.62, which will continue to apply to the reorganized corporate group. For more information, see the commentary on section 110.62.

This amendment is deemed to have come into force on January 1, 2024.

### **Certain investment tax credits**

ITA  
87(2)(qq.1)

Paragraph 87(2)(qq.1) treats the corporation formed on an amalgamation as the same corporation as, and a continuation of, each of its predecessors, for the purposes of computing the corporation’s clean economy investment tax credits.

This paragraph is amended to provide the same treatment for the purposes of new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Foreign merger – anti-avoidance**

ITA  
87(8.3)

Subsection 87(8.3) of the Act is intended to prevent the use of certain structures aimed at circumventing the anti-avoidance rule in subsection 85.1(4). In particular, it is intended to ensure that certain foreign merger transactions cannot be used to effectively transfer shares of a foreign affiliate in a manner that is inconsistent with subsection 85.1(4). Subsection 87(8.3) is amended, in parallel to amendments made to subsection 85.1(4).

Subsection 87(8.3) provides that subsection 87(8), which allows certain foreign mergers to qualify for the tax-deferred amalgamation provisions in subsections 87(4) and (5), does not apply in respect of a taxpayer’s shares of a predecessor foreign corporation (as defined in subsection 87(8.1)) in the context of a foreign merger (as defined in subsection 87(8.1)) where four conditions are present.

The first condition, contained in paragraph 87(8.3)(a), is maintained. It requires that the new foreign corporation is, immediately after the foreign merger, a foreign affiliate of the taxpayer.

Paragraphs (b) and (c) are restructured and amended in line with the amendments to paragraph 85.1(4)(a), modified for the foreign merger context as required. For more information, see the note to subsection 85.1(4).

In addition, to ensure that subsection 87(8.3) applies appropriately in respect of structures containing partnerships:

- new rules are introduced in new subsection 87(8.31), applicable for the purposes of paragraph 87(8.3)(c), to determine whether a partnership is dealing, or not, at arm's length with a person or another partnership; and
- the membership "look-through" rules for tiered partnerships in subsection 93.1(3) are amended to reflect the addition of new subsection 87(8.31) by removing the reference to subsection 87(8.3) and adding a reference to subsection 87(8.31) to paragraph 93.1(3)(c).

For more information, see the commentary on subsection 87(8.31).

The amendments to subsection 87(8.3) apply to dispositions that occur on or after August 15, 2025.

### **Interpretation –partnerships**

ITA  
87(8.31)

New subsection 87(8.31) of the Act is added to provide rules for determining whether a partnership is dealing, or not, at arm's length with a person or another partnership for the purposes of paragraph 87(8.3). Where a taxpayer's shares of a predecessor foreign corporation that is a foreign affiliate of the taxpayer are exchanged for or become shares of a new foreign corporation or foreign parent corporation, these new rules apply if either or both of the "relevant taxpayer" (which refers to the taxpayer or a particular person, within the meaning of new subsection 85.1(4.2)) and a subsequent acquirer of the new foreign corporation shares (or property that is substituted for, or derives its value from, those shares) are partnerships.

This new subsection mirrors new subsection 85.1(4.1) and ensures consistency in the application of the anti-avoidance rules contained in subsections 85.1(4) and 87(8.3). For more information, see the note to subsection 85.1(4.1).

New subsection 87(8.31) applies in respect of dispositions that occur on or after August 15, 2025.

### **Clause 24**

#### **Winding-up**

ITA  
88(1)(e.31)

Paragraph 88(1)(e.31) allows the flow-through of investment tax credits for the purposes of sections 127.44, 127.45, 127.48 and 127.49 and Part XII.7 to a parent corporation on a wind-up of the subsidiary. A parent corporation could be subject to recapture or recovery of these investment tax credits.

Paragraph 88(1)(e.31) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Winding-up of Canadian corporation**

ITA  
88(2)(c)

Subsection 88(2) applies to a winding-up of a Canadian corporation to which subsection 88(1) does not apply.

Paragraph 88(2)(c) provides that paragraph 12(1)(t), which generally requires investment tax credits claimed in a preceding taxation year to be included in computing a taxpayer's income to the extent that they have not been applied to reduce certain related expenditures or amounts, may also apply in respect of investment tax credits claimed by the corporation in the year in which all or substantially all of its property is distributed on a winding-up.

Paragraph 88(2)(c) is amended to reflect the introduction of the clean electricity investment tax credit by adding a reference to new subsection 127.491(10). A reference is also added to new subparagraph 53(2)(c)(vi.5), which applies cost base reductions to partners claiming this new investment tax credit.

This amendment applies on or after April 16, 2024.

### **Suppression election**

ITA  
88(3.3)

Subsections 88(3.3) and (3.4) of the Act allow a taxpayer to elect, in accordance with the rules prescribed in section 5911 of the Regulations, to reduce (*i.e.*, “suppress”) the amount for which a distributed property is considered disposed of under paragraph 88(3)(a) where the distributed property is capital property of a foreign affiliate that is the subject of a “qualifying liquidation and dissolution”. This reduced amount is then deemed under paragraph 88(3)(c) to be the taxpayer's cost of the distributed property, resulting in a reduction to the taxpayer's proceeds of disposition of the dissolving affiliate's shares by the application of paragraph 88(3)(d) and

subsection 88(3.2). The purpose of this election is to allow a taxpayer to defer some or all of any gain that would have otherwise been realized on the disposition of the dissolving affiliate shares until the affiliate's distributed property is disposed of by the taxpayer. Such gains arise where the aggregate relevant cost base of the distributed property ("inside" basis) exceeds the adjusted cost base of the dissolving affiliate shares ("outside" basis).

Subsection 88(3.3) was originally introduced as a concessionary measure to facilitate the reorganization of Canadian taxpayers' foreign affiliate structures without triggering taxable gains. It was never intended to allow taxpayers to effectively eliminate the gain accrued in respect of dissolving affiliate shares or defer it in circumstances where a deferral would be inappropriate in policy terms. For example, if the distributed property, in respect of which the suppression election is made, were shares or debt of a Canadian-resident corporation, the accrued gain could (subject to the application of the general anti-avoidance rule):

- be eliminated through a reorganization of the Canadian-resident corporation following the dissolution; or
- be deferred indefinitely while still allowing a Canadian-resident corporation use of the underlying property.

Accordingly, subsection 88(3.3) is amended to restrict its application to distributed property, of a dissolving affiliate, that is shares of another foreign affiliate. This restriction is made to more clearly align the rule with its original policy intent.

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

## Clause 25

### Definitions

ITA  
89(1)

#### ***“capital dividend account”***

The “capital dividend account” (CDA) is a mechanism intended to achieve integration by generally allowing amounts that have borne a sufficient level of tax at the corporate level to flow through a private corporation without attracting an extra level of tax. To the extent that a private corporation has a CDA balance, it may generally elect to treat dividends that it pays as capital dividends. Capital dividends may be received tax-free by the corporation's shareholders.

Consequential to changes to the definition of “relevant tax factor” (RTF), new paragraph (h) is added to the definition of CDA to address the integration of certain earnings of foreign affiliates as they are repatriated to and distributed by Canadian-controlled private corporations (CCPCs) and substantive CCPCs to their individual shareholders.

Under the current rules, amounts repatriated from foreign affiliates to CCPCs and distributed to individual shareholders are generally integrated through the system of deductions available for dividends received from foreign affiliates in section 113 and through the “general rate income pool” (defined in subsection 89(1), and from which CCPCs may distribute eligible dividends). However, due to the new RTF for CCPCs and substantive CCPCs, the current rules would not effectively integrate such amounts.

To address integration, new paragraph (h) provides additions to the CDA of a CCPC or a substantive CCPC. The amount added to CDA approximates the portion of certain after-tax earnings repatriated to the corporation from its foreign affiliate to the extent such earnings had been subject to a notional tax rate of 52.63 per cent (represented by the new “relevant tax factor” of 1.9 applicable to such corporations). This addition to the CDA represents after-tax income that was subject to tax at a rate approximating the highest combined federal and provincial personal income tax rate and therefore, to achieve integration, should not be subject to additional Canadian income tax upon its distribution to the corporation’s Canadian resident individual shareholders.

More specifically, new paragraph (h) provides additions to the CDA equal to the total of all amounts each of which is, if the corporation was a CCPC throughout the year or a substantive CCPC at any time in the year,

- (i) an amount deductible under paragraph 113(1)(a.1) in computing the taxable income of the corporation for the particular taxation year in respect of a dividend received on a share of the capital stock of a foreign affiliate less the amount determined under sub-subclause 113(1)(a.1)(ii)(A)(II)1 in respect of the dividend (i.e. the non-taxable portion of hybrid surplus plus the after-tax amount of the taxable portion of hybrid surplus that was subject to sufficient foreign tax, as determined based on the RTF of 1.9, less any foreign withholding tax paid in respect of the dividend prescribed to have been paid out of hybrid surplus), and
- (ii) the total of the amounts deductible under paragraphs 113(1)(b) and (c) in computing the taxable income of the corporation for the particular taxation year in respect of a dividend received on a share of the capital stock of a foreign affiliate if
  - no election was made by the corporation for the particular taxation year under subsection 93.4(3) with respect to that amount, or
  - an election was made under subsection 93.4(3), to the extent that the amount was determined under paragraph 93.4(3)(c) less the amount determined under clause 113(1)(c)(i)(A) in respect of the dividend (i.e. the after-tax amount of the taxable surplus that was subject to sufficient foreign tax, as determined based on the RTF of 1.9, plus the after-tax amount of withholding tax-sheltered amounts).

For amounts deductible under paragraphs 113(1)(b) and (c) in computing the taxable income of the corporation for the particular taxation year in respect of a dividend received on a share of the capital stock of a foreign affiliate where an election under subsection 93.4(3) has been made, the amounts determined under paragraph 93.4(3)(b) would have been subject to the higher RTF of 4 and would not have borne a sufficient level of tax at the corporate level to justify being included

in a corporation's CDA; such amounts would thus instead be added to the corporation's general rate income pool.

These amendments apply to taxation years that begin on or after April 7, 2022.

For more information, see the commentary on the definition of "general rate income pool" in subsection 89(1), section 93.4 and the definition "relevant tax factor" in subsection 95(1).

### ***"general rate income pool"***

The definition "general rate income pool" (GRIP) in subsection 89(1) of the Act is relevant for determining the extent to which a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation can pay eligible dividends in any given taxation year. Generally, a corporation's GRIP reflects the amount of its after-tax income that was subject to tax at the general corporate tax rate.

Existing paragraph (b) of variable E of the definition adds to GRIP all amounts in respect of dividends received from foreign affiliates of the taxpayer to the extent those amounts are deductible under any provision of section 113. A number of amendments are made in respect to this paragraph.

First, paragraph (b) of variable E is amended consequential to the amendment to the definition "relevant tax factor" (RTF) in subsection 95(1) and the resulting adjustment to the determination of the deduction for inter-corporate dividends paid to a CCPC or a substantive CCPC from the hybrid surplus or taxable surplus of a foreign affiliate under subsection 113(1). More specifically, paragraph (b) of variable E is amended to remove from the GRIP of a CCPC an amount equal to the deductions claimed in respect of amounts deductible under paragraphs:

- 113(1)(a.1) (i.e. repatriations of a foreign affiliate's hybrid surplus (representing certain capital gains)),
- 113(1)(b) (i.e. repatriations of a foreign affiliate's taxable surplus), unless an election was filed with respect to the amount under subsection 93.4(3) and to the extent that the amount was determined under paragraph 93.4(3)(b) (in other words, the portion of an amount deductible under paragraph 113(1)(b) that was calculated using the RTF of 4 will remain in GRIP),
- 113(1)(c) (in respect of the payment of withholding tax to a foreign government on inter-corporate dividends received from a foreign affiliate prescribed to be paid out of taxable surplus) (unless an election was filed with respect to the amount under subsection 93.4(3) and to the extent that the amount was determined under paragraph 93.4(3)(b) (in other words, the portion of an amount deductible under 113(1)(c) that was calculated using the RTF of 4 will remain in GRIP)).

The integration of these amounts will now be addressed through the capital dividend account. For more information, see the commentary on the definition "capital dividend account" in subsection 89(1), section 93.4, and the definition "relevant tax factor" in subsection 95(1).

Second, the amount that can be added to a deposit insurance corporation's GRIP with respect to amounts deductible under section 113 is modified to better represent the amount of the after-tax earnings repatriated to the corporation from a foreign affiliate. This is accomplished by removing the amount of foreign withholding tax paid with respect to the dividend from the amount that is added to GRIP under variable E of the definition. This amendment more accurately reflects the after-tax amount determined under the general corporate rate and that remains on hand for distribution.

These amendments apply to taxation years that begin on or after April 7, 2022.

Third, paragraph (b) of variable E is amended to exclude amounts deductible under paragraph 113(1)(d) or subsection 113(2), both of which represent *de facto* returns of capital rather than true dividends.

This amendment applies to taxation years that begin on or after August 9, 2022.

## **Clause 26**

### **Specified provisions for subsection (1)**

ITA  
93.1(1.1)

Where a Canadian-resident corporation owns shares of a non-resident corporation through a partnership, subsection 93.1(1) applies in determining whether the non-resident corporation is a foreign affiliate of the Canadian-resident corporation for the purposes of certain provisions of the Act and Regulations. In those circumstances, subsection 93.1(1) provides a look-through rule that deems the Canadian corporation to own its proportionate number of the non-resident corporation's shares based on the relative fair market value of its interest in the partnership. The rule also applies where a foreign affiliate of the Canadian corporation owns shares of another non-resident corporation through a partnership.

Subsection 93.1(1.1) lists the purposes for which the look-through rule in subsection 93.1(1) applies. Paragraph 93.1(1.1)(a) is amended by adding a reference to section 93.4 (other than subsection 93.4(2)) to ensure that foreign affiliate status can flow through a partnership for the purposes of the new elective relieving regime with respect to foreign accrual business income earned by an affiliate.

This amendment generally applies to taxation years that begin after 2025. However, as section 93.4 applies to earlier taxation years where an election is filed under subsection 93.4(4) or (5), the amendments to subsection 93.1(1.1) apply to earlier taxation years where an election is filed under subsection 93.4(4) or (5). For more information, see the commentary on those subsections.

### **Tiered partnerships**

ITA

### 93.1(3)(c)

Subsection 93.1(3) of the Act provides "look-through" rules for tiered partnerships that apply for the purposes of certain provisions of the Act. Paragraph 93.1(3)(c) is amended to add a reference to new subsections 85.1(4.1) and 87(8.31). For further information, please see the commentary on subsections 85.1(4) and (4.1) and 87(8.31).

This amendment is deemed to come into force on August 15, 2025.

## Clause 27

### Foreign accrual business income

ITA  
93.4

#### *Overview*

Neutrality is a fundamental principle of Canadian tax policy. The Canadian income tax system aims to achieve neutrality by ensuring that income earned through a corporation is taxed at roughly the same rate as income that is earned directly by a Canadian resident individual. This objective is commonly referred to as integration.

To encourage business investment and growth, the business income of a corporation is subject to a low rate of tax in the corporation and is integrated only once dividends are paid out to shareholders. In contrast, the "aggregate investment income" (AII) of Canadian-controlled private corporations (CCPCs) and substantive CCPCs (SCCPCs) is subject to additional refundable tax that approximates the highest marginal tax rate payable by Canadian resident individuals. This ensures no tax deferral advantage can be obtained by Canadian resident individuals earning their investment income through a holding corporation rather than directly.

This refundable tax forms part of a system of rules that link the taxation of income earned by corporations and their individual shareholders to achieve integration. The foreign accrual property income (FAPI) rules are a component of the system of integration.

Very generally, the FAPI rules aim to prevent Canadian taxpayers from gaining a tax deferral advantage from earning investment income and certain other types of highly mobile income through controlled foreign affiliates (i.e., generally, a non-resident corporation in which the taxpayer has a controlling interest). The rules do this by requiring a Canadian shareholder to include in its income for a taxation year its participating share of any controlled foreign affiliate's FAPI for the year on an accrual basis under subsection 91(1), regardless of whether such amounts are distributed to the Canadian shareholder. If the Canadian shareholder is a CCPC or SCCPC, any FAPI amounts included under subsection 91(1) minus any deductions claimed under subsection 91(4) for the year are included in AII and subject to the same additional refundable tax described above.

To prevent double taxation, a “foreign accrual tax” (FAT) deduction is available under subsection 91(4) in respect of foreign taxes paid on FAPI that is included in a Canadian shareholder’s income under subsection 91(1). The deductible amount is determined by grossing up the foreign taxes paid by the “relevant tax factor” (RTF), which is defined in subsection 95(1). The RTF definition is being amended to subject CCPCs, SCCPCs and certain partnerships to an RTF of 1.9, instead of the RTF of 4 that previously applied, in order to more accurately reflect the corporate tax rate (approximating the highest personal income tax bracket) that would otherwise apply to investment income earned directly by a CCPC or a SCCPC. Prior to the amendment, FAT of \$25 on FAPI of \$100 was sufficient to eliminate any FAPI inclusion. With the new RTF of 1.9, each dollar of FAT now provides CCPCs, SCCPCs and certain partnerships with approximately half of the tax shelter it previously provided.

To account for the fact that FAPI, as defined in subsection 95(1), includes certain types of income that are not included in AII when earned directly by a CCPC or SCCPC in Canada, section 93.4 is introduced to provide an elective relieving regime that allows CCPCs and substantive CCPCs to preserve the higher RTF of 4 on amounts included under the new definitions “foreign accrual business income” (FABI) and “FABI surplus” contained in subsection 93.4(1). This elective regime is intended to improve integration by aligning the treatment of these amounts under the domestic and foreign anti-deferral regimes.

#### *FABI and FABI surplus*

Very generally, the FABI of a foreign affiliate for a taxation year consists of amounts included in the affiliate’s FAPI (reduced for relevant “foreign accrual property loss” and “foreign accrual capital loss” amounts), that would not be AII if the affiliate were a CCPC (and all amounts included in its FAPI were from a source in Canada) and that are not derived from direct or indirect payments to the affiliate that erode income of a non-arm’s length taxpayer that would otherwise have been subject to tax at a high rate or that reduce the FAPI (other than FABI) of a foreign affiliate. Thus, a payment received by the affiliate will be treated as FAPI (other than FABI) and be subject to the RTF of 1.9 if:

- it is made by a payer that is
  - a taxpayer of whom the affiliate is a foreign affiliate, or a person not dealing at arm’s length with the affiliate or with any taxpayer of whom the affiliate is a foreign affiliate,
  - a foreign affiliate of a taxpayer of whom the affiliate is a foreign affiliate or of another taxpayer that does not deal at arm’s length with such a taxpayer or with the affiliate, or
  - a partnership any member of which is a person or partnership listed above, and
- the payment is deductible in computing the income of the payer that would otherwise be subject to tax at a rate that approximates the highest personal income bracket – for example, AII or FAPI (other than FABI).

A foreign affiliate’s FABI surplus is the amount that would be the affiliate’s taxable surplus if it was limited to:

- the affiliate's FABI (and losses in respect of FABI sources);
- dividends received out of another affiliate's FABI surplus, less dividends paid out of the affiliate's own FABI surplus; and
- the active business earnings of the affiliate that are not FAPI but are included in its taxable surplus.

For more information, see the commentary on those definitions in subsection 93.4(1).

### *New elections*

New section 93.4 provides CCPCs, SCCPCs and partnerships all the members of which (other than non-resident persons) are corporations in the year with two new relieving elections:

- an election under subsection 93.4(2) to use the RTF of 4 in calculating a deduction under subsection 91(4) in respect of FAT that can reasonably be regarded as attributable to the FABI of a controlled foreign affiliate; and
- an election under subsection 93.4(3) to use the RTF of 4 in calculating a deduction under paragraphs 113(1)(b) and (c) on the portion of any dividend that is considered to be paid out of a foreign affiliate's FABI surplus.

The new election under subsection 93.4(2) ensures that any FAPI income inclusion under subsection 91(1) that may reasonably be regarded as attributable to FABI will be completely offset by a deduction under subsection 91(4) where the tax rate of the foreign tax that may reasonably be regarded as attributable to FABI is equal to or exceeds 25 per cent. Similarly, the election under subsection 93.4(3) results in a deduction under subsection 113(1) that completely offsets a dividend received from an affiliate out of its FABI surplus where the rate of foreign taxes imposed on the underlying income included in the FABI surplus is equal to or exceeds 25%. Each of these relieving elections allows Canadian shareholders to apply the RTF of 4, which more accurately reflects the combined federal and provincial corporate tax rate that would have applied had the FABI or the income included in FABI surplus been earned by the Canadian shareholder directly.

Consequential amendments are made to the definition "income" or "loss" in subsection 129(4) to ensure that the portion of an amount included in a corporation's income under subsection 91(1) (or deducted under subsection 91(4)) that can reasonably be considered to be attributable to the FABI of a controlled foreign affiliate is disregarded in determining the AII of a CCPC or SCCPC. Consequential amendments are also made to the definitions "capital dividend account" and "general rate income pool" in subsection 89(1) (as well as to paragraph 55(5)(c)) to ensure proper treatment of FABI and non-FABI amounts when they are earned by a foreign affiliate and repatriated to the Canadian corporation. Lastly, consequential amendments are made under new subsection 93.4(6) for the purpose of computing the "tax-free surplus balance" (as defined under subsection 5905(5.5) of the Regulations) of a foreign affiliate in respect of which an election has been made under new section 93.4. For more information, see the commentary on paragraph 55(5)(c), the definitions "capital dividend account" and "general rate income pool" in subsection 89(1), new subsection 93.4(6), and the definition "income" or "loss" in subsection 129(4).

### *Pre-2026 taxation years*

New subsections 93.4(4) and (5) generally aim to extend the same treatment as described above with respect to amounts that would be included in FABI or FABI surplus, as the case may be, where such amounts arise in a taxation year that ends before the taxpayer's first taxation year beginning after 2025 and an election is made on or before the filing-due date for the taxpayer's first taxation year beginning after 2025.

### *Other amendments*

To facilitate the application of certain deeming rules applicable in respect of partnerships that hold shares in a foreign affiliate, references to certain provisions in section 93.4 are added to paragraph 93.1(1.1)(a). Further, to allow late-filed elections under subsections 93.4(2) to (5) in certain circumstances, paragraph 600(b) of the Regulations is also amended to add references to those subsections. For more information, see the commentary on subsection 93.1(1.1) and on section 600 of the Regulations.

### *Effective date*

Section 93.4 generally applies to taxation years that begin after 2025. However, section 93.4 also applies to earlier taxation years where an election is filed under subsection 93.4(4) or (5). For more information, see the commentary on those subsections.

## **Definitions**

ITA  
93.4(1)

### ***“FABI surplus”***

The definition “FABI surplus” in new subsection 93.4(1) is relevant where a taxpayer elects under new subsection 93.4(3), in determining the deductions available to a corporation resident in Canada under paragraphs 113(1)(b) and (c) in respect of foreign taxes paid on the earnings of a foreign affiliate when distributed to the corporation out of the affiliate's taxable surplus. It is also relevant in determining a foreign affiliate's “tax-free surplus balance” (discussed further in the commentary to new subsection 93.4(6)).

This definition draws on the existing definition “taxable surplus” but adapts the amounts included in that definition to limit it to the following items:

- the subject affiliate's FABI and losses in respect of FABI sources;
- dividends received out of another affiliate's FABI surplus, less dividends paid out of the affiliate's own FABI surplus; and
- the subject affiliate's net earnings or net loss from an active business carried on by it in a country.

Paragraph (a) of the definition includes in the subject affiliate's FABI surplus any inter-affiliate dividends received by the subject affiliate that are paid out of the payer affiliate's FABI surplus. Specifically, it includes the lesser of:

- the portion of any dividend included in the subject affiliate's taxable surplus under subparagraph (iii) of the description of A of the definition "taxable surplus" in subsection 5907(1) of the Regulations; and
- the proportion of the payer affiliate's FABI surplus at the time the dividend was paid that the dividend received is of the whole dividend referred to in paragraph 5900(1)(b) of the Regulations.

Paragraph (b) of the definition reduces the subject affiliate's FABI surplus for any dividends paid by the subject affiliate out of its FABI surplus and determines such amounts to be the lesser of:

- the portion of the whole dividend deemed under paragraph 5901(1)(b) of the Regulations to be paid out of the subject affiliate's taxable surplus; and
- the subject affiliate's FABI surplus at that time.

Paragraphs (a) and (b), in effect, each provide an ordering rule which treats amounts paid out of a foreign affiliate's taxable surplus as being paid out of its FABI surplus ahead of any taxable surplus other than FABI surplus.

Paragraph (c) of the definition provides that the computation of the subject affiliate's FABI surplus takes into consideration only two other categories of amounts that were included in computing the affiliate's net earnings and net loss.

The first category of amounts, included under clauses (c)(i)(A) and (c)(ii)(A), are amounts in respect of FAPI that can reasonably be considered to be attributable to the subject affiliate's FABI. By referencing amounts included in computing the subject affiliate's net earnings or net loss "in respect of FAPI" that are taken into consideration in computing its taxable surplus, this ensures the subject affiliate's FABI surplus is:

- reduced for any losses in respect of FABI sources (or "FABLs") and any income or profits tax paid that can reasonably be regarded as tax applicable to the subject affiliate's FABI, and
- increased for the subject affiliate's FABI and any income or profits tax refunds that can be reasonably be regarded as tax refunded in respect of the subject affiliate's FABI.

In other words, it is necessary to redetermine the amounts under paragraph (b) of the definitions "net earnings" and "net loss", and under subparagraph (b)(ii) of the definitions "taxable earnings" and "taxable loss", in subsection 5907(1) of the Regulations on the basis that each of those paragraphs and subparagraphs referred only to the affiliate's FABI or FABL for the year. In cases where a controlled foreign affiliate has an amount of FABI, clause (c)(i)(A) provides for an increase to the affiliate's FABI surplus only if an election under subsection 93.4(2) is made by a taxpayer for the taxation year. However, if the controlled foreign affiliate has a FABL, the affiliate's FABI surplus is reduced by the amount of the FABL under clause (c)(ii)(A). The

impact of income or profits tax paid or refunded on FABI surplus will generally follow the treatment of the income to which it can reasonably be regarded as applicable (as either FABI or FAPI (other than FABI)), thereby potentially requiring a detailed review of the application of foreign accrual property losses (FAPLs) and FABLs over multiple years. For further details on the use of FABLs and its impact on a taxpayer's deduction under subsection 91(4), see the commentary on subsection 93.4(2).

The second category of amounts, included under clauses (c)(i)(B) and (c)(ii)(B) of the "FABI surplus" definition, is the affiliate's net earnings or net loss from an active business carried on by it in a country that are included in its taxable surplus. Notably, this ensures the FABI surplus of the subject affiliate is reduced for any income or profits tax paid in respect of such income and increased for any income or profits tax refunded to the affiliate that can be reasonably be regarded as tax refunded in respect of such income.

In certain situations, it is necessary to reset or establish (depending on the provision) the amount of a foreign affiliate's taxable surplus or taxable deficit under section 5905. The preamble of the definition "FABI surplus" requires a determination of the taxable surplus or deficit of the subject affiliate, which in turn requires a determination of the subject affiliate's opening taxable surplus or opening taxable deficit – factoring in only the items in paragraphs (a) to (c) of the "FABI surplus" definition. The opening taxable surplus or taxable deficit is then included under subparagraph (i) of the description of A or B, respectively, which feeds into the subject affiliate's FABI surplus. Similarly, any adjustments included in subparagraphs (iv) and (iv.1) of the description of A, and subparagraphs (v) and (vi) of the description of B, of the definition "taxable surplus" must be reasonably allocated between the affiliate's FABI surplus and taxable surplus amounts other than its FABI surplus. Paragraphs (a) to (c) of the "taxable surplus" definition remain unaltered for the purposes of the "FABI surplus" definition, meaning that the start and end dates for the period in respect of which a foreign affiliate's taxable surplus is being determined are the same as the dates applicable for determining its taxable surplus.

### ***"foreign accrual business income"***

The definition "foreign accrual business income" (or "FABI") in new subsection 93.4(1) is relevant when an election is made under new subsection 93.4(2). That relieving election provides an enhanced deduction under subsection 91(4) to a taxpayer that is a CCPC, SCCPC or a partnership all of the members of which (other than non-resident persons) are corporations, in respect of foreign taxes paid on the FAPI of a foreign affiliate of the taxpayer that is attributable to the affiliate's FABI and is included in the taxpayer's income pursuant to subsection 91(1). In other words, these provisions aim to identify the portion of the FAPI of a foreign affiliate that would have been subject to a high tax rate (approximating the highest marginal tax rate applicable to individuals) and the portion that would have been eligible for the lower corporate tax rates on active business income, had the income been earned in Canada by the affiliate, and to subject each of those portions to a similar tax treatment to what they would have received had they been earned directly by the taxpayer in Canada. This is achieved through the application of a different RTF to each portion.

Consequential amendments are made to the definition “income” or “loss” in subsection 129(4) to ensure that the portion of an amount included in a taxpayer’s income under subsection 91(1) (or deducted under subsection 91(4)) that can reasonably be considered to be attributable to the FABI of a controlled foreign affiliate is disregarded in determining the AII of a CCPC or SCCPC. For more information, see the commentary on the definition “income” or “loss” in subsection 129(4).

In general terms, the FABI definition draws on the existing FAPI definition in subsection 95(1), but is limited to the portion of the FAPI of a foreign affiliate that

- would not be AII if the affiliate were a CCPC (subparagraph (a)(i) of the definition),
- did not arise as a consequence of certain base erosion payments (subparagraph (a)(ii) of the definition), and
- would result if the affiliate’s “foreign accrual property loss” and “foreign accrual capital loss” computations and designations were applied factoring in only amounts of income, loss and expenses that are described in paragraph (a) of the FABI definition, which in general terms are amounts in respect of FABI sources (paragraph (b) of the definition).

Subparagraph (a)(i) of the definition limits FABI to the portion of the affiliate’s FAPI that would not be included in the computation of the affiliate’s AII. That is, each item of income or loss that is included in computing the affiliate’s FAPI is evaluated on the basis of the AII definition in subsection 129(4). To account for the fact that the affiliate is a non-resident corporation and may derive income from sources outside Canada, subparagraph (a)(i) contains two assumptions that aim to ensure a proper assessment of amounts that would be included in the computation of the affiliate’s AII:

- Clause (a)(i)(A) provides that the determination of the amounts that would not be included in the computation of the affiliate’s AII is to be made as if the affiliate were, at all times, a CCPC. The phrase “at all times” ensures the affiliate is always considered a CCPC such that any of its capital gains or capital losses included in computing its FAPI satisfy the requirements of the definition “eligible portion” in subsection 129(4) and are thus included in the affiliate’s hypothetical AII under subparagraph (a)(ii) of the AII definition in subsection 129(4).
- Clause (a)(i)(B) treats all income or loss amounts that were relevant in the computation of the affiliate’s FAPI as if they were from a Canadian source. This is necessary because a foreign affiliate will generally carry on its activities outside of Canada and paragraph (a) of the definition “income” or “loss” in subsection 129(4), and consequently AII, excludes income or loss from certain sources outside Canada. This assumption ensures that it is only necessary to evaluate the character, and not the source, of the various income, loss, capital gain and capital loss amounts included in computing an affiliate’s FAPI under this AII test.

The scope of the assumption in clause (a)(i)(B) is limited to the source and does not extend to attribute any further specific characteristics to a person or partnership from whom the amount may arise. For example, where a foreign affiliate receives a dividend from a non-resident corporation, clause (a)(i)(B) would apply, for the purpose of determining the affiliate’s FABI for

a taxation year, to treat the dividend itself as coming from a Canadian source, but it would not treat the payer corporation as resident in Canada (which could be relevant in determining whether the dividend would be included in the affiliate's hypothetical AII).

Subparagraph (a)(ii) of the FABI definition ensures that an affiliate's FAPI derived from certain base erosion payments that would not have been included in the affiliate's AII is nonetheless excluded from FABI. This is intended to prevent arrangements that would otherwise convert high-tax income of a taxpayer into FABI through payments that would not be included in the affiliate's AII but that reduce the taxable income of a non-arm's length party or the FAPI (other than FABI) of another foreign affiliate that would have otherwise been subject to a tax rate that approximates the highest personal income tax bracket. This anti-base erosion rule will apply to prevent an amount from being included in an affiliate's FABI if:

1. It is derived from an amount paid or payable by a CCPC, a substantive CCPC, a corporation carrying on a personal services business (as defined in subsection 125(7)), an individual resident in Canada (including trusts), another foreign affiliate or a partnership any member of which is one of those enumerated persons;
2. If the payer, or a member of the payer partnership, is a person other than a foreign affiliate, the payer or member, as the case may be, is not a taxpayer of whom the affiliate is a foreign affiliate and does not deal at arm's length with the affiliate or any taxpayer of whom the affiliate is a foreign affiliate; and
3. The amount paid or payable
  - a. is deductible in computing the AII of, or reduces the tax otherwise payable under section 123.3 for a taxation year by, the payer or the relevant member, as the case may be (where the payer or relevant member is a CCPC or substantive CCPC),
  - b. is deductible in computing the income for a taxation year of the payer or a relevant member, as the case may be (where the payer or relevant member is a corporation carrying on a personal services business or an individual resident in Canada), or
  - c. is deductible in computing the FAPI (other than FABI) for a taxation year of the payer affiliate or the relevant member, as the case may be (where the payer or relevant member is another foreign affiliate).

Paragraph (b) of the FABI definition modifies the FAPI computation in determining a foreign affiliate's FABI to ensure any FAPL and "foreign accrual capital loss" (FACL) amounts, included under variables F and F.1 of the FAPI definition, only include the income and loss amounts described in paragraph (a) of the FABI definition (which in general terms are income or losses from FABI sources). Subparagraph (b)(ii) treats the taxpayer as having made designations in respect of these notional FAPLs and FACLs for the purpose of computing its FABI. The combined FAPL and FACL amounts taken into account in determining the affiliate's FABI for the year are the lesser of two amounts: (1) the affiliate's FABI for the year before any carryover of FAPL and FACL amounts; and (2) the maximum combined amount of the notional FAPLs and FACLs available to be designated for the year. This ensures that the FABI amounts of a controlled foreign affiliate are automatically reduced by any notional FAPLs and FACLs in

respect of FABI for the purpose of determining the enhanced deduction under subsection 91(4) for taxpayers electing under subsection 93.4(2).

### **Example 1**

#### Facts

*Canco, a CCPC, holds all of the issued and outstanding shares of CFA, a non-resident corporation that is a controlled foreign affiliate of Canco.*

*Canco provides a wide range of business IT services.*

*CFA operates a call center in a foreign country. This call center employs dozens of employees and provides support to Canco's clients. Canco pays an arm's length fee for the services provided to it by CFA.*

#### Analysis

*The income earned by CFA would be deemed to be from a separate business, other than an active business, under clause 95(2)(b)(i)(A), since the amounts paid in consideration for the services it provides to Canco are deductible in computing the income from a business carried on in Canada by Canco. As such, CFA's income would be FAPI. However, CFA's income would qualify as FABI because:*

- *CFA's income is not from a source that is property. Consequently, it would not be included in the computation of CFA's AII if CFA were a CCPC and the income were from a source in Canada; and*
- *Canco does not earn income from property. Consequently, it does not have AII and has no liability under section 123.3, such that the payments made by Canco to CFA cannot be considered to reduce Canco's AII or its tax otherwise payable under section 123.3 (in other words, the payments do not erode income of Canco that was subject to a high rate of tax).*

*As such, Canco could file elections under subsections 93.4(2) and (3) to benefit from the higher RTF of 4 when the income is earned and repatriated.*

### **Example 2**

#### Facts

*Canco, a CCPC, holds all of the issued and outstanding shares of CFA1 and CFA2, two non-resident corporations that are controlled foreign affiliates of Canco.*

*Canco owns a number of real or immovable properties in Canada and operates a long-term rental business that generates rental income. Canco has one employee.*

*CFA1 owns a number of rental properties in a foreign country and operates a long-term rental business that generates rental income from third parties. CFA1 has two employees.*

*CFA2 provides services in support of Canco's and CFA1's rental businesses and receives management fees in consideration for those services from both corporations. CFA2 has one employee.*

### Analysis

#### *Canco*

*Canco's rental business would likely qualify as a "specified investment business", as defined in subsection 125(7). Considering that the rental properties are located in Canada, the income earned from Canco's rental operation would be included in its AII and subject to the additional refundable tax under section 123.3.*

#### *CFA1*

*CFA1's rental operation would likely qualify as an "investment business" under the definition in subsection 95(1). As such, its rental income would qualify as "income from property" and be included in FAPI under variable A of the definition.*

*None of CFA1's rental income would be FABI as it would not satisfy the requirement under subparagraph (a)(i) of the FABI definition. Indeed, if CFA1 were a CCPC and its rental income were derived from a source in Canada, its income, like Canco's rental income, would likely be income from a "specified investment business" (from a source in Canada) and would be included in AII.*

#### *CFA2*

*The provision of services by CFA2 would be deemed to be a separate business, other than an active business, under clauses 95(2)(b)(i)(A) (for the portion provided to Canco) and (B) (for the portion provided to CFA1). As such, the management fees earned by CFA2 would be included in its FAPI under variable A of the FAPI definition.*

*The management fees earned by CFA2 would not be included in AII if it were a CCPC and the fees were derived from a source in Canada. Thus, its income would not be excluded from FABI under subparagraph (a)(i) of the definition.*

*However, the anti-base erosion rule in subparagraph (a)(ii) of the FABI definition would prevent CFA2's management fee income from qualifying as FABI since that income is derived from a combination of:*

- *amounts paid by a non-arm's length CCPC (Canco) that reduce the tax otherwise payable under section 123.3 by the payer (in other words, the payments erode the AII of a non-arm's length CCPC); and*

- *amounts paid by another foreign affiliate of Canco (CFAI) that are deductible in computing the other FA's FAPI (other than FABI) (in other words, the payment erodes the FAPI (other than FABI) of another foreign affiliate in the corporate group).*

Just as a foreign affiliate's FAPI is relevant in computing its taxable surplus, a foreign affiliate's FABI is relevant in determining its FABI surplus. The inclusion of a foreign affiliate's FABI in its FABI surplus is provided in clauses (c)(i)(A) and (ii)(A) of the definition "FABI surplus". For more information, see the commentary to that definition.

### ***"underlying FABI surplus tax"***

The definition "underlying FABI surplus tax" in new subsection 93.4(1) is relevant (along with the definition "FABI surplus") where a taxpayer elects under new subsection 93.4(3), in determining the deductions available to a corporation resident in Canada under paragraphs 113(1)(b) and (c) in respect of foreign taxes paid on the earnings of a foreign affiliate when distributed to the corporation out of the affiliate's taxable surplus.

An affiliate's underlying FABI surplus tax is also relevant in determining its "tax-free surplus balance" under subsection 5905(5.5) of the Regulations because of new subsection 93.4(6). For more information, see the commentary to subsection 93.4(6).

This definition draws on the existing definition "underlying foreign tax" in subsection 5907(1) of the Regulations but includes only amounts that would be included in a foreign affiliate's underlying foreign tax if it were limited to amounts that can reasonably be regarded as applicable in respect of the affiliate's FABI surplus. Accordingly, in determining an affiliate's underlying FABI surplus tax for the purpose of determining the amount deductible under paragraph 113(1)(b), it is necessary to identify the income or profits tax paid to a government of a country by the affiliate that can reasonably be regarded as having been paid in respect of its FABI surplus and that was included in computing its underlying foreign tax. This could include, for example, the income or profits taxes paid on the affiliate's income earned from a real estate development business that is included in computing its FABI surplus, as well as withholding taxes paid by the affiliate on any FABI surplus dividends received by it from another foreign affiliate. Similarly, it is necessary to identify the income or profits tax refunded by a government of a country to the affiliate that can reasonably be regarded as having been refunded in respect of its FABI surplus. Further, it is necessary to identify underlying foreign taxes applicable to dividends paid by the affiliate that can reasonably be regarded as underlying FABI surplus tax applicable in respect of dividends paid out of the subject affiliate's FABI surplus.

Similar to how FAPLs applied in determining a foreign affiliate's FAPI can impact which RTF applies to a taxpayer's deduction under subsection 91(4) in respect of FAT (depending on whether the FAPLs are in respect FABI, or FAPI (other than FABI)), losses in respect of FABI sources can reduce an affiliate's FABI surplus under clause (c)(ii)(A) of the definition "FABI surplus" and are relevant in determining the affiliate's "underlying FABI surplus tax". See the commentary to subsection 93.4(2) for more information regarding the determination of whether tax was paid in respect of FABI, or FAPI (other than FABI), including in the event of loss carryovers.

Where an election was previously made to disproportionately allocate underlying foreign tax to a taxable surplus dividend to increase the amount deductible in respect of the dividend under paragraph (b) of the definition “underlying foreign tax applicable” in subsection 5907(1) of the Regulations, it will be necessary to evaluate what portion of the underlying foreign tax applicable relates to underlying FABI surplus tax and determine the remaining underlying FABI surplus tax, if any, available for distributions after the disproportionate UFT election.

### *Example*

#### Facts

1. *Canco is a CCPC that holds all of the issued and outstanding shares of CFA, a controlled foreign affiliate of Canco.*
2. *Canco elected in 2026 under subsection 93.4(4), with the result it is deemed to have timely made the election under subsection 93.4(2) for each of its taxation years that begin before April 7, 2022.*
3. *A portion of CFA’s FAPI in some taxation years before 2020 can reasonably be considered to be attributable to FABI.*
4. *In 2021, CFA paid a dividend of \$180, which was deemed to be paid out of its taxable surplus under paragraph 5901(1)(b) of the Regulations. At the time of the dividend payment, CFA’s taxable surplus balance was \$270 (\$220 of which was reasonably considered to be in respect of FABI surplus and \$50 of which was amounts other than its FABI surplus) and its underlying foreign tax was \$30 (\$23 of which was reasonably considered to be underlying FABI surplus tax while \$7 was amounts other than its underlying FABI surplus tax).*
5. *Canco made an election to disproportionately allocate underlying foreign tax to the taxable surplus dividend to increase the amount deductible in respect of the dividend under paragraph (b) of the definition “underlying foreign tax applicable” in subsection 5907(1) of the Regulations. The elected amount was \$25.*

#### Analysis

*Under paragraph (b) of the definition “FABI surplus” in subsection 93.4(1), the dividend of \$180 deemed to be paid out of CFA’s taxable surplus is treated as having been paid entirely out of its FABI surplus.*

*Absent a disproportionate underlying foreign tax election, the underlying foreign tax applicable to the dividend in 2021 would be \$20 and thus the underlying FABI surplus tax applicable to the dividend would also be \$20. The disproportionate underlying foreign tax election resulted in an additional \$5 of underlying foreign tax being applicable in respect of the dividend in 2021, and 100% of the dividend is considered to be paid out of the affiliate’s FABI surplus. Thus, \$3 of that*

*additional \$5 of underlying foreign tax applicable is considered underlying FABI surplus tax applicable.*

*Assuming there were no further increases or decreases to the affiliate's underlying foreign tax and underlying FABI surplus tax from 2021 to 2024, the affiliate's underlying foreign tax at the start of 2025 is \$5, \$0 of which is considered to be underlying FABI surplus tax.*

### **Amounts deductible under subsection 91(4)**

ITA  
93.4(2)

New subsection 93.4(2) provides taxpayers with an election to use the RTF of 4 in calculating a deduction in respect of FAT under subsection 91(4) for a taxation year, to the extent that the FAT can reasonably be regarded as applicable to the FABI of a controlled foreign affiliate. If a taxpayer so elects, any FAPI inclusion under subsection 91(1) for the taxation year or any of the five immediately preceding taxation years that may reasonably be regarded as attributable to FABI will be completely offset by a deduction under subsection 91(4) where the tax rate of the foreign tax that may reasonably be regarded as attributable to FABI equals or exceeds 25 per cent.

Paragraph (a) sets out a requirement to compute two separate deductions under subsection 91(4) – one deduction for any portion of the “income amount” (as defined in subsection 91(4)) that may reasonably be regarded as attributable to the FABI of any controlled foreign affiliate (referred to as the “FABI amount”), and the other deduction for any portion of the income amount other than the FABI amount (referred to as the “excess amount”). The FABI amount reflects FABI of controlled foreign affiliates whose shares are owned by the taxpayer either directly or indirectly through other controlled foreign affiliates.

Subparagraph (b)(i) provides that in determining the amount deductible under subsection 91(4) in respect of any FABI amount, each reference to “income amount” in subsection 91(4) is to be read as a reference to the “FABI amount” and the RTF of 4 applies in determining that deduction. This more accurately reflects the combined federal and provincial corporate tax rate that would have applied to this type of income had the FABI been earned by the Canadian shareholder directly.

Subparagraph (b)(ii) provides that in determining the amount deductible under subsection 91(4) for any excess amount, each reference to “income amount” in subsection 91(4) is to be read as a reference to the “excess amount”. The default RTF of 1.9 is used in determining the deduction under subsection 91(4) for any excess amount.

To determine the FAT applicable to each of the FABI amount and the excess amount of any controlled foreign affiliate, the first step is to determine the amount of FAPI included in income under subsection 91(1) that “may reasonably be regarded as attributable” to the affiliate’s FABI. Notably, an affiliate can have an amount of FAPI that is comprised of any combination of (1) positive or negative amounts of FABI (i.e., a FABI amount or a FABL), and (2) positive or

negative amounts of FAPI (other than FABI) (i.e., an excess amount or a FAPL). By replacing the “income amount” references in subsection 91(4) with references to the “FABI amount” or “excess amount”, the reading rules in paragraph 93.4(2)(b) require an affiliate’s FAPI and FAPLs to be attributed to either FABI (or FABL), or FAPI other than FABI (or FAPL other than FABL).

The second step requires allocating the FAT between the FABI amount and the excess amount. Just as the FAT definition in subsection 95(1) requires an assessment of whether an amount of income or profits tax may reasonably be regarded as applicable to income included under subsection 91(1), it is necessary to determine whether the FAT may reasonably be regarded as applicable to the FABI amount or the excess amount.

Allocating the FAT between the FABI amount and the excess amount requires a review of all the facts. It may also require looking at multiple taxation years, as illustrated by the example below. As this election is made on an annual basis, in circumstances where a taxpayer has a FABI amount for the year that forms part of the FAPI imputed under subsection 91(1) but no deduction is being claimed under subsection 91(4) (e.g., where the foreign tax has not yet been paid), the taxpayer can nonetheless make an election in the year of the FAPI inclusion so that the FABI amount for the year is excluded from its AII. For more information, see the commentary to the definition “income” or “loss” in subsection 129(4).

### ***Example***

#### ***Facts***

*Canco is a corporation resident in Canada which holds all of the issued and outstanding shares of CFA, a controlled foreign affiliate of Canco.*

*CFA is resident in Country X, which imposes a corporate income tax at a rate of 20%.*

*CFA earns income that is included in FAPI, a portion of which is (in some years) FABI.*

*Canco files an election under subsection 93.4(2) for each of the taxation years in which CFA has an amount of FABI.*

*Over years 1 through 5, the situation can be summarized as follows:*

	<b><i>Year 1</i></b>	<b><i>Year 2</i></b>	<b><i>Year 3</i></b>	<b><i>Year 4</i></b>	<b><i>Year 5</i></b>	<b><i>Totals</i></b>
<b><i>FABI</i></b>	<b><i>(50)</i></b>	<b><i>50</i></b>	<b><i>20</i></b>	<b><i>60</i></b>	<b><i>-</i></b>	<b><i>80</i></b>
<b><i>FAPI (other than FABI)</i></b>	<b><i>-</i></b>	<b><i>100</i></b>	<b><i>-</i></b>	<b><i>40</i></b>	<b><i>(10)</i></b>	<b><i>130</i></b>
<b><i>Total FAPI / FAPL</i></b>	<b><i>(50)</i></b>	<b><i>150</i></b>	<b><i>20</i></b>	<b><i>100</i></b>	<b><i>(10)</i></b>	<b><i>210</i></b>

*(before  
carryovers)*

***Analysis***

*Loss carryovers*

*The loss carryovers over the years can be summarized as follows:*

	<b><i>Year 1</i></b>	<b><i>Year 2</i></b>	<b><i>Year 3</i></b>	<b><i>Year 4</i></b>	<b><i>Year 5</i></b>	<b><i>Totals</i></b>
<i>FABL carryover</i>	-	(50)*	-	-	-	N/A
<i>FAPL (other than FABL) carryover</i>	-	(10)**	-	-	-	N/A
<b><i>Income inclusion under subsection 91(1)</i></b>	-	<b>90</b>	<b>20</b>	<b>100</b>	-	<b>210</b>

*\*Year 1 FABL carried forward to Year 2*

*\*\*Year 5 FAPL carried back to Year 2*

*Deductions under subsection 91(4)*

*The amounts deductible under subsection 91(4) as a consequence of the elections made under subsection 93.4(2) are summarized in the following table and further described below:*

	<b><i>Year 1</i></b>	<b><i>Year 2</i></b>	<b><i>Year 3</i></b>	<b><i>Year 4</i></b>	<b><i>Year 5</i></b>	<b><i>Totals</i></b>
<i>91(1) inclusion attributable to FABI</i>	-	-	20	60	-	80
<i>91(1) inclusion attributable to FAPI (other than FABI)</i>	-	90	-	40	-	130

<i>FAT</i>	-	(18)	(4)	(20)	-	(42)
<i>RTF</i>	-	1.9	4	4 / 1.9	-	N/A
<i>Deduction under subsection 91(4)</i>	-	(34.20)	(16)	(48) / (15.20)	-	(113.40)

### Year 1

*In Year 1, CFA realized a FABL of \$50, which constitutes a FAPL that is carried forward and applied against FAPI otherwise arising in Year 2. Although Canco has no FABI amount and does not elect under subsection 93.4(2) for Year 1, the \$50 FABL is relevant in determining CFA's FABI in Year 2 (as discussed below).*

### Year 2

*In Year 2, CFA earned \$50 of FABI and \$100 of FAPI (other than FABI). However, the \$50 FABL from Year 1 and the \$10 FAPL (other than a FABL) from Year 5 are applied against the \$150 of FAPI otherwise arising in Year 2, with the result that Canco's income inclusion under subsection 91(1) for the year is equal to \$90. The FAT applicable to that \$90 income inclusion is equal to \$18.*

*While CFA earned \$50 of FABI in Year 2, paragraph (b) of the FABI definition in subsection 93.4(1) applies to reduce the CFA's FABI by the \$50 FABL from Year 1, resulting in CFA having \$0 of FABI in Year 2. Similarly, the \$10 FAPL from Year 5 that is applied in Year 2 results in CFA having \$90 of net income from FAPI (other than FABI) sources. Consequently, the \$18 of FAT in Year 2 may reasonably be regarded as applicable to Canco's income inclusion in respect of CFA's FAPI (other than FABI), and thus the RTF of 1.9 applies, resulting in a deduction to Canco of \$34.20 under subsection 91(4).*

### Year 3

*In Year 3, CFA earns \$20 of FABI and pays \$4 of FAT, all of which may reasonably be regarded as applicable to Canco's income inclusion under subsection 91(1) in respect of CFA's FABI. Accordingly, in determining the amount deductible by Canco under subsection 91(4) – where that subsection is read in the manner set out in subsection 94.3(2) – \$20 is considered the FABI amount and the RTF of 4 applies to the \$4 of FAT, resulting in a deduction of \$16 under subsection 91(4).*

### Year 4

*In Year 4, CFA earns \$60 of FABI and \$40 of FAPI (other than FABI) and pays \$20 of FAT. As the FAT was paid at the same 20 per cent rate in respect of all sources of FAPI, in applying subsection 91(4) in the manner set out in subsection 94.3(2), \$12 of the FAT can reasonably be*

*regarded as applicable to the FABI amount, while \$8 of the FAT can reasonably be regarded as applicable to the excess amount. Consequently, the RTF of 4 applies to the \$12 of FAT, resulting in a deduction under subsection 91(4) of \$48 in respect of the FABI amount, while the RTF of 1.9 applies to the remaining \$8 of FAT, resulting in a deduction of \$15.20 in respect of the excess amount.*

### Year 5

*In Year 5, CFA realizes a \$20 FAPL (other than FABL), which is carried back and applied against Year 2's FAPI. See the explanation under Year 2.*

As noted above, the subsection 91(4) deduction is also relevant in determining a CCPC's or SCCPC's AII (for more information, see the commentary to the definition "income" or "loss" in subsection 129(4)). Similarly, the income or profits tax that can reasonably be regarded as applicable to an affiliate's FABI or amounts of FAPI (other than its FABI) is relevant in determining the applicable RTF when determining the amount deductible under paragraphs 113(1)(b) and (c) in respect of dividends paid by a foreign affiliate out of its FABI surplus or taxable surplus other than its FABI surplus to a corporation resident in Canada. For more information, see the commentary to the definition "underlying FABI surplus tax" in subsection 93.4(1).

### **Dividends received from foreign affiliates**

ITA  
93.4(3)

New subsection 93.4(3) provides taxpayers with an election to use the RTF of 4 in calculating a deduction under paragraphs 113(1)(b) or (c) in respect of the portion of any dividend paid out of the taxable surplus of a foreign affiliate that is considered to be paid out of the affiliate's FABI surplus. If a taxpayer so elects, specific rules in paragraphs 93.4(3)(a) to (c) apply in determining the deductions under paragraphs 113(1)(b) and (c).

Paragraph (a) determines the portion, of the dividend prescribed to be paid out of a foreign affiliate's taxable surplus, that is paid out of the affiliate's FABI surplus (referred to as the "FABI surplus dividend"). This paragraph, in effect, provides an ordering rule ensuring that a foreign affiliate's FABI surplus is distributed first, before taxable surplus amounts other than FABI surplus. For more information, see the commentary to the definition "FABI surplus" in subsection 93.4(1).

The overall aim of paragraph (b) is to allow for the RTF of 4 to be used to determine the deductions under paragraphs 113(1)(b) and (c) in respect of a FABI surplus dividend. It does so by modifying paragraphs 113(1)(b) and (c) and the RTF definition, as follows:

- Subparagraph (i) modifies the references in paragraphs 113(1)(b) and (c) to the taxable surplus portion of the dividend to refer solely to the FABI surplus dividend. This ensures that the limitations under subparagraphs 113(1)(b)(ii) and (c)(ii) are capped at the amount

of the FABI surplus dividend. It also ensures that a deduction under paragraph 113(1)(c) in respect of the FABI surplus dividend is to be determined using only the non-business-income tax applicable to that portion of the dividend.

- Subparagraph (ii) provides that, in determining a deduction under paragraph 113(1)(b) in respect of a FABI surplus dividend, the amount prescribed to be the foreign tax applicable (as set out in paragraph 5900(1)(b) of the Regulations) consists only of the affiliate's underlying FABI surplus tax.
- Subparagraph (iii) modifies the reading of the RTF definition in subsection 95(1), to allow the RTF of 4 to apply for deductions under paragraphs 113(1)(b) and (c) in respect of FABI surplus dividends.

Under paragraph (c), the RTF of 1.9 is to be used for the portion of the taxable surplus dividend other than the affiliate's FABI surplus dividend. This is achieved by modifying paragraphs 113(1)(b) and (c), as follows:

- Subparagraph (i) modifies the references in paragraphs 113(1)(b) and (c) to the taxable surplus portion of the dividend to refer solely to the portion of the taxable surplus dividend other than the FABI surplus dividend. This ensures that the limitations under subparagraphs 113(1)(b)(ii) and (c)(ii) are capped at the portion of the taxable surplus dividend other than the FABI surplus dividend. It also provides that a deduction under paragraph 113(1)(c) in respect of the portion of the taxable surplus dividend other than the FABI surplus dividend is to be determined using only the non-business-income tax applicable to that portion of the dividend.
- Subparagraph (ii) provides that, in determining a deduction under paragraph 113(1)(b) in respect of the portion of the taxable surplus dividend other than the FABI surplus dividend, the amount prescribed to be the foreign tax applicable (as set out in paragraph 5900(1)(b) of the Regulations) consists only of underlying foreign tax amounts other than the affiliate's underlying FABI surplus tax.

Applying the RTF of 4 in determining the deductions under paragraphs 113(1)(b) and (c) for distributions of FABI surplus, and the RTF of 1.9 for the deductions in respect of distributions of taxable surplus amounts other than FABI surplus, more accurately reflects the combined federal and provincial corporate tax rate that would have applied to the earnings underlying each type of distribution had they been earned by the Canadian shareholder directly.

Consequential amendments are also made to the definitions of "capital dividend account" and "general rate income pool" to improve the integration of a foreign affiliate's earnings as they are distributed through a corporate chain to the ultimate Canadian individual shareholder. For more information, see the commentary on the definitions "capital dividend account" and "general rate income pool" in subsection 89(1) and the definition "relevant tax factor" in subsection 95(1).

### **Pre-2023 taxation years**

ITA  
93.4(4)

While new section 93.4 generally applies for taxation years beginning after 2025, there are circumstances where a taxpayer may wish to elect under subsection 93.4(2) for each of its taxation years that begin before April 7, 2022 (referred to as “pre-2023 taxation years”). A taxpayer will be deemed to have timely made elections for the pre-2023 taxation years if the taxpayer makes an election under subsection 93.4(4) in prescribed form and manner by the filing-due date for its first taxation year or fiscal period that begins after 2025.

This deemed election for pre-2023 taxation years is intended to deal with two circumstances. First, it addresses situations where a taxpayer included in computing its income its participating share of a controlled foreign affiliate’s FAPI under subsection 91(1) for a taxation year beginning before April 7, 2022, and the FAPI may reasonably be regarded as attributable to FABI of the taxpayer’s controlled foreign affiliates, but the FAT is paid in a taxation year that begins on or after that date. In that case, this election allows the taxpayer to be deemed to elect under subsection 93.4(2) in order to use the RTF of 4 in determining the amount deductible under subsection 91(4) in the taxation year when it paid the FAT for the portion of the FAPI that may reasonably be regarded as attributable to FABI included under subsection 91(1) for its taxation year beginning before April 7, 2022.

Second, this election also addresses situations where a foreign affiliate pays a dividend out of taxable surplus in a taxation year beginning on or after April 7, 2022, to a corporation that is a CCPC or a SCCPC, and the corporation wishes to apply the RTF of 4 in determining the amounts deductible under paragraphs 113(1)(b) and (c) in respect of the portion of the dividend that would be considered to be paid out of the affiliate’s FABI surplus if the affiliate were able to earn FABI for taxation years beginning before April 7, 2022. This election causes the taxpayer to be deemed to elect under subsection 93.4(2) for the taxation years beginning before April 7, 2022, in order to satisfy the requirement under subparagraph (c)(i) of the definition “FABI surplus” in subsection 93.4(1). This results in the taxpayer being considered to earn FABI for those taxation years and thus accumulating FABI surplus, in respect of which the taxpayer can apply the RTF of 4 on distributions in taxation years beginning on or after April 7, 2022.

### **Pre-2026 taxation years**

ITA  
93.4(5)

Similar to the election in subsection 93.4(4), a taxpayer can elect under subsection 93.4(5) to have an election under subsection 93.4(2), and subsection (3) as applicable, deemed to have been timely made for each of its taxation years that begins after April 6, 2022 and before 2026. This election is required to be filed by the taxpayer in prescribed form and manner by its filing-due date for its first taxation year or fiscal period that begins after 2025.

The expression “as applicable” in the preamble of this subsection acknowledges that an election under subsection 93.4(3) is not relevant for a taxpayer that is a partnership given the deeming rule in subsection 93.1(2), which deems each member of a partnership to receive its proportionate share of a dividend received by the partnership from a foreign affiliate of the member. Therefore, an election under subsection 93.4(2) will be applicable for a taxpayer that is

a CCPC, SCCPC or partnership all the members of which (other than non-resident persons) are corporations, whereas an election under subsection 93.4(3) will be applicable only for a taxpayer that is a CCPC or a SCCPC.

The election in subsection 93.4(5) is separate from the one in subsection 93.4(4), which applies to taxation years that begin before April 7, 2022, in recognition that taxpayers may wish to be deemed to make elections under subsections 93.4(2) for taxation years that begin before April 7, 2022, but not for taxation years beginning after that date and before 2026. For example, a taxpayer that is a CCPC or SCCPC may prefer not to make an election under subsection 93.4(5) if the amounts deducted by the taxpayer under paragraphs 113(1)(b) and (c) in respect of a dividend received from a foreign affiliate have already been included in computing its CDA and the taxpayer has paid a capital dividend in respect of such amounts. To avoid having to recalculate its CDA and the potential Part III tax applying in respect of excess capital dividend amounts, the taxpayer may in those cases decide not to make an election under subsection 93.4(5).

### **Computation of tax-free surplus balance**

ITA  
93.4(6)

The “tax-free surplus balance” (or “TFSB”) of a foreign affiliate is defined in subsection 5905(5.5) of the Regulations. It is a measure of the “good” surplus inherent in the affiliate and is relevant for purposes of determining the safe income of a corporation resident in Canada that holds shares of the affiliate, as well as for determining adjustments to the adjusted cost base, surpluses, and deficits of the affiliate or another foreign affiliate in the context of certain share transactions and corporate reorganizations. “Good” surplus is, generally, the aggregate of exempt surplus, the tax-free portion of the hybrid surplus, and the grossed-up amount of underlying foreign tax (i.e., taxes paid in respect of taxable surplus).

New subsection 93.4(6) contains special rules which apply when determining the TFSB of a foreign affiliate where a taxpayer has made an election under any of subsections 93.4(2) to (5) for a taxation year. The overall aim of this rule is to align the computation of a foreign affiliate’s TFSB in respect of its FABI surplus and underlying FABI surplus tax (each defined in subsection 93.4(1)) with the treatment under subsection 93.4(3), by applying an RTF of 4 to gross up the affiliate’s underlying FABI surplus tax in computing its TFSB. This is accomplished by modifying the computation of a foreign affiliate’s TFSB to be determined as though subparagraph 5905(5.5)(b)(i) contained a modified formula. With this modified formula, the amount included in a foreign affiliate’s TFSB at any time in respect of taxable surplus is the lesser of two amounts:

- The first amount is the aggregate of:
  - the amount that could be distributed out of the affiliate’s FABI surplus free of tax, which is equal to the lesser of (i) its underlying FABI surplus tax grossed up by a factor equal to the RTF of 4 minus 1, and (ii) its FABI surplus at that time, and

- the amount that could be distributed out of the affiliate's taxable surplus other than its FAPI surplus free of tax, which is equal to the lesser of (i) its underlying foreign tax grossed up by a factor equal to the RTF of 1.9 minus 1, and (ii) its taxable surplus at that time,
- The second amount is the affiliate's taxable surplus minus any offsetting deficits.

## Clause 28

### Tracking interests

ITA

94.2(2)(a)(i)

Where a trust meets the conditions in subsection 94.2(1), subparagraph 94.2(2)(a)(i) deems the trust to be a non-resident corporation that is controlled by the beneficiary referred to in subsection 94.2(1) and, where applicable, by any particular person of which the beneficiary is a controlled foreign affiliate.

In parallel to the introduction of new subsection 94.2(5), subparagraph 94.2(2)(a)(i) is amended to introduce an exception from this deemed control, which exception applies where the sole reason the condition in paragraph 94.2(1)(b) is met is that the condition in subparagraph (b)(i) is satisfied in respect of fixed interests in the trust that are tracking interests.

This amendment ensures that, where the "tracking arrangement" rules in subsection 95(11) apply in tandem with subsection 94.2(5) to effectively convert a class of tracking interests in a trust into shares of a separate controlled foreign affiliate for foreign accrual property income purposes, those tracking interests are disregarded in determining if the trust itself is a controlled foreign affiliate under subsection 94.2(2). Therefore, where all the fixed interests in a trust are tracking interests (e.g., the trust is an "umbrella trust"), the trust itself will not be a controlled foreign affiliate unless the contributed restricted property condition in subparagraph 94.2(1)(b)(ii) is met.

This amendment applies in respect of taxation years of trusts beginning after February 26, 2018.

### Tracking interests

ITA

94.2(5)

Section 94.2 provides certain rules that are relevant in applying various provisions of the Act in respect of non-resident trusts that meet the conditions in subsection 94.2(1). Among other things, these rules generally result in the attribution of the foreign accrual property income ("FAPI") of such a trust to a taxpayer that directly – or indirectly, through a controlled foreign affiliate – holds fixed interests representing at least 10% of the fair market value of any class of fixed interests in the trust.

New subsection 94.2(5) is principally intended to provide certain rules for determining the portion of a trust's FAPI that is attributable to a taxpayer where the trust meets the conditions in subsection 94.2(1) and takes the form of an "umbrella trust". An umbrella trust is, in general terms, a single trust consisting of several sub-funds traded as individual investment funds, with the assets and liabilities of each sub-fund being isolated from the assets and liabilities of other sub-funds within the trust. An umbrella trust typically issues a separate class of participating (or "tracking") interests for each sub-fund, which provides holders with exposure to the returns on assets of the particular sub-fund and not assets of other sub-funds.

Subsection 94.2(5) governs how the "tracking arrangement" rules in subsection 95(11) operate in determining the portion of an umbrella trust's FAPI that is attributable to a taxpayer under subsection 91(1) (as well as any related deductions under subsection 91(4) and the filing requirements under section 233.4), in instances where subsection 94.2(2) applies to bring the trust within the scope of those rules. The main purpose is to allow this determination to be made based on the income, gains and losses realized in a particular sub-fund, of the umbrella trust, in which the taxpayer has invested, and not on the basis of the income, gains and losses realized in other sub-funds in which the taxpayer has not invested.

Subsection 94.2(5) applies in respect of a trust if two conditions are met.

First, the condition in subparagraph 94.2(1)(b)(i) must be met in respect of a class of fixed interests in the trust that are tracking interests (within the meaning of subsection 95(8)). In other words, the beneficiary and/or other persons or partnerships referenced in that subparagraph must hold tracking interests of a particular class in respect of the trust that have a combined fair market value equal to at least 10% of the total fair market value of all the interests of the class. Thus, subsection 94.2(5) does not apply to trusts without a class of tracking interests.

Second, it must be the case that subsection 95(11) would apply in respect of the trust if the new exception in subsection 95(13) were disregarded. This condition indirectly incorporates the conditions in subsection 95(10), as applied to the non-resident corporation that a trust is deemed to be as a result of the application of subsection 94.2(2). If subsection 94.2(2) does not apply in respect of a trust, this condition will not be satisfied in respect of that trust. Likewise, this condition is not satisfied if the taxpayer (i.e., the beneficiary of the trust referenced in subsection 94.2(1) or a particular person of which that beneficiary is a controlled foreign affiliate) does not hold a tracking interest in respect of the deemed non-resident corporation or the taxpayer (or its controlled foreign affiliate) does not hold shares of a tracking class of the deemed non-resident corporation.

Where these conditions are met, three consequences result:

- paragraph (a) disapplies the new exception in subsection 95(13), such that subsection 95(11) applies in respect of the trust even in instances where the requirements for that exception are met;
- paragraph (b) deems the beneficiary and any particular person referenced in subsection 94.2(1) (i.e., the beneficiary that holds tracking interests in respect of the trust and any

taxpayer of which that beneficiary is a controlled foreign affiliate) to control the separate corporation that the sub-fund is deemed to be under paragraph 95(11)(a); and

- paragraph (c) adapts the provisions of subsection 94.2(3), which address double taxation, to the context of the deemed separate corporation. As a result, any FAPI inclusion of the beneficiary or particular person referenced in subsection 94.2(1) that would otherwise arise in respect of the deemed separate corporation is affected by two adjustments. First, the FAPI is reduced by reference to distributions of the trust that satisfy the condition in paragraph 94.2(3)(a) (regarding hypothetical subsection 104(13) income inclusions). The second adjustment is to the beneficiary's or particular person's participating percentage, based on the alterations made to distribution entitlements under paragraph 94.2(3)(b).

This amendment applies in respect of taxation years of trusts beginning after February 26, 2018.

## Clause 29

### Definitions

ITA  
95(1)

#### ***“foreign accrual property income”***

The definition “foreign accrual property income” (FAPI) in subsection 95(1) of the Act is relevant for the purpose of determining amounts that a taxpayer is to include under subsection 91(1), as income from a share of a controlled foreign affiliate, in computing its income for a particular taxation year. It is also relevant for the purposes of determining the taxable surpluses and deficits of a foreign affiliate of a taxpayer. Variables A to C of the formula in the FAPI definition contain the additions to FAPI and variables D to H contain the deductions from FAPI.

Paragraph (b) of the description of A in the definition generally excludes from the FAPI of a foreign affiliate of a taxpayer dividends received from another foreign affiliate of the taxpayer. However, where a foreign affiliate receives an inter-affiliate dividend that is deductible for foreign tax purposes, the dividend is included in the recipient affiliate's FAPI, consistent with Recommendation 2.1 of the report under Action 2 of the Group of 20 and Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting Project (the “BEPS Action 2 report”), titled *Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements*.

Paragraph (b) of the description of A in the FAPI definition is amended to no longer apply the deductible dividend test under subsection 113(5). Instead, the amended paragraph (b) applies a test using the various rules and definitions used for applying subsection 12.7(3), the secondary operative rule of the hybrid mismatch rules.

The amended paragraph (b) excludes inter-affiliate dividends from FAPI in two circumstances. The first exclusion is provided in subparagraph (i), which excludes from FAPI any dividends received from another affiliate where the recipient affiliate and the payor affiliate are resident in

the same country. This exclusion applies regardless of whether the dividend is deductible for foreign tax purposes, so long as the residency test is met.

The second exclusion, which is in subparagraph (ii), applies to the extent a dividend does not result in a “deduction/non-inclusion mismatch” (as determined under paragraph 18.4(7)(c)). It limits the FAPI inclusion to circumstances where a dividend is deductible for foreign tax purposes but is not included in computing foreign relevant income or profits. If all or any portion of the amount of the dividend was deductible by the payor affiliate but not included in computing the “foreign ordinary income” (as defined in subsection 18.4(1)) of the recipient affiliate, there is an inclusion in the FAPI of the recipient affiliate to the extent of the amount of the deduction/non-inclusion mismatch. For this purpose, clauses (b)(ii)(A) and (B) set out two modifications in applying the deduction/non-inclusion mismatch test under subsection 18.4(6). First, that test is limited exclusively to the test in paragraph (b) of that subsection and thus ignores any inclusion of the dividend in “Canadian ordinary income”. Absent this modification, there is a potential circularity as sub-clause 95(2)(f.11)(ii)(F)(IV) modifies the “Canadian ordinary income” definition to read in paragraph (b) of the FAPI definition. The second modification is made to the description of C in the definition “foreign ordinary income”, to ensure that an inclusion in foreign ordinary income as a result of a “foreign hybrid mismatch rule” (as defined in subsection 18.4(1)) is taken into consideration in determining whether there is a deduction/non-inclusion mismatch.

Variable H in the FAPI definition is relevant where a foreign affiliate of a taxpayer is a member of a partnership that receives a dividend from another foreign affiliate of the taxpayer. It ensures that the dividend is not included in the member’s FAPI. Variable H is amended to implement the same policy, and achieve a similar result, as the amendment to paragraph (b) of the description of A (described above).

These amendments apply in respect of dividends received on or after July 1, 2024.

### ***“relevant tax factor”***

The definition “relevant tax factor” (RTF) in subsection 95(1) is used in determining the Canadian tax relief provided in respect of foreign taxes imposed on the earnings of a foreign affiliate of a taxpayer.

Relief for foreign tax paid, based on the taxpayer’s RTF, is provided

- under subsection 91(4), in respect of foreign tax paid on foreign accrual property income (FAPI) of a controlled foreign affiliate that is included in the taxpayer’s income pursuant to subsection 91(1), or
- under section 113, in respect of foreign tax paid on earnings of a foreign affiliate that are repatriated to a corporation resident in Canada.

The RTF can also indirectly affect the taxation of distributions paid to the ultimate Canadian resident individual shareholder of a corporation, since amounts deductible under section 113 are added to certain corporations’ “general rate income pool” (which is relevant for determining the

extent to which a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation can pay eligible dividends in any given taxation year).

The existing definition provides that the RTF for a corporation (or a partnership all the resident members of which are corporations) is the reciprocal of the basic corporate tax rate less the general rate reduction (i.e.,  $1/(0.38-0.13)$ , or 4). The RTF for individuals and for other partnerships is 1.9.

The RTF definition is amended to generally subject CCPCs, substantive CCPCs and partnerships one or more members of which are CCPCs or substantive CCPCs to the RTF of 1.9. The RTF of 1.9 more accurately reflects the corporate tax rate (approximating the highest personal income tax bracket) that would otherwise apply to investment income earned by a CCPC or a substantive CCPC.

An elective relieving regime is also introduced in section 93.4 to allow CCPCs and substantive CCPCs to preserve the high RTF of 4 on certain types of income that are included in FAPI and/or taxable surplus and that would generally not have been subject to the high tax rate on investment income had they been earned domestically rather than through a foreign affiliate. For more information, see the commentary on new section 93.4 and the amended definition of “income” or “loss” in subsection 129(4).

Consequential amendments are also made to the definitions of “capital dividend account” and “general rate income pool” to improve the integration of a foreign affiliate’s earnings as they are distributed through a corporate chain to the ultimate Canadian individual shareholder.

The purpose of these amendments is to improve neutrality by further aligning the domestic and international anti-deferral regimes.

For more information, see the commentary on the definitions “capital dividend account” and “general rate income pool” in subsection 89(1), section 93.4 and the definition “income” or “loss” and “non-eligible refundable dividend tax on hand” in subsection 129(4).

These amendments apply to taxation years that begin on or after April 7, 2022.

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

ITA

95(2)(d.1)

Paragraph 95(2)(d.1) provides for the rollover of property on a foreign merger of two or more predecessor foreign corporations, where certain conditions are met. Subparagraph 95(2)(d.1)(ii) provides continuity rules to give proper application to various rules in the Act. This subparagraph is amended to add new clause (D), which provides that the new foreign corporation is deemed to be the same corporation as, and a continuation of, each foreign affiliate predecessor in respect of a disposition of property to the new foreign corporation for purposes of subsections 85.1(4) and 87(8.3). This amendment is consequential on the amendments to those subsections.

For more information, see the commentary on those subsections.

This amendment applies in respect of dispositions that occur on or after August 15, 2025.

ITA  
95(2)(e)

Paragraph 95(2)(e) provides rules that apply where a foreign affiliate of a taxpayer is liquidated and dissolved and property is distributed to shareholders that include other foreign affiliates of the taxpayer. Clause 95(2)(e)(v)(A) provides continuity rules to give proper application to various rules in the Act. This clause is amended to add new subclause (IV), which provides that the shareholder affiliate is deemed to be the same corporation as, and a continuation of, the disposing affiliate in respect of a disposition of property to the shareholder affiliate for purposes of subsections 85.1(4) and 87(8.3). This amendment is consequential on the amendments to those subsections.

For more information, see the commentary on those subsections.

This amendment applies in respect of dispositions that occur on or after August 15, 2025.

### **Tracking class — separate corporation**

ITA  
95(11)

Subsection 95(11), together with subsection 95(12), is intended to prevent the avoidance of controlled foreign affiliate status – and therefore accrual-based taxation of foreign accrual property income (“FAPI”) – through the use of tracking arrangements. As such, these rules are not intended to apply in respect of any foreign affiliate that is already a controlled foreign affiliate without regard to these rules. The application of these rules to such controlled foreign affiliates could, in certain cases, prevent a FAPI inclusion under subsection 91(1) that would otherwise occur. That result would be contrary to the underlying policy of ensuring that controlled foreign affiliate status (and consequent accrual taxation of FAPI) cannot be avoided through the use of tracking interests.

To clarify that the tracking arrangement rules do not apply in respect of a foreign affiliate that is otherwise a controlled foreign affiliate, the preamble to subsection 95(11) is amended by adding the words “other than a controlled foreign affiliate”.

This amendment applies in respect of taxation years of foreign affiliates beginning after February 26, 2018.

### **Exception — no avoidance purpose**

ITA

## 95(13)

Subsections 95(10) to (12) (i.e., the tracking arrangement rules) are intended to prevent the avoidance of controlled foreign affiliate status – and therefore accrual-based taxation of foreign accrual property income (“FAPI”) – through the use of tracking arrangements. Subsection 95(11) addresses tracking arrangements where the tracking is embedded in shares of a foreign affiliate, and subsection 95(12) applies in respect of all other tracking arrangements involving foreign affiliates.

New subsection 95(13) ensures the tracking arrangement rules do not apply in respect of a foreign affiliate of a taxpayer in situations where avoiding, preventing or deferring the inclusion in income of any amount in respect of FAPI under subsection 91(1) is not a purpose of creating or issuing a tracking interest in the affiliate that is acquired or held by the taxpayer or a foreign affiliate of the taxpayer, or a purpose of the taxpayer or foreign affiliate of the taxpayer acquiring or holding that tracking interest. This is implemented by way of an exception to subsections 95(11) and (12) that applies where there is no such FAPI avoidance purpose.

The focus of this purpose test is on the purpose of creating, issuing, acquiring or holding a tracking interest specifically, as opposed to the taxpayer’s purpose of acquiring or holding an interest in the foreign affiliate more generally. Accordingly, the test is satisfied, for example, in cases where the taxpayer’s sole purpose for acquiring an interest in the foreign affiliate was to earn an investment return but the purpose for structuring the interest as a tracking interest was to avoid an income inclusion in respect of FAPI.

One situation in which the exception in subsection 95(13) is expected to apply is where the tracking interest in respect of a foreign affiliate is a currency hedging arrangement to which the foreign affiliate is a party. For example, a foreign affiliate may operate a fund and enter into currency hedging contracts to insulate the returns of the fund’s investors from fluctuations in their domestic currencies relative to the fund’s operating currency. There may be a separate class of shares in the fund vehicle corresponding to each investor residence jurisdiction, with the hedging contract(s) relating to the currency of a given jurisdiction being allocated as distinct property of the corresponding share class and benefiting only investors resident in that jurisdiction. In the absence of subsection 95(13), since shares in each of these classes would likely be tracking interests, subsection 95(11) or (12) may be triggered. Subsection 95(13) ensures that subsections 95(11) and (12) do not apply in relation to these tracking interests, unless there are other factors suggesting that a FAPI avoidance purpose exists as part of the arrangement.

Because of new paragraph 94.2(5)(a), subsection 95(13) does not apply in the case of a trust in respect of which subsection 94.2(2) applies. In the context of section 94.2, subsection 95(11) operates more as an administrative relieving provision rather than an anti-avoidance rule. As such, it would be inappropriate to prevent its application in this context.

This amendment applies in respect of taxation years of foreign affiliates beginning after February 26, 2018.

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## Clause 30

### Limited partnership losses

ITA

96(2.1)(b)(ii)

Subsection 96(2.1) deals with the losses of limited partnerships. This subsection generally limits the deduction by a limited partner of losses for a taxation year to the extent of the limited partner's "at-risk amount" in respect of a partnership at the end of the fiscal period of the partnership ending in that year.

Subparagraph 96(2.1)(b)(ii) further limits the deduction of limited partner losses, beyond the "at-risk amount" limitation, by the amount of investment tax credits required to be added by subsection 127(8), the amount of carbon capture, utilization and storage tax credits required to be added by subsection 127.44(11), the amount of clean technology investment tax credits required to be added by subsection 127.45(8), the amount of clean hydrogen tax credits required to be added by subsection 127.48(12) and the amount of CTM investment tax credits required to be added by subsection 127.49(8).

This subparagraph is amended to reduce limited partnership losses by the amount required to be added by new subsection 127.491(12) in respect of the new clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### At-risk amount

ITA

96(2.2)

Subsection 96(2.2) defines the "at-risk amount" of a limited partner for the purposes of determining deductible losses and tax credits allocated to the partner.

Subsection 96(2.2) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### Limited partner

ITA

96(2.4)

Subsection 96(2.4) provides an extended definition of "limited partner" for the purpose of applying the limited partnership at-risk rules in subsection 96(2.2).

Subsection 96(2.4) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Clause 31**

#### **Reference to trust or estate**

ITA  
104(1)

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

Subsection 104(1) currently provides that, except for the purposes of certain specified provisions, references in the Act to trusts are considered not to include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as "bare trusts". Trusts described in paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1) are expressly not affected by this exclusion. Subsection 104(1) currently provides that the exclusion for bare trusts does not apply for the purposes of section 150. As such, these trusts are generally required to file an annual trust return and are subject to the beneficial ownership reporting requirements set out in section 204.2 of the *Income Tax Regulations*.

Subsection 150(1.3) also provides that for the purpose of section 150 a trust includes an arrangement under which a trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property.

Subsection 150(1.3) is being amended to more clearly define the beneficial ownership arrangements that are subject to the reporting rules. This subsection will, subject to the exceptions in subsection 150(1.31), deem certain beneficial ownership arrangements that would not otherwise constitute a trust for the purposes of the Act to be a trust for the purposes of the beneficial ownership reporting rules.

Subsection 104(1) is amended to remove the reference to section 150. As such, beneficial ownership arrangements that are not otherwise treated as trusts for the purposes of the Act will only be subject to the beneficial ownership reporting requirements if they are deemed to be trusts under new subsection 150(1.3).

This amendment applies for taxation years that end after December 30, 2024.

#### **Beneficiaries QFFP taxable capital gain — 2024**

ITA  
104(21.21)

Subsection 104(21.2) sets out the rules for establishing those net taxable capital gains of a personal trust that have been designated by a trust in respect of its beneficiaries that can be attributed to specific types of properties disposed of by the trust for the purpose of section 110.6 of the Act. This attribution permits the beneficiary to claim the lifetime capital gains exemption under section 110.6 for dispositions by a personal trust of qualified farm or fishing property, or a share of a qualified small business corporation of the trust.

Subsection 104(21.21) applies to dispositions of qualified farm or fishing property by a personal trust on or after April 21, 2015. This was relevant for the increase in the lifetime capital gains exemption limit to \$500,000 of taxable capital gains (\$1,000,000 of capital gains) under subsection 110.6(2.2) that applied to dispositions of qualified farm or fishing property on or after April 21, 2015. Subsection 104(21.21) provides a formula that prorates (for the purposes of section 110.6, which sets out rules for calculating the lifetime capital gains exemption) the amount of a trust beneficiary's taxable capital gain from qualified farm or fishing property between dispositions of qualified farm or fishing property before and on or after April 21, 2015. With the increase in the lifetime capital gains exemption limit in subsection 110.6(2) to \$508,418 as of 2024 (due to annual adjustments for inflation), the additional lifetime capital gains exemption limit amount in subsection 110.6(2.2) is no longer relevant since the general limit is now higher than the limit provided for in 110.6(2.2).

Subsections 104(21.21) and (21.22) are amended and new subsections 104(21.23) and (21.24) are added consequential on the 2024 taxation year additional amount for the lifetime capital gains exemption limit provided in amended subsection 110.6(2.2), which provides an additional capital gains deduction limit (increased to \$625,000 of taxable income or \$1,250,000 of capital gains) for qualified farm or fishing property or a qualified small business corporation share disposed of on or after June 25, 2024 and before 2025. In determining an individual's entitlement to the additional deduction, the individual must establish the extent to which the individual's taxable capital gains arose from dispositions of qualified farm or fishing property or qualified small business corporation shares on or after June 25, 2024 and before 2025. Amended subsections 104(21.21) and (21.22) assist individuals in respect of whom personal trusts have designated amounts in respect of net taxable capital gains of the trust from dispositions of qualified farm or fishing property of the trust in its 2024 taxation year. New subsections 104(21.23) and (21.24) assist individuals in respect of whom personal trusts have designated amounts in respect of net taxable capital gains of the trust from dispositions of a qualified small business corporation share of the trust in its 2024 taxation year.

Amended subsection 104(21.21) provides for the proration of the gains of a trust in its 2024 taxation year from dispositions of qualified farm or fishing property before and on or after June 25, 2024. In particular, for the beneficiary's taxation year in which the designation year of the trust ends, where

- clause 104(21.2)(b)(ii)(A) applies for the purpose of section 110.6 to deem the trust beneficiary to have a disposition of qualified farm or fishing property taxable capital gain, and
- where the trust has made the required designation under new subsection 104(21.22),

the beneficiary is deemed for the purpose of amended subsection 110.6(2.2) to have a disposition of qualified farm or fishing property taxable capital gain on or after June 25, 2024. Pursuant to the formula in 104(21.21), for the purpose of subsection 110.6(2.2), the beneficiary's qualified farm or fishing property taxable capital gain realized on or after June 25, 2024 is equal to the qualified farm or fishing property taxable capital gains allocated to the beneficiary by the trust, multiplied by the trust's taxable capital gain realized for dispositions, on or after June 25, 2024 and before 2025, of qualified farm or fishing property divided by the trust's taxable capital gain from the disposition of qualified farm or fishing property for the year.

This amendment applies to taxation years that begin after 2023.

### **Trusts to designate amounts — 2024**

ITA  
104(21.22)

Subsection 104(21.22) provides that a trust is to determine and to designate, in prescribed form, the amount that is, under subsection 104(21.21), determined to be the beneficiary's taxable capital gain from the disposition of qualified farm or fishing property of the beneficiary.

Subsection (21.22) is amended consequential on the amendment of subsection 104(21.21) to refer to the additional amount for the lifetime capital gains exemption limit provided in amended subsection 110.6(2.2), which provides an additional capital gains deduction limit for qualified farm or fishing property disposed of on or after June 25, 2024 and before 2025.

This amendment applies to taxation years that begin after 2023.

### **Beneficiaries QSBC taxable capital gain — 2024**

ITA  
104(21.23)

Consequential on the amendment to subsection 110.6(2.2) to provide a transitional year addition to the lifetime capital gains exemption limit to \$1,250,000 (\$625,000 of taxable capital gains) for dispositions on or after June 25, 2024 and before 2025, new subsection 104(21.23) is introduced to provide for the proration of taxable capital gains from dispositions by personal trusts in their 2024 taxation year of qualified small business corporation shares before and on or after June 25, 2025. New subsections 104(21.23) and (21.24) mirror existing subsections 104(21.21) and (21.22) but apply in respect of dispositions of qualified small business corporation shares (rather than qualified farm or fishing property).

Subsection 104(21.23) provides that for a beneficiary's taxation year in which the designation year of the trust ends, where

- clause 104(21.2)(b)(ii)(B) applies for the purpose of section 110.6 to deem the trust beneficiary to have a taxable capital gain from the disposition of a qualified small business corporation share, and
- where the trust has made the required designation under new subsection 104(21.24),

the beneficiary is deemed for the purpose of new subsection 110.6(2.2) to have a qualified small business corporation share taxable capital gain on or after June 25, 2024 and before 2025.

Pursuant to the formula in 104(21.23), for the purposes of subsection 110.6(2.2), the beneficiary's qualified small business corporation share taxable capital gain realized on or after June 25, 2024 and before 2025 will be equal to the qualified small business corporation share taxable capital gains allocated to the beneficiary by the trust, multiplied by the trust's taxable capital gain realized for dispositions, on or after June 25, 2024 and before 2025, of qualified small business corporation shares divided by the trust's taxable capital gain from the disposition of qualified small business corporation shares for the year.

This amendment applies to taxation years that begin after 2023.

### **Trusts to designate amounts — 2024**

ITA

104(21.24)

New subsection 104(21.24) provides that a trust is to determine and to designate, in prescribed form, the amount that is, under subsection 104(21.23), determined to be a beneficiary's taxable capital gain from the disposition of qualified small business corporation shares of the beneficiary.

This amendment applies to taxation years that begin after 2023.

### **Clause 32**

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

ITA

107.4(2)(b)

Paragraph 107.4(2)(b) deems there to be no change in beneficial ownership of a property where the property is transferred from a trust governed by an RRSP or RRIF to another trust governed by an RRSP or RRIF, provided that the annuitant of the transferor is the same as that of the transferee.

Since property may be transferred from an RRSP to an FHSA of an individual (see paragraph 146(16)(a.2)), or from an individual's FHSA to an RRSP or RRIF under which the individual is

the annuitant (see subsection 146.6(7)), or between FHSAs of the same individual, paragraph 107.4(2)(b) is amended to refer to trusts governed by an FHSA.

This amendment comes into force on April 1, 2023.

### **Clause 33**

#### **Employee options**

ITA

110(1)(d)(i)(B)

Paragraph 110(1)(d) provides for a deduction in computing taxable income if certain conditions are met. The deduction is currently equal to half of the amount of the benefit deemed by subsection 7(1) to have been received by a taxpayer in respect of a security under an employee stock option agreement.

Paragraph 110(1)(d) permits a deduction in computing taxable income of a deceased taxpayer who is deemed by subsection 7(1)(e) to have received a benefit in respect of a security because, immediately before death, the taxpayer owned a right to acquire the security under an employee stock option agreement. Under clause 110(1)(d)(i)(B), the deduction is available in these circumstances if (among other conditions) the security is acquired under the agreement within the first taxation year of the graduated rate estate of the taxpayer by:

- the graduated rate estate of the taxpayer,
- a person who is a beneficiary (as defined in subsection 108(1)) under the graduated rate estate of the taxpayer, or
- a person in whom the rights of the taxpayer under the agreement have vested as a result of the taxpayer's death.

Clause 110(1)(d)(i)(B) is amended consequential to changes to subsection 164(6.1) which provides the graduated rate estate of a deceased individual an additional two taxation years to carry back certain amounts related to rights to acquire securities held by the individual immediately before their death (as determined under subsection 164(6.1)) to be deducted in computing the deceased individual's income for their last taxation year.

For more information, see the commentary on subsection 164(6.1).

This amendment applies to taxation years of individuals who die on or after August 12, 2024.

### **Clause 34**

#### **2024 Extension**

ITA

110.1(18)

Section 110.1 provides rules for calculating the deduction in computing the taxable income of a corporation in respect of gifts made by the corporation to qualified donees.

In response to the 2024 postal strike that began on November 15, 2024, new subsection 110.1(18) extends the deadline for making donations eligible for deduction in the 2024 tax year, until February 28, 2025. This new subsection will provide that gifts made before March of 2025 are deemed to have been made in a taxation year of a taxpayer that ends after November 14, 2024, and before 2025 (the "donation year"), and not in the taxpayer's 2025 taxation year, if

- the gift would be deductible under section 110.1 in computing the taxpayer's taxable income under Part I for the year if it were made immediately before the end of the donation year;
- the taxpayer deducts the amount of the gift under this section for the taxpayer's donation year; and
- the gift was in the form of cash or was transferred by way of cheque, credit card, money order or electronic payment.

## Clause 35

### Definitions

ITA  
110.6(1)

#### *“annual gains limit”*

The annual gains limit of an individual is one of the factors applicable in determining the individual's entitlement to the lifetime capital gains exemption for a year, determined by the formula  $A - B$ . The definition “annual gains limit” in subsection 110.6(1) is amended consequential on the introduction of the capital gain exemptions available on the disposition of shares pursuant to a qualifying business transfer or a qualifying cooperative conversion under section 110.61 and new section 110.62, respectively.

#### Description of A

The description of A is equal to the lesser of paragraphs (a) and (b). This formula functions to reduce the annual gains limit for the individual's allowable capital losses to the extent it exceeds their net taxable capital gains from sources unrelated to the disposition of properties eligible for the lifetime capital gains exemption. More specifically, paragraph (a) is equal to the individual's net taxable capital gains, which includes any allowable capital losses. If this amount is less than the net taxable capital gains from the disposition of properties eligible for the lifetime capital gains exemption (paragraph (b)), the description of A is equal to the individual's net taxable capital gains for the year.

Paragraph (a) is amended to exclude any portion of the net taxable capital gains that relate to deductions claimed by the individual for the year under subsection 110.61(2) and new subsection

110.62(2). This amendment ensures that a capital gain that has effectively been exempted through a deduction under section 110.61 or 110.62 is excluded from the total net taxable capital gains in this paragraph.

#### Description of B

The description of B reduces the annual gains limit for the total of paragraphs (a) the individual's net capital losses (to the extent it exceeds their net taxable capital gains from sources unrelated to the disposition of properties eligible for the lifetime capital gains exemption) and (b) the individual's allowable business investment losses (ABILs) for the year.

Subparagraph (a)(ii) is amended to exclude any portion of the net taxable capital gains that relate to deductions claimed by the individual for the year under subsection 110.61(2) and new subsection 110.62(2). This amendment ensures that a capital gain that has effectively been exempted through a deduction under section 110.61 or 110.62 is excluded from the total net taxable capital in this paragraph.

Paragraph (b) is amended to exclude any portion of the ABILs that have reduced the amount otherwise deductible by the individual for the year under subsection 110.61(2) and new subsection 110.62(2). This amendment ensures that ABILs that have already reduced another deduction under section 110.61 or 110.62 are not reducing the annual gains limit for the lifetime capital gains exemption.

These amendments apply in respect of dispositions that occur on or after August 12, 2024.

#### ***“cumulative net investment loss”***

An individual's cumulative net investment loss at the end of a taxation year may limit the individual's access to the capital gains exemption provided under section 110.6 by reducing their cumulative gains limit at the end of the year. The cumulative net investment loss of an individual at the end of a year is defined as the amount by which the aggregate of their investment expenses for the year and prior years ending after 1987 exceeds the aggregate of their investment income for such years.

The definition “cumulative net investment loss” is amended consequential on the introduction of the capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or a qualifying cooperative conversion under section 110.61 and new section 110.62, respectively.

Under subparagraph (ii) of the description of H used in the formulas in paragraphs 110.61(2)(b) and 110.62(2)(b), the amount by which an individual's “investment expense” exceeds their “investment income” for the year (referred to, here, as “net investment losses”) may reduce the amount of the deduction that the individual may claim under subsections 110.61(2) or 110.62(2). To ensure the reduction caused by the individual's net investment losses to the amount of the deduction available under subsections 110.61(2) or 110.62(2) is only accounted for once, the definition of “cumulative net investment loss” is amended to exclude that amount of the individual's net investment losses which reduced the deduction available under subsections

110.61(2) and 110.62(2). This amendment ensures that the amount of the individual's net investment losses which reduced the deduction available under subsections 110.61(2) and 110.62(2) does not reduce the individual's cumulative gains limit in the same amount.

This amendment applies in respect of dispositions that occur on or after August 12, 2024.

### **Capital gains deduction — qualified farm or fishing property**

ITA

110.6(2)(a)

Subsection 110.6(2) provides a deduction in computing the taxable income of an individual (other than a trust) in respect of taxable capital gains from the disposition of qualified farm or fishing property. For 2024, this would allow for a deduction of up to \$508,418 of taxable capital gains (as indexed for inflation). With an inclusion rate of 1/2, this would effectively exempt up to \$1,016,816 of capital gains from tax.

Subsection 110.6(2.1) provides a deduction in computing the taxable income of an individual (other than a trust) in respect of taxable capital gains from the disposition of a qualified small business corporation share. The limit in subsection 110.6(2.1) is computed using the formula in paragraph 110.6(2)(a).

Paragraph 110.6(2)(a) is amended to increase the limit to \$625,000 (\$1,250,000 of capital gains), effective for the 2025 taxation year. This amount will be indexed to the Consumer Price Index (CPI) for the 2026 and subsequent taxation years. For further information, see the commentary on subsection 117.1(2).

This amendment applies to taxation years that begin after 2024.

### **Additional deduction — 2024**

ITA

110.6(2.2)

Subsection 110.6(2.2) provides that, in computing the taxable income of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of qualified farm or fishing property in the year or in a preceding year (provided the disposition occurs on or after April 21, 2015), there may be deducted such amount as the individual may claim not exceeding the least of certain limits, including the amount necessary to increase the base lifetime capital gains exemption (in subsection (2)) to \$1,000,000, which is expressed as the amount by which \$500,000 exceeds the total of

- the indexed lifetime capital gains exemption limit for qualified farm or fishing property in subsection (2), and
- the total of all amounts previously deducted by the individual under new subsection (2.2) in a preceding taxation year that ended after 2014.

With the increase in the lifetime capital gains exemption limit in subsection 110.6(2) to \$508,418 as of 2024 (due to annual adjustments for inflation), the additional amount in subsection 110.6(2.2) is no longer relevant since the general limit is now higher than the limit provided for in 110.6(2.2).

Subsection (2.2) is amended to provide a temporary increase to the lifetime capital gains exemption limit to \$1,250,000 for dispositions of qualified farm or fishing property or a qualified small business corporation share on or after June 25, 2024 and before 2025 (the “transitional year”).

Amended subsection (2.2) provides an additional deduction (subject to certain limits) of up to \$116,582 of taxable income for the 2024 transitional year. This additional amount, combined with the underlying lifetime capital gains exemption limit of \$508,418, provides an increased deduction limit of \$625,000 of taxable income (\$1,250,000 of capital gains) for dispositions of qualified farm and fishing property and qualified small business corporation shares after June 24, 2024 and before 2025.

This amendment applies to taxation years that begin after 2023.

### **Deduction denied**

ITA  
110.6(32) and (33)

New subsections 110.6(32) and (33) prevent an individual from claiming the increased lifetime capital gains exemption limit for the 2025 taxation year in respect of a taxable capital gain from a disposition of property before June 25, 2024, in certain circumstances.

Subsection 110.6(32) provides that the denial of the increased limit under subsection (33) applies in respect of an individual's taxable capital gains for the 2025 taxation year if

- in the taxation year, the individual has a taxable capital gain from the disposition, before June 25, 2024, by a partnership or a trust of a qualified small business corporation share of the individual or a qualified farm or fishing property of the individual; and
- those taxable capital gains exceed the amount that would be deductible by the individual under the pre-June 25, 2024 inflation indexed lifetime capital gains exemption limit of \$522,145 for the 2025 taxation year (the “denied excess”).

Subsection 110.6(33) provides that no amount may be deducted under section 110.6 for the taxation year by the individual in respect of the individual's taxable capital gains for the year to the extent of the denied excess described in subsection 110.6(32).

### **Clause 36**

#### **Capital gains deduction for qualifying business transfer – conditions**

ITA

110.61(1)(a)

Paragraph 110.61(1)(a) provides that for subsection (2) to apply, no individual may have, prior to the disposition time, claimed a deduction under subsection (2) in respect of another disposition of shares that, at the time of that disposition, derived their value from an active business that is also relevant to the determination of whether the disposition of the subject shares satisfies the condition set out in paragraph (a) of the definition qualifying business transfer in subsection 248(1).

This paragraph is amended to add that no individual may have, prior to the disposition time, claimed a deduction under new section 110.62 (i.e., the deduction available for dispositions of shares under a qualifying cooperative conversion) in respect of another disposition of shares that, at the time of that disposition, derived their value from an active business that is also relevant to the determination of whether the disposition of the subject shares satisfies the condition set out in paragraph (a) of the definition qualifying business transfer in subsection 248(1).

This condition is intended to ensure that an interest in a business is effectively transferred only once pursuant to a qualifying business transfer for which the capital gains deduction in subsection (2) is available, preventing multiplication of the deduction under subsection (2) and section 110.62 in respect of the same business.

This paragraph is also amended to clarify that the determination of whether a prior deduction was sought under section 110.61 or 110.62, in respect of a disposition of shares that derived their value from an active business that is relevant to the determination of whether the disposition of the subject shares satisfies the conditions set out in paragraph (a) of the definition “qualifying business transfer” in subsection 248(1), is to be made on a look-through basis.

These amendments are deemed to have come into force on January 1, 2024.

ITA

110.61(1)(b)

Paragraph 110.61(1)(b) provides the conditions that the subject shares must meet throughout the 24 months immediately prior to the disposition time under the qualifying business transfer. Subparagraph (i) requires that, during this period, the subject shares were not owned by anyone other than the individual or a person or partnership related to the individual (referred to as “the holding period test”). Subparagraph (b)(ii) requires that, during this period, more than 50% of the fair market value of the subject shares was derived from assets which were used principally in an active business (referred to as “the active business test”).

Paragraph (b) is amended to ensure that the holding period and the active business asset tests operate effectively where shares are received in substitution for other shares. Under amended paragraph (b), the holding period test may be met if the original share throughout the part of the 24-month period immediately preceding the disposition time that is before the time of

substitution was a share of a corporation that meets the active business asset test and was not owned by a person or partnership other than a person or partnership described in subparagraph (b)(i).

Subparagraph (b)(ii) is also amended to clarify that the active business test may be met where the value of the subject shares and the substituted shares (if any) is derived, directly or indirectly, from assets used principally in an active business. This amendment is intended to clarify that the sale of shares of a holding corporation could satisfy this condition; for example, if the holding corporation's sole property were shares of a wholly-owned subsidiary corporation all of whose assets were used in an active business.

These amendments are deemed to have come into force on January 1, 2024.

ITA

110.61(1)(d)(ii)

Subparagraph 110.61(1)(d)(ii) requires that throughout any 24-month period ending before the disposition time, the individual claimant, or a spouse or common-law partner of the individual, was actively engaged in the business that is relevant to the determination of whether the subject shares satisfy the condition set out in paragraph (a) of the definition “qualifying business transfer” in subsection 248(1). This subparagraph is amended to qualify that the active engagement takes place on a regular, continuous and substantial basis (including within the meaning of paragraph 120.4(1.1)(a)). An individual working at least an average of 20 hours per week during the portion of the year in which the business operates is deemed to satisfy this condition per the provision's reference to paragraph 120.4(1.1)(a).

This amendment is deemed to come into force on January 1, 2024.

### **Capital gains deduction – qualifying business transfers**

ITA

110.61(2)

Subsection 110.61(2) sets out the rules for calculating an individual's entitlement to the capital gains deduction on qualifying business transfers. If the conditions provided under subsection (1) have been met and the individual is eligible for a deduction under subsection (2), then in computing the taxable income for a taxation year of the individual, the individual may deduct such amount as they may claim not exceeding the least of the amounts provided under paragraphs (a) and (b).

This subsection is amended and reorganized in order to incorporate limitations equivalent to those currently applicable to the lifetime capital gains exemption (i.e., limitations equivalent to the “annual gains limit” and similar to the “cumulative net investment loss”, both defined in section 110.6). These restrictions prevent multiple deductions from being claimed against the same amount.

*\$10 million gains limit*

New paragraph 110.61(2)(a) provides that the deduction cannot exceed the amount that would be determined under the formula:  $A \times B \times C - D$ .

Variable A is the elected amount included in the joint election referred to in paragraph 110.61(1)(e) (i.e., the total amount of capital gains that the parties agree may be eligible for a deduction under subsection (2) with respect to the qualifying business transfer, not exceeding \$10,000,000).

Variable B is 1, unless more than one individual is entitled to a deduction under this subsection in respect of the qualifying business transfer. If more than one individual is entitled to the deduction, then variable B is the percentage assigned to the individual in the joint election referred to in paragraph (1)(e), if a percentage is assigned to the individual in accordance with clause (1)(e)(ii)(B). In any other case, variable B is nil.

Variable C is the fraction of the taxpayer's capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year.

Variable D recognizes that an individual may use the reserve provided under subparagraph 40(1)(a)(iii) to report the capital gain from a qualifying business transfer over multiple taxation years. Variable D is the total of each amount claimed by the taxpayer under subsection (2) in a prior taxation year in respect of the disposition of the subject shares multiplied by the amount determined by the formula  $E \div F$  (which adjust past deductions claimed to compensate for any difference between the capital gains inclusion rates in the current and past taxation years).

Variable E is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the current year.

Variable F is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the prior year in respect of the disposition of the subject shares.

*Reduction of capital gains deduction*

New paragraph (2)(b) requires that certain other deductions, if claimed, are first applied against the relevant taxable capital gain realized on the subject shares before the deduction under section 110.61 can be claimed. This limit ensures that, in computing taxable income, the exemption is reduced to the extent the taxpayer has also claimed allowable capital losses under paragraph 3(b) (to the extent the allowable capital losses exceed their taxable capital gains excluding the amount deducted previously in the year by the individual under section 110.61) or allowable business investment losses (ABILs), and to the extent that the taxpayer's investment expense exceeds their investment income (referred to, here, as "net investment losses"). This limit also ensures that, in computing taxable income, the exemption is reduced to the extent the taxpayer has claimed net capital loss carryovers under paragraph 111(1)(b) (to the extent the net capital loss carryovers exceed their net taxable capital gains under paragraph 3(b) excluding any amounts deducted previously in the year by the individual under section 110.61). (For the ordering of

deductions claimed by an individual under subsection 110.61(2) in a taxation year, see the commentary to new subsection 110.61(2.1).)

More specifically, this paragraph provides that the deduction available under section 110.61 cannot exceed the amount that would be determined under the formula:  $G - H$ .

#### Variable G

Variable G is the lesser of subparagraph (i), the individual's net taxable capital gains for the year under paragraph 3(b) (except any portion that relates to a prior deduction claimed by the individual in the year under this section for another qualifying business transfer), and subparagraph (ii), their net taxable capital gains from the disposition of the subject shares.

#### Variable H

Variable H is the total of subparagraphs (i) to (iii).

Subparagraph (i) is the individual's ABILs for the year (except any portion that previously reduced the amount otherwise deductible by the individual for the year under this subsection).

Subparagraph (ii) is the individual's net investment losses for the year (except any portion that previously reduced the amount otherwise deductible by the individual for the year under this subsection).

For the purposes of subparagraph (ii) of variable H, an "investment expense" of an individual for a year, has the meaning assigned by subsection 110.6(1) except that, the reference to "amount determined in respect of the individual for the year under paragraph (a) of the description of B in the definition annual gains limit" in paragraph (f) of that definition is to be read as "total of all amounts determined in respect of the individual for the year under subparagraph (iii) of the description of H in subsection 110.61(2) (to the extent that amount reduces the amount otherwise deductible under that subsection)".

For the purposes of subparagraph (ii) of variable H, "investment income" of an individual for a year, has the meaning assigned by subsection 110.6(1) except that, the reference to "amount determined in respect of the individual for the year for A in the definition annual gains limit" in paragraph (f) of that definition is to be read as "total of all amounts determined in respect of the individual for the year for the description of G in subsection 110.61(2) (except any amount that previously reduced the amount otherwise deductible by the individual in the year under subsection 110.61(2))".

Subparagraph (iii) is the individual's net capital losses for other taxation years deducted by the individual in the year under paragraph 111(1)(b) to the extent the deducted net capital loss carryovers exceed the individual's net taxable capital gains under paragraph 3(b) (excluding any amounts deducted previously in the year by the individual under subsection 110.61(2)).

The limit under paragraph (2)(b) is intended to ensure that the new exemption is not used to shelter other unrelated income. Similar limits apply in respect of the lifetime capital gains deductions (see the definitions “annual gains limit” and “cumulative net investment loss” in subsection 110.6(1)).

### **Example**

Imene owns shares of two unrelated operating corporations (20% of the fair market value of all shares of Opco1 and 15% of Opco2). In September 2025, Imene and the other Opco1 shareholders sold all of their Opco1 shares to an employee ownership trust (EOT1) pursuant to a qualifying business transfer. Similarly, in October 2025, Imene and all the other Opco2 shareholders sold all their Opco2 shares to another employee ownership trust (EOT2). All the Opco1 and Opco2 shares are “qualified small business corporation shares” (QSBC shares), as defined under subsection 110.6(1). Imene’s sale of Opco1 shares resulted in a capital gain of \$3,000,000 (taxable capital gain of \$1,500,000) and Opco2 shares resulted in a capital gain of \$1,000,000 (taxable capital gain of \$500,000). Under the joint election for the capital gains deduction for selling to an employee ownership trust (EOTCGE) provided under subsection 110.61(1)(e), EOT1 effectively allocates \$2,000,000 and EOT2 effectively allocates \$1,500,000 of their respective \$10,000,000 EOTCGE to Imene. Imene has never used her lifetime capital gains exemption (LCGE) prior to this transaction.

Imene has also realized \$100,000 of allowable business investment losses (ABILs) in November 2025.

In December 2025, Imene disposed of portfolio shares resulting in a capital gain of \$200,000 (\$100,000 taxable capital gain). The portfolio shares do not qualify for the LCGE. Lastly, Imene has \$100,000 of net capital losses carried forward from her 2023 taxation year (i.e., the portion of a \$200,000 capital loss realized in 2023 that is an allowable capital loss) that she will use to fully shelter the capital gain realized on the portfolio shares in December 2025.

Imene does not have any other relevant income for the year, or any other years.

*What amounts can Imene claim under the EOTCGE and LCGE to reduce her taxable income from the sale of the Opco shares?*

Pursuant to section 111.1, Imene calculates the amount she can claim under section 110.61 prior to section 110.6.

Under new subsection 110.61(2.1), since Imene is claiming more than one EOTCGE in the year, she must designate the order in which the deductions are claimed. Imene designates the deduction for Opco1 shares to be claimed before Opco2 shares.

Step 1a – Calculate EOTCGE amount for Opco1 shares

Applying the formula provided under paragraph 110.61(2)(a), this amount is \$1,000,000 (i.e., \$2 million of the \$10 million EOT exemption limit was allocated to Imene multiplied by the

fraction of her capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year (1/2)).

Paragraph 110.61(2)(b) requires the application of the formula:  $G - H$ .

In this case, variable G is the lesser of Imene's net taxable capital gains for the year (i.e., \$2,100,000) and Imene's net taxable capital gains from the Opco1 shares sold to EOT1 (i.e., \$1,500,000). Therefore, variable G is \$1,500,000.

Variable H is the total of Imene's (i) ABILs for the year (i.e., \$100,000), (ii) net investment losses for the year (i.e., \$100,000 - \$600,000 = nil), and (iii) net capital losses deducted in the year that exceeds the amount, if any, by which her net taxable capital gains exceeds the amount determined for G (i.e., \$100,000 - (\$2,100,000 - \$1,500,000) = nil). Therefore, variable H is \$100,000 (from the ABILs).

The amount calculated under the formula " $G - H$ " under paragraph (b) is \$1,400,000 (i.e., \$1,500,000 - \$100,000).

The maximum amount that Imene may claim for her Opco1 shares under subsection 110.61(2) is the lesser of the amounts under paragraphs (a) (i.e., \$1,000,000) and (b) (i.e., \$1,400,000). Imene may therefore claim the EOTCGE for her Opco1 shares in the amount of \$1,000,000 in computing her taxable income for her 2025 taxation year.

Since Imene's EOTCGE in respect of Opco1 shares is limited to her allocated EOT exemption limit in paragraph (a), no portion of the ABILs have reduced the amount otherwise deductible (in paragraph (b)). This is a relevant factor for determining the EOTCGE in respect of Opco2 shares (see below).

#### Step 1b – Calculate EOTCGE amount for Opco2 shares

Applying the formula provided under paragraph 110.61(2)(a), this amount is \$750,000 (i.e., \$1.5 million of the \$10 million EOT exemption limit was allocated to Imene multiplied by the fraction of her capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year (1/2)).

Paragraph 110.61(2)(b) requires the application of the formula:  $G - H$ .

In this case, variable G is the lesser of Imene's net taxable capital gains for the year (except any portion related to a previous EOTCGE) (i.e., \$2,100,000 - \$1,000,000 (Opco1) = \$1,100,000) and Imene's net taxable capital gains from the Opco2 shares sold to EOT2 (i.e., \$500,000). Therefore, variable G is \$500,000.

Variable H is the total of Imene's (i) ABILs for the year except any portion that previously reduced the amount otherwise deductible under this subsection (as mentioned above, no portion of the \$100,000 ABILs have reduced the amount otherwise deductible), (ii) net investment losses for the year (i.e., \$100,000 - \$1,600,000 = nil), and (iii) net capital losses deducted in the year

(\$100,000) that exceeds the amount, if any, by which her net taxable capital gains (except any portion related to a previous EOTCGE) ( $\$2,100,000 - \$1,000,000 = 1,100,000$ ) exceeds the amount determined for G (i.e.,  $\$100,000 - (\$1,100,000 - \$500,000) = \text{nil}$ ). Therefore, variable H is \$100,000 (from the ABILs).

The amount calculated under the formula “G – H” under paragraph (b) is \$400,000 (i.e.,  $\$500,000 - \$100,000$ ).

The maximum amount that Imene may claim for her Opco2 shares under subsection 110.61(2) is the lesser of the amounts under paragraph (a) (i.e., \$750,000) and (b) (i.e., \$400,000). Imene may therefore claim the EOTCGE for her Opco2 shares in the amount of \$400,000 in computing her taxable income for her 2025 taxation year.

Since the amount otherwise deductible under subsection 110.61(2) has been reduced by the \$100,000 ABILs, it is a relevant factor in determining the LCGE (see below).

### Step 2 – Calculate LCGE amount

Under subsection 110.6(2.1), Imene may claim the LCGE on her net taxable capital gain resulting from the sale of QSBC shares (including her Opco1 and Opco2 shares), not exceeding the least of the amounts determined under paragraphs (a) through (d).

#### *Paragraph (a):*

For the 2025 taxation year, the LCGE limit is \$1,250,000, it follows that the amount corresponding to paragraph (a) is \$625,000.

#### *Paragraph (b):*

The cumulative gains limit at the end of 2025 is \$500,000 (from variable A of the annual gains limit – see below).

#### *Paragraph (c):*

Imene’s annual gains limit (as amended in the definition in subsection 110.6(1)) for the year is determined by the formula A – B:

*Variable A – is the lesser of paragraphs (a) and (b):*

(a) Imene’s net taxable capital gains (\$2,100,000) except any portion related to an EOTCGE ( $\$1,000,000$  (Opco1) +  $\$500,000$  (Opco2) =  $\$1,500,000$ ). Thus, the amount under paragraph (a) is \$600,000 ( $\$2,100,000 - \$1,500,000$ ); and

(b) Imene’s net taxable capital gains from the disposition of Opco1 and Opco2 shares ( $\$2,000,000$ ). However, under new subsection 111.1(2), no amount may be claimed under the LCGE in respect of a taxable capital gain that has been deducted under the EOTCGE. Thus, the amount under paragraph (b) is \$500,000 ( $\$2,000,000 - \$1,500,000$ ).

Consequently, variable A is the lesser of paragraph (a) (i.e., 600,000) and paragraph (b) (i.e., 500,000) and is thus equal to \$500,000.

*Variable B – is the total of paragraphs (a) and (b):*

(a) the amount, if any, by which Imene's net capital losses deducted in the year (\$100,000) exceeds the amount, if any, by which the amount of net taxable capital gains (except any portion related to an EOTCGE) (\$2,100,000 – \$1,500,000 = \$600,000) exceeds the amount determined for A in respect of the individual for the year (\$500,000). Therefore, paragraph (a) is \$nil (\$100,000 – (\$600,000 – 500,000)); and

(b) Imene's ABILs for the year except any portion that reduced Imene's EOTCGE. Therefore, paragraph (b) is nil (\$100,000 – \$100,000). Since the \$100,000 ABILs have already reduced the EOTCGE in respect of Opco2 shares, it should not also reduce the LCGE.

Variable B is the total of paragraphs (a) and (b) and is equal to nil.

Consequently, the annual gains limit (paragraph (c)) is \$500,000 (\$500,000 – 0).

*Paragraph (d):*

Paragraph (d) is the net taxable capital gains under paragraph 3(b), if the only properties referred to in that paragraph were properties that, at the time they were disposed of, were the QSBC shares (\$2,000,000). However, under new subsection 111.1(2), no amount may be claimed under the LCGE in respect of a taxable capital gain that has been deducted under the EOTCGE. Consequently, paragraph (d) is \$500,000 (\$2,000,000 - \$1,500,000).

In computing Imene's taxable income for the 2025 taxation year, she may claim the LCGE under subsection 110.6(2.1) on her taxable capital gain, resulting from the sale of the Opco1 and Opco2 shares, an amount not exceeding the least of paragraphs (a) (\$625,000), (b) (\$500,000), (c) (\$500,000) and (d) (\$500,000), i.e., equal to \$500,000.

### Step 3 – Conclusion

Imene's taxable capital gains for the 2025 taxation year from the sale of Opco1 shares is \$1,500,000 and Opco2 shares is \$500,000, for a total of \$2,000,000. The total deductions claimed for these shares under the EOTCGE is \$1,400,000 (\$1,000,000 + \$400,000) and under the LCGE is \$500,000, for a total of \$1,900,000. The \$100,000 reduction in these exemptions reflect the ABILs incurred in the year that offset the remaining taxable capital gains from these share dispositions. However, the \$100,000 net capital losses do not reduce the exemptions because they do not exceed the taxable capital gains from sources unrelated to the disposition of the relevant properties (i.e., the net capital losses deducted does not exceed the taxable capital gains from portfolio shares). As a result of these exemptions, Imene's taxable income for her 2025 taxation year is nil. (Note that this example does not consider the possible impact of the alternative minimum tax (AMT) under sections 127.5 to 127.55.)

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This amendment is deemed to have come into force on August 12, 2024.

### **Order of application**

ITA

110.61(2.1)

New subsection 110.61(2.1) is relevant in a taxation year if an individual claims more than one deduction under subsection 110.61(2). In that case, the individual must designate the order in which each deduction is claimed, so that the formula in paragraph 110.61(2)(b) may apply to exclude certain amounts from a previous subsection 110.61(2) deduction. See subsection 110.61(2) for more information. If the individual does not designate the order of the deductions, the Minister may designate the order.

This amendment is deemed to have come into force on August 12, 2024.

### **Disqualifying event**

ITA

110.61(3)(b)

Paragraph 110.61(3)(b) provides that a disqualifying event in respect of a qualifying business transfer occurs at the time that is the beginning of the taxation year of a qualifying business of an employee ownership trust (EOT) in which less than 50% of the fair market value of the shares of the qualifying business of the EOT is attributable to assets used principally in an active business carried on by one or more qualifying businesses controlled by the EOT at both that time and at the beginning of the preceding taxation year of the qualifying business (referred to as the “active business test”).

Paragraph 110.61(3)(b) is amended to provide an exception to its application where an active business of a qualifying business ceases to be carried on due to the disposition of all the assets that were used to carry on the business in order to satisfy debts owed to creditors of the EOT or of a qualifying business controlled by the EOT. Such a liquidation event would presumably be beyond the control of the qualifying business and the EOT and would leave the qualifying business and the EOT without the ability to pay an additional income tax liability. A taxpayer seeking to use a sale to an EOT to rely on this exception in order to liquidate a business on a tax-free basis would be subject to the existing anti-avoidance rule under subsection 84(2) and to the “qualifying business transfer” requirements under paragraph (c) of the definition in subsection 248(1) that a taxpayer deal at arm’s length and not retain any right or influence that, if exercised, would allow the taxpayer to control, directly or indirectly in any manner whatever, the subject corporation, the trust or any purchaser corporation.

Paragraph 110.61(3)(b) is also amended to replace the term “attributable to” with “derived, directly or indirectly, from”. This amendment is intended to clarify, for greater certainty, that the active business test applies on a look-through basis to arrangements where assets are owned and

used principally in the active business of a subsidiary corporation that is owned by a holding corporation of an EOT.

This amendment is deemed to have come into force on January 1, 2024.

### **Consequences of a disqualifying event**

ITA

110.61(4)(b)

Paragraph 110.61(4)(b) provides the consequences for an employee ownership trust of a disqualifying event (within the meaning of subsection 110.61(3)) at any time following the day that is 24 months after the disposition time for a qualifying business transfer to the trust. If it applies, paragraph (b) deems the trust to have realized a capital gain during the year in which the disqualifying event occurs equal to the elected amount (within the meaning of clause (1)(e)(ii)(A)) under the joint election referred to in paragraph (1)(e) for the qualifying business transfer.

Paragraph (b) is amended to limit the consequences of a disqualifying event to any time between the day that is 24 months after the disposition time for the qualifying business transfer and 8 years from that time. Consequently, the consequences of a disqualifying event under subsection (4) apply for up to 10 years after the disposition time for a qualifying business transfer.

This amendment is deemed to have come into force on January 1, 2024.

ITA

110.61(11)(b.1)

*Deemed relationship – spouse or common-law partner immediately before deceased individual's death*

New paragraph 110.61(11)(b.1) clarifies that, for purposes of section 110.61, a spouse or common-law partner of a particular individual includes another individual who was a spouse or common-law partner of the particular individual immediately before the death of the other individual. This is relevant for the conditions under subparagraphs (1)(b)(i) and (d)(i) that an individual (or their spouse or common-law partner) must satisfy to claim a deduction under subsection (2).

This amendment is deemed to have come into force on January 1, 2024.

### **Clause 37**

#### **Deduction for qualifying cooperative conversion – conditions**

ITA

110.62(1)

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New subsection 110.62(1) provides the conditions for the application of the capital gains deduction under subsection (2) available upon a qualifying cooperative conversion (as defined in subsection 248(1)) to a worker cooperative. The conditions in subsection (1) are summarized and discussed in further detail below.

*Claimant is an individual (other than a trust)*

New subsection 110.62(1) requires that a person claiming the deduction under subsection (2) must be an individual (other than a trust).

*Disposition occurs between 2024 and 2026*

New subsection 110.62(1) further provides that for subsection (2) to apply, the disposition of the subject shares must occur after 2023 and before 2027.

*Disposition occurs under a qualifying cooperative conversion*

New subsection 110.62(1) also provides that subsection (2) applies if, at the time of a disposition (referred to as the “disposition time”) of shares (referred to as “subject shares”) of the capital stock of a corporation (referred to as the “subject corporation”) to another corporation (referred to as the “purchaser corporation”), the disposition satisfied the conditions for a qualifying cooperative conversion (as defined in subsection 248(1)).

*Deduction has not previously been sought in respect of the same business*

New paragraph 110.62(1)(a) provides that for subsection (2) to apply, no individual may have, prior to the disposition time, claimed a deduction under subsection (2) or section 110.61 (i.e., the deduction available for dispositions of shares to an employee ownership trust pursuant to a qualifying business transfer) in respect of another disposition of shares that, at the time of that disposition, derived their value, directly or indirectly, from an active business that is also relevant to the determination of whether the disposition of the subject shares satisfies the condition set out in paragraph (a) of the definition qualifying cooperative conversion in subsection 248(1). This condition is intended to ensure that an interest in a business is effectively transferred only once pursuant to a qualifying cooperative conversion for which the capital gains deduction in subsection (2) is available, preventing multiplication of the deduction under subsection (2) and section 110.61 in respect of the same business.

*24-month holding period*

New paragraph 110.62(1)(b) provides the conditions that the subject shares must meet throughout the 24 months immediately prior to the disposition time under the qualifying cooperative conversion. Subparagraph (i) requires that, during this period, the subject shares were not owned by anyone other than the individual or a person or partnership related to the individual (referred to as “the holding period test”). The holding period test may be met if the original share throughout the part of the 24-month period immediately preceding the disposition

time that is before the time of substitution was a share of a corporation that meets the condition in subparagraph (b)(ii) and was not owned by a person or partnership other than a person or partnership described in subparagraph (b)(i). For more information on the interpretation of related persons for the purposes of this section, see the commentary on subsection (11).

#### *Active business requirement*

New subparagraph (b)(ii) requires that, during the 24-month period immediately prior to the disposition time, more than 50% of the fair market value of the subject shares and the substituted shares (if any) was derived, directly or indirectly, from assets which were used principally in an active business (referred to as “the active business test”). This requirement could be satisfied, for example, if the subject corporation’s sole property were shares of a wholly-owned subsidiary corporation all of whose assets were used in an active business.

#### *Subject corporation is not a professional corporation*

New paragraph 110.62(1)(c) provides the conditions that the purchaser corporation and the subject corporation must meet immediately before the disposition time. Subparagraph (c)(i) ensures the deduction in subsection (2) is not available on a qualifying cooperative conversion if the subject corporation, or any corporation affiliated with the subject corporation in which the subject corporation owns (directly or indirectly) shares, is a professional corporation (as defined in subsection 248(1)).

#### *Purchaser corporation’s members are not its employees immediately before the disposition time*

New subparagraph (c)(ii) provides that the purchaser corporation acquiring the subject shares under the qualifying cooperative conversion must not already be established for the purposes of providing employment to its members who are its employees at that time (excluding any officer or director of the purchaser corporation), or the employees of another corporation controlled by the purchaser corporation. Consequently, if a sale of a business is made to a pre-existing worker cooperative, such a transfer would not qualify for the deduction under subsection (2).

This condition is intended to improve neutrality by ensuring that an established worker cooperative does not hold a tax advantage (in the form of a deduction under subsection 110.62(2)) over its non-worker cooperative competitors when acquiring a new business. Similarly, this condition mitigates the advantage held by an established worker cooperative (due to greater access to financing) bidding against a newly formed worker cooperative for the benefit of workers of a target business who wish to form their own worker cooperative. The deduction under subsection (2) is intended to reduce the disincentive of selling a business to a newly created worker cooperative that may not have the financial resources of a third-party buyer.

#### *Claimant is an adult*

New paragraph 110.62(1)(d) provides the conditions that the individual and the individual’s spouse or common-law partner, and the members of the worker cooperative must meet at the

disposition time. Subparagraph (d)(i) requires that the individual claiming the deduction under subsection (2) must be at least 18 years of age at the disposition time.

*Claimant (or spouse or common-law partner) was actively engaged in the underlying business*

New subparagraph 110.62(1)(d)(ii) requires that throughout any 24-month period ending before the disposition time, the individual claimant, or a spouse or common-law partner of the individual, was actively engaged on a regular, continuous and substantial basis (including within the meaning of paragraph 120.4(1.1)(a)) in the business that is relevant to the determination of whether the subject shares satisfy the condition set out in paragraph (a) of the definition “qualifying cooperative conversion” in subsection 248(1). An individual working at least an average of 20 hours per week during the portion of the year in which the business operates is deemed to satisfy this condition per the provision’s reference to paragraph 120.4(1.1)(a). This requirement restricts the deduction under subsection (2) to owner-managers and their spouses or common-law partners.

### **Example**

In 2015, Daniella started a business in which she was engaged on a full-time basis throughout the following six years. In 2021, she began to transition most of her management and employment duties to her current employees and has been relatively uninvolved in the day-to-day operations of the business ever since. In 2024, Daniella decided to sell her business to her employees through a worker cooperative under a qualifying cooperative conversion.

Because Daniella was actively engaged in the business on a full-time basis for six years prior to the disposition time, she satisfies the condition in subparagraph 110.62(1)(d)(ii).

*Residency of members of the purchaser corporation at disposition time*

New subparagraph (d)(iii) requires that, at the disposition time, the purchaser corporation is a worker cooperative (as defined in subsection 248(1)) and provides two threshold requirements regarding the composition and residency of its members. These residency requirements are intended to ensure that the deduction under subsection (2) predominantly benefits Canadian workers.

*Residency requirement #1 – 75% of qualifying cooperative workers reside in Canada*

New clause (d)(iii)(A) requires that at least 75% of the purchaser corporation’s qualifying cooperative workers described in paragraph (d) of the definition “worker cooperative” in subsection 248(1) are resident in Canada at the disposition time. The definition “qualifying cooperative worker” is provided in subsection 248(1) and, subject to certain conditions, generally includes most employee members of a cooperative. The requirement in clause (e)(iii)(A) generally means that at least 75% of the members of the worker cooperative who are also employed by the worker cooperative are resident in Canada at the disposition time.

*Residency requirement #2 – 75% of employee members reside in Canada*

New clause (d)(iii)(B) requires that at least 75% of the individual employee members of the purchaser corporation who are described in paragraph (e) of the definition “worker cooperative” in subsection 248(1) are resident in Canada. Paragraph (e) of the definition “worker cooperative” provides that at least 75% of all individuals employed by the corporation and all qualifying cooperative businesses controlled by the corporation (other than an employee who has not completed an applicable probationary period, which may not exceed 12 months) are holders of a membership share of the corporation.

#### *Joint election*

New paragraph 110.62(1)(e) recognizes that the deduction under subsection (2) may be shared among multiple individuals disposing of subject shares under a qualifying cooperative conversion. This paragraph also recognizes that the actions of the purchaser corporation could potentially cause a disqualifying event, as described under subsection (3), and trigger the relevant consequences described under subsection (4).

New subparagraph (i) requires that the purchaser corporation, the individual and any other individual entitled to a deduction under subsection (2) in respect of the qualifying cooperative conversion must jointly elect, in prescribed form, for the deduction provided under subsection (2) to apply in respect of the disposition of the subject shares.

Under new clause (ii)(A), the election must provide the elected amount (i.e., the total amount of capital gains that the parties agree may be eligible for a deduction under subsection (2) with respect to the qualifying cooperative conversion), not exceeding \$10,000,000. If multiple individuals are eligible for a deduction in respect of the qualifying cooperative conversion, new clause (ii)(B) requires that the election include the percentage of the elected amount that is assigned to each eligible individual. The total percentages assigned to all individuals must not exceed 100%.

The election must be filed with the Minister of National Revenue on or before the earlier of the individual’s or the worker cooperative’s filing-due date for the taxation year that includes the disposition time.

See the commentary to new subsections 110.62(3) and (4) for more information regarding disqualifying events, and the commentary to new subsection 160(1.7) for information regarding joint and several liability of the parties to an election under paragraph 110.62(1)(e) if the deduction under subsection (2) is denied.

### **Capital gains deduction — qualifying cooperative conversions**

ITA

110.62(2)

New subsection 110.62(2) sets out the rules for calculating an individual’s entitlement to the capital gains deduction on qualifying cooperative conversions. If the conditions provided under

subsection (1) have been met and the individual is eligible for a deduction under subsection (2), then in computing the taxable income for a taxation year of the individual, the individual may deduct such amount as they may claim not exceeding the least of the amounts provided under paragraphs (a) and (b).

New paragraph 110.62(2)(a) provides that the deduction cannot exceed the amount that would be determined under the formula:  $A \times B \times C - D$ .

Variable A is the elected amount included in the joint election referred to in paragraph 110.62(1)(e) (i.e., the total amount of capital gains that the parties agree may be eligible for a deduction under subsection (2) with respect to the qualifying cooperative conversion, not exceeding \$10,000,000).

Variable B is 1, unless more than one individual is entitled to a deduction under this subsection in respect of the qualifying cooperative conversion. If more than one individual is entitled to the deduction, then variable B is the percentage assigned to the individual in the joint election referred to in paragraph (1)(e), if a percentage is assigned to the individual in accordance with clause (1)(e)(ii)(B). In any other case, variable B is nil.

Variable C is the fraction of the taxpayer's capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year.

Variable D recognizes that an individual may use the reserve provided under subparagraph 40(1)(a)(iii) to report the capital gain from a qualifying business transfer over multiple taxation years. Variable D is the total of each amount claimed by the taxpayer under subsection (2) in a prior taxation year in respect of the disposition of the subject shares multiplied by the amount determined by the formula  $E \div F$  (which adjust past deductions claimed to compensate for any difference between the capital gains inclusion rates in the current and past taxation years).

Variable E is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the current year.

Variable F is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the prior year in respect of the disposition of the subject shares.

*Paragraph (b) – January 1, 2024 – August 11, 2024*

New paragraph (b) provides that the deduction cannot exceed the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were subject shares. Paragraph (b) also provides that, in making that determination, there is not to be included any amounts already included in the amount determined under paragraph 3(b) for the purposes of paragraphs 110.6(2)(d) and 110.6(2.1)(d) (i.e., the lifetime capital gains deductions for dispositions of qualified farm property and qualified small business corporation shares) in respect of the individual.

This version of paragraph (b) applies on a temporary basis for dispositions that occur between January 1, 2024 and August 11, 2024. It is replaced as of August 12, 2024 with a version that includes additional limits, as provided below.

*Paragraph (b) – Beginning August 12, 2024*

Subsection 110.62(2) is amended to replace its existing paragraph (b) as of August 12, 2024.

New paragraph (b) requires that certain other deductions, if claimed, are first applied against the relevant taxable capital gain realized on the subject shares before the deduction under section 110.62 can be claimed. This limit ensures that, in computing taxable income, the exemption is reduced to the extent the taxpayer has also claimed allowable capital losses under paragraph 3(b) (to the extent the allowable capital losses exceed their taxable capital gains excluding amounts deducted previously in the year by the individual under section 110.61 or 110.62) or allowable business investment losses (ABILs), and to the extent that the taxpayer's investment expense exceeds their investment income (referred to, here, as "net investment losses"). This limit also ensures that, in computing taxable income, the exemption is reduced to the extent the taxpayer has claimed net capital loss carryovers under paragraph 111(1)(b) (to the extent the net capital loss carryovers exceed the amount determined in respect of the individual for the year under paragraph 3(b) excluding amounts deducted previously in the year by the individual under section 110.61 or 110.62). (For the ordering of deductions claimed by an individual under subsection 110.62(2) in a taxation year, see the commentary to new subsection 110.62(2.1).)

More specifically, this paragraph provides that the deduction available under section 110.62 cannot exceed the amount that would be determined under the formula:  $G - H$ .

Variable G

Variable G is the lesser of subparagraph (i), the individual's net taxable capital gains for the year under paragraph 3(b) (except any portion that relates to a prior deduction claimed by the individual in the year under section 110.61 or under this section for another qualifying cooperative conversion), and subparagraph (ii), their net taxable capital gains from the disposition of the subject shares.

Variable H

Variable H is the total of subparagraphs (i) to (iii).

Subparagraph (i) is the individual's ABILs for the year (except any portion that previously reduced the amount otherwise deductible by the individual for the year under this subsection or subsection 110.61(2)).

Subparagraph (ii) is the individual's net investment losses for the year (except any portion that previously reduced the amount otherwise deductible by the individual for the year under this subsection or subsection 110.61(2)).

For the purposes of subparagraph (ii) of variable H, an “investment expense” of an individual for a year, has the meaning assigned by subsection 110.6(1) except that, the reference to “amount determined in respect of the individual for the year under paragraph (a) of the description of B in the definition annual gains limit” in paragraph (f) of that definition is to be read as “total of all amounts determined in respect of the individual for the year under subparagraph (iii) of the description of H in subsection 110.62(2) and subparagraph (iii) of the description of H in subsection 110.62(2) (to the extent that amount reduces the amount otherwise deductible under that subsection)”.

For the purposes of subparagraph (ii) of variable H, “investment income” of an individual for a year, has the meaning assigned by subsection 110.6(1) except that, the reference to “amount determined in respect of the individual for the year for A in the definition annual gains limit in paragraph (f)” of that definition is to be read as “total of all amounts determined in respect of the individual for the year for the description of G in subsection 110.62(2) and the description of G in subsection 110.62(2) (except any amount that previously reduced the amount otherwise deductible by the individual in the year under subsection 110.61(2) or 110.62(2))”.

Subparagraph (iii) is the individual’s net capital losses for other taxation years deducted by the individual in the year under paragraph 111(1)(b) to the extent the deducted net capital loss carryovers exceed the individual’s net taxable capital gains under paragraph 3(b) (excluding any amounts deducted previously in the year by the individual under subsection 110.61(2) or under this subsection).

The limit under paragraph (2)(b) is intended to ensure that the new exemption is not used to shelter other unrelated income. Similar limits apply in respect of the lifetime capital gains deductions (see the definitions “annual gains limit” and “cumulative net investment loss” in subsection 110.6(1)).

### **Example**

Adam owns 15% of the fair market value of all shares of an operating corporation (Opco). In September 2025, Adam and the other Opco shareholders sold all the Opco shares to a worker cooperative (WC) pursuant to a qualifying cooperative conversion. All the Opco shares are “qualified small business corporation shares” (QSBC shares), as defined under subsection 110.6(1). Adam’s sale of Opco shares results in a capital gain of \$2,000,000 (taxable capital gain of \$1,000,000). Under the joint election for the capital gains deduction for selling to a worker cooperative (WCCGE) provided under subsection 110.62(1)(e), Adam is allocated \$1,500,000 of the total shared \$10,000,000 WCCGE. Adam has never used his lifetime capital gains exemption (LCGE) prior to this transaction.

In 2025, Adam also disposed of some portfolio shares in January, resulting in a capital gain of \$200,000 (\$100,000 taxable capital gain) and in February, resulting in a capital loss of \$300,000 (\$150,000 allowable capital loss). None of the portfolio shares qualify for the LCGE.

In 2025, Adam also earned employment income from Opco.

Adam does not have any other relevant income for the year, or any other years.

What amounts can Adam claim under the WCCGE and LCGE to reduce his taxable income from the sale of the Opco shares?

Pursuant to section 111.1, Adam calculates the amount he can claim under section 110.62 prior to section 110.6.

#### Step 1 – Calculate WCCGE amount

Applying the formula provided under paragraph 110.62(2)(a), this amount is \$750,000 (i.e., \$1.5 million of the \$10 million WC exemption limit was allocated to Adam multiplied by the fraction of the taxpayer's capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year (1/2)).

Paragraph 110.62(2)(b) requires the application of the formula:  $G - H$ .

Variable G functions to reduce the capital gains deduction for the individual's allowable capital losses (\$150,000 from portfolio shares) to the extent it exceeds their taxable capital gains from sources unrelated to the qualifying cooperative conversion (\$100,000 from portfolio shares). Consequently, the capital gains deduction should be reduced by the excess of \$50,000 (\$150,000 - \$100,000). More specifically, variable G is the lesser of Adam's net taxable capital gains for the year (i.e., \$950,000) and Adam's net taxable capital gains from the Opco shares sold to the WC for the year (i.e., \$1,000,000). Therefore, variable G is \$950,000.

Variable H is the total of Adam's (i) ABILs for the year (i.e., none), (ii) net investment losses for the year (i.e., none), and (iii) net capital losses deducted in the year that exceeds the amount, if any, by which his net taxable capital gains exceeds the amount determined for G (i.e., none). Therefore, variable H is nil.

The amount calculated under the formula " $G - H$ " under paragraph (b) is \$950,000 (i.e., \$950,000 - nil).

The maximum amount that Adam may claim for his Opco shares under subsection 110.62(2) is the lesser of the amounts under paragraph (a) (i.e., \$750,000) and (b) (i.e., \$950,000). Adam may therefore claim the WCCGE for his Opco shares in the amount of \$750,000 in computing his taxable income for his 2025 taxation year.

Since Adam's WCCGE in respect of Opco shares is limited to his allocated WC exemption limit in paragraph (a), no portion of the allowable capital losses have reduced the amount otherwise deductible (in paragraph (b)).

#### Step 2 – Calculate LCGE amount

Under subsection 110.6(2.1), Adam may claim the LCGE on his taxable capital gain resulting from the sale of the Opco shares, not exceeding the least of the amounts determined under paragraphs (a) through (d).

*Paragraph (a):*

For the 2025 taxation year, the LCGE limit is \$1,250,000. It follows that the amount corresponding to paragraph (a) is \$625,000.

*Paragraph (b):*

The cumulative gains limit at the end of 2025 is \$250,000 (from variable A of the annual gains limit – see below).

*Paragraph (c):*

Adam's annual gains limit (as amended in the definition in subsection 110.6(1)) for the year is determined by the formula  $A - B$ :

*Variable A – is the lesser of paragraphs (a) and (b):*

(a) Adam's net taxable capital gains (except any portion related to a WCCGE). Thus, the amount under paragraph (a) is \$200,000 (\$950,000 - \$750,000); and

(b) Adam's net taxable capital gains from the disposition of Opco shares (\$1,000,000). However, under new subsection 111.1(2), no amount may be claimed under the LCGE in respect of a taxable capital gain that has been deducted under the WCCGE. Thus, the amount under paragraph (b) is \$250,000 (\$1,000,000 - \$750,000).

Consequently, variable A is the lesser of paragraph (a) (i.e., \$200,000) and paragraph (b) (i.e., 250,000), therefore \$200,000.

*Variable B – is the total of paragraphs (a) and (b):*

(a) the amount of Adam's net capital losses deducted in the year that exceeds the excess of his net taxable capital gains over the amount determined for A. Since Adam has not deducted any net capital losses in the year, paragraph (a) is nil; and

(b) Adam's ABILs for the year, which is also nil.

Therefore, variable B is nil.

Consequently, the annual gains limit is \$200,000 (\$200,000 – nil).

*Paragraph (d):*

Paragraph (d) is the net taxable capital gains under paragraph 3(b), if the only properties referred to in that paragraph were properties that, at the time they were disposed of, were the QSBC shares (\$1,000,000). However, under new subsection 111.1(2), no amount may be claimed under

the LCGE in respect of a taxable capital gain that has been deducted under the WCCGE. Consequently, paragraph (d) is \$250,000 (\$1,000,000 - \$750,000).

In computing Adam's taxable income for the 2025 taxation year, he may claim the LCGE under subsection 110.6(2.1) on his taxable capital gain resulting from the sale of the Opco shares an amount not exceeding the least of paragraphs (a) (i.e., \$625,000), (b) (i.e., \$250,000), (c) (i.e., \$200,000) and (d) (i.e., \$250,000), equal to \$200,000.

### Step 3 – Conclusion

Adam's taxable capital gains for the year from the sale of Opco shares is \$1,000,000. He also has taxable capital gains from the sale of portfolio shares of \$100,000 and allowable capital losses from the sale of other portfolio shares of \$150,000. The total deductions claimed for the Opco shares is \$950,000 (\$750,000 under the WCCGE and \$200,000 under the LCGE). The \$50,000 reduction in these exemptions reflect the allowable capital losses incurred in the year that exceeds taxable capital gains from sources unrelated to the QSBC shares (i.e., \$150,000 - \$100,000), that offset the remaining taxable capital gains from these share dispositions. This reduction ensures that the WCCGE and LCGE are not used to shelter other taxable income (such as Adam's employment income).

See the commentary to the definitions "annual gains limit" and "cumulative gains limit" in subsection 110.6(1) for more information regarding the interaction of the annual gains limit under paragraph (b) and the equivalent limits under the lifetime capital gains deduction. See also, the commentary to new subsections 110.62(3) and (4) for more information regarding disqualifying events that could deny the deduction under subsection (2), and the commentary to paragraph 152(4)(b.941) for information regarding the 3-year extension of the normal reassessment period for an individual in respect of a deduction claimed under subsection (2).

This amendment is deemed to come into force on August 12, 2024.

### **Order of application**

ITA  
110.62(2.1)

New subsection 110.62(2.1) is relevant in a taxation year if an individual claims more than one deduction under subsection 110.62(2). In that case, the individual must designate the order in which each deduction is claimed, so that the formula in paragraph 110.62(2)(b) may apply to exclude certain amounts from a previous subsection 110.62(2) deduction. See subsection 110.62(2) for more information. If the individual does not designate the order of the deductions, the Minister may designate the order.

This amendment is deemed to have come into force on August 12, 2024.

### **Disqualifying event**

ITA  
110.62(3)

New subsection 110.62(3) provides the meaning of a disqualifying event in respect of a qualifying cooperative conversion. If subsection (3) applies, then a disqualifying event occurs at the earliest of the times in which the events described in paragraphs (a) and (b) occur.

New paragraph (a) provides that a disqualifying event occurs when the worker cooperative that participated in the qualifying cooperative conversion ceases to be a worker cooperative. A worker cooperative would cease to be a worker cooperative if it no longer met any of the requirements in the definition “worker cooperative” in subsection 248(1).

Under new paragraph (b), a disqualifying event also occurs at the time that is the beginning of the taxation year of a worker cooperative in which less than 50% of the fair market value of the shares of the worker cooperative is derived, directly or indirectly, from assets used principally in an active business carried on by the worker cooperative (or by a qualifying cooperative business controlled by the worker cooperative) at both that time and at the beginning of the preceding taxation year of the worker cooperative.

Paragraph 110.62(3)(b) provides relief to a worker cooperative or qualifying cooperative business, in certain circumstances, from the tax consequences of a disqualifying event where there is a distribution of business assets to satisfy creditors. Specifically, paragraph 110.62(3)(b) will not apply if the underlying active business of a qualifying cooperative business or of a worker cooperative has ceased to be carried on due to the disposition of all the assets that were used to carry on the business in order to satisfy debts owed to creditors of the worker cooperative (or of a qualifying cooperative business controlled by the worker cooperative). Such a liquidation event would presumably be beyond the control of the worker cooperative (or the qualifying cooperative business) and would leave the worker cooperative without the ability to pay an additional income tax liability. A taxpayer seeking to use a sale to a worker cooperative to rely on this exception in order to liquidate a business on a tax-free basis would be subject to the existing anti-avoidance rule under subsection 84(2) and to the “qualifying cooperative conversion” requirements under paragraph (c) of the definition in subsection 248(1) that a taxpayer deal at arm’s length and not retain any right or influence that, if exercised, would allow the taxpayer to control, directly or indirectly in any manner whatever, the subject corporation or any purchaser corporation.

This amendment is deemed to have come into force on January 1, 2024.

**Example 1 – Asset lease to an arm’s length party**

In 2024, a purchaser corporation (Purchaseco) acquired 100% of the shares of a subject corporation (Subco) that employed the members of Purchaseco and carries on an active business of manufacturing widgets. Upon the acquisition, Purchaseco and Subco amalgamated, forming a worker cooperative (WC). When Purchaseco acquired Subco, Subco owned two manufacturing facilities: Facility 1 and Facility 2. Sixty per cent of the fair market value of the Subco shares

was derived from Facility 2, an asset used principally in Subco's active business. WC has a December 31 taxation year-end.

In December 2027, WC ceased using Facility 2 for manufacturing and instead rented Facility 2 to an arm's length tenant under a 3-year lease. WC continued to carry on its active business using Facility 1. However, during this period, less than 50% of the fair market value of the WC shares was derived from assets used principally in WC's active business.

As a result of having leased Facility 2, at the beginning of two of WC's consecutive taxation years (i.e., January 1, 2028 and January 1, 2029), more than 50% of the fair market value of WC's shares was not derived from assets used principally in an active business carried on by WC. Consequently, a disqualifying event within the meaning of paragraph 110.62(3)(b) occurred on January 1, 2029, and paragraph 110.62(4)(b) applies to WC at that time.

### **Example 2 – Asset lease to a qualified cooperative business controlled by the worker cooperative**

In 2024, a worker cooperative (WC) acquired 100 per cent of the shares of a qualifying cooperative business (Holdco), which controls and wholly-owns a subsidiary corporation (Opco). Opco carries on an active business in which the members of WC are employed. Holdco also owns equipment that it leases to Opco. Holdco and Opco have December 31 taxation year ends. For the following several years, Opco uses the equipment principally to carry on its active business and over 50% of the fair market value of the Holdco shares is derived from the leased equipment.

A disqualifying event under paragraph 110.62(3)(b) occurs if less than 50% of the fair market value of the shares of a qualifying business is derived from assets used principally in an active business carried on by WC at both the beginning of the taxation year of the qualifying cooperative business and at the beginning of the preceding taxation year of the qualifying cooperative business. In this case, the conditions for paragraph 110.62(3)(b) to apply are not met by virtue of Holdco leasing its equipment to Opco because at least 50% of the fair market value of the Holdco shares was derived from assets (the leased equipment) used principally in an active business carried on by Opco.

See the commentary to subsection 110.62(4) for information regarding the consequences of a disqualifying event.

### **Consequences of a disqualifying event**

ITA  
110.62(4)

New subsection 110.62(4) provides the consequences for a worker cooperative of a disqualifying event (within the meaning of subsection 110.62(3)).

If the disqualifying event occurs within 24 months of the disposition time for the qualifying cooperative conversion, new paragraph (a) deems the capital gains deduction provided under subsection (2) to have never applied in respect of the subject shares disposed of under the qualifying cooperative conversion. See the commentary to paragraph 152(4)(b.941) for information regarding the 3-year extension of the normal reassessment period for an individual in respect of a deduction claimed under subsection (2), and subsection 160(1.7) regarding joint and several liability of the parties to an election under paragraph 110.62(1)(e) if the deduction under subsection (2) is denied.

If the disqualifying event occurs any time between the day that is 24 months after the disposition time for the qualifying cooperative conversion and 8 years from that time, new paragraph (b) deems the worker cooperative to have realized a capital gain equal to the elected amount (within the meaning of clause (1)(e)(ii)(A)) included in the joint election referred to in paragraph (1)(e), for the year in which the disqualifying event occurs. Consequently, the consequences of a disqualifying event under subsection (4) apply for up to 10 years after the disposition time for a qualifying cooperative conversion.

### **Example**

In Year 1, WC is a “worker cooperative” as defined in subsection 248(1). WC became a worker cooperative immediately following its acquisition pursuant to a qualifying cooperative conversion of all the common shares of a corporation (EmployerCo) that employs the members of WC. The individual that sold the EmployerCo shares to WC claimed the capital gains deduction under subsection 110.62(2) in respect of the sale. The only property owned by WC is the common shares of EmployerCo. EmployerCo is a “qualifying cooperative business”, as defined under subsection 248(1).

In Year 5, WC sells all of its common shares in EmployerCo to an arm’s length third-party purchaser in exchange for cash.

WC’s sale of the EmployerCo shares in Year 5 is a disqualifying event within the meaning of paragraph 110.62(3)(a). This result occurs because WC would no longer satisfy the conditions in the definition “worker cooperative” in subsection 248(1) (for example, paragraph (d) of the definition would not be satisfied because none of WC’s shareholders would be “qualifying cooperative workers” since those individuals are no longer employed by WC or any qualifying cooperative business controlled by WC).

As a result of the disqualifying event, paragraph 110.62(4)(b) would apply to deem the WC to have realized a capital gain (equal to the elected amount of capital gains eligible for a deduction under subsection (2)) at the time of the disqualifying event.

### **Anti-avoidance**

ITA  
110.62(5)

New subsection 110.62(5) is an anti-avoidance rule, which applies despite any other provision in section 110.62. This subsection provides that the deduction provided under subsection (2) does not apply in respect of a qualifying cooperative conversion if it is reasonable to consider that one of the purposes of any transaction (as defined in subsection 245(1)), or series of transactions, is to:

- a) involve the subject corporation (or the purchaser corporation) in the qualifying cooperative conversion to accommodate the direct or indirect acquisition of subject shares (or the acquisition of all or substantially all of the risk of loss and opportunity for gain or profit in respect of the subject shares) by another person or partnership (other than the subject corporation or the purchaser corporation) in a manner that permits an individual to claim a deduction under subsection (2) that would otherwise not be available; or
- b) organize or reorganize a subject corporation or any other corporation, partnership or trust in a manner that allows a deduction to be claimed under subsection (2) in respect of more than one qualifying cooperative conversion of a business that is relevant to the determination of whether subject shares satisfied the condition set out in paragraph (a) of the definition “qualifying cooperative conversion” in subsection 248(1).

This subsection is intended to ensure worker cooperatives are not used as accommodating intermediaries to facilitate the avoidance of tax that would otherwise be payable on a direct sale of shares to a third party. This provision is also intended to address planning that seeks to multiply the deduction under subsection (2) by selling a business in separate parts.

### **Failure to report capital gain**

ITA  
110.62(6)

New subsection 110.62(6) applies where an individual has realized a capital gain on a disposition of subject shares under a qualifying cooperative conversion in a taxation year and knowingly or under circumstances amounting to gross negligence fails to report the disposition in their return of income for that taxation year or fails to file a return for that taxation year within one year following the taxpayer’s filing-due-date for the taxation year and the Minister of National Revenue establishes the facts justifying the denial. Subsection 110.62(6) applies notwithstanding that an amount could have been claimed as a capital gains deduction under subsection 110.62(2).

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(6)).

### **Deduction not permitted**

ITA  
110.62(7)

New subsection 110.62(7) is an anti-avoidance rule to prevent the conversion of taxable capital gains of corporations into exempt capital gains of individuals. Any such gain will be denied the capital gains deduction otherwise provided under subsection 110.62(2).

There are a number of provisions in the Act which permit property to be transferred between corporations on a tax-deferred basis. This subsection is not intended to restrict the operation of these provisions. However, this provision is necessary to ensure that these provisions are not utilized to effect a sale of corporate property in such a manner that a capital gain on corporate property is transmogrified into a capital gain of an individual shareholder in order to qualify for the deduction under subsection (2).

For example, where a corporation disposes of a property by first transferring the property to another corporation for consideration that is less than the fair market value of the property and an individual realizes a capital gain on the sale of the shares of either corporation as part of that series of transactions, they will not be permitted to claim the deduction under subsection (2) with respect to that gain. Similarly, an individual will be denied a deduction under subsection (2) with respect to a capital gain realized as part of a so-called butterfly transaction or series of transactions where corporate property is disposed of in an arm's length transaction, either directly or indirectly, on a tax-free or tax deferred basis.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(7)).

### **Deduction not permitted**

ITA  
110.62(8)

New subsections 110.62(8) and (9) are anti-avoidance rules to prevent the conversion of dividend income into exempt capital gains of individuals. These rules are intended to prevent corporations from issuing shares that have attributes designed to facilitate the realization of the yield by way of a capital gain rather than by way of dividends. These rules would apply, for example, to preferred shares that do not pay dividends or pay relatively low dividends but that are retractable or redeemable at a substantial premium. An individual will be denied the deduction under subsection (2) with respect to capital gains realized on a disposition of those types of shares. This rule will not apply, however, in the case of prescribed shares (within the meaning of subsection 110.6(8)).

New subsection 110.62(8) provides that an individual may not claim the deduction under subsection (2) with respect to a capital gain realized on a disposition of property where it is reasonable to conclude that a significant portion of the capital gain is attributable to the fact that dividend payments on a share (other than a prescribed share within the meaning of subsection 110.6(8)) have either not been made or have been deferred. For this purpose, dividend payments will be considered to have been deferred where the dividends actually paid on the share in a year are less than 90% of the average annual rate of return on the share for the year (as defined in subsection (9)).

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Similar provisions apply in respect of the lifetime capital gains deductions (see subsections 110.6(8) and (9)).

### **Average annual rate of return**

ITA  
110.62(9)

New subsection 110.62(9) defines the average annual rate of return on a share (other than a prescribed share within the meaning of subsection 110.6(8)) for the year. The average annual rate of return on a share for a year is based on an objective standard, that is, the rate of return that a knowledgeable and prudent investor would expect to receive based on certain assumptions. By virtue of these assumptions, any delay, postponement or variation in the amount of dividends is generally ignored. Also ignored are any proceeds the investor might expect on the redemption or disposition of the share that differs from the original issue price.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(9)).

### **Deduction not permitted**

ITA  
110.62(10)

New subsection 110.62(10) is an anti-avoidance rule that prevents individuals from claiming disproportionate amounts received from or allocated by a partnership or trust (other than a personal trust), as being eligible for the capital gains deduction under subsection 110.62(2). This new subsection will deny a deduction under subsection (2) in circumstances where it is reasonable to consider that one of the main reasons that an individual acquires, holds or has an interest in a partnership or trust (other than a personal trust) or that one of the main reasons for the attributes of such interest is to enable the individual to receive a disproportionate percentage of any capital gain or taxable capital gain of the partnership or trust.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(11)).

### **Related persons, etc.**

ITA  
110.62(11)

New subsection 110.62(11) provides certain interpretation rules that apply to section 110.62.

*Ordering rule*

New paragraph 110.62(11)(a) provides an ordering rule for the disposition of shares that are identical properties for the purpose of determining whether a share satisfies the holding period test under subparagraph 110.62(1)(b)(i). Where a taxpayer disposes of shares only some of which meet the holding requirements of the subject shares under subparagraph 110.62(1)(b)(i), new paragraph 110.62(11)(a) deems the taxpayer to have disposed of the shares in the order in which they were acquired by the taxpayer.

### *Personal trusts*

Under new subparagraph 110.62(11)(b)(i) a beneficiary of a personal trust is deemed to be related to the trust while they are a beneficiary.

New subparagraph 110.62(11)(b)(ii) provides that a personal trust will also be treated as being related, in respect of the subject shares, to any person from whom it acquired those shares where, at the time the trust disposes of the shares, all beneficiaries (other than registered charities) of the trust are related to the person from whom the trust acquired the shares (or would be related to that person if he or she were living at that time).

For the purposes of the capital gains deduction for qualifying cooperative conversions, this paragraph provides that the period of time during which subject shares were held by a personal trust of which the individual was a beneficiary will be included in determining whether the holding period requirement for the subject shares set out in paragraph 110.62(1)(b) have been met.

### *Deemed relationship – spouse or common-law partner immediately before deceased individual's death*

New paragraph 110.62(11)(c) clarifies that, for the purposes of section 110.62, a spouse or common-law partner of a particular individual includes another individual who was a spouse or common-law partner of the particular individual immediately before the death of the other individual. This is relevant for the conditions under subparagraphs (1)(b)(i) and (d)(ii) that an individual (or their spouse or common-law partner) must satisfy to claim a deduction under subsection (2).

### *Partnerships*

New paragraph 110.62(11)(d) provides that a partnership shall be deemed to be related to a person for any period throughout which the person was a member of the partnership. For the purposes of the capital gains deduction for qualifying cooperative conversions, the period of time during which shares were held by a partnership of which the individual was a member will be included in determining whether the holding period requirements for the subject shares set out in paragraph 110.62(1)(b) have been met.

New paragraph 110.62(11)(e) deems a person who is a member of a partnership that is a member of another partnership (a lower-tiered partnership) to be a member of the lower-tiered partnership. This paragraph will permit such a taxpayer to have access to the capital gains

deduction arising on the disposition of subject shares under a qualifying cooperative conversion by the lower-tiered partnership.

#### *Holding corporations*

New paragraph 110.62(11)(f) provides that a holding corporation will be deemed to be related to any of its shareholders from whom it acquired shares in another corporation in respect of the acquired shares where all or substantially all of the consideration received by a shareholder from the corporation in respect of the acquisition was common shares of the corporation. Paragraph (f) is a relieving provision which ensures that shareholders who held subject shares (within the meaning of subsection 110.62(1)) will not disentitle themselves to the capital gains deduction for qualifying cooperative conversions by reason only of the interposition of a holding company between themselves and the subject corporation (within the meaning of subsection 110.62(1)).

#### *Issued shares*

New paragraph 110.62(11)(g) deems shares issued by a corporation to a particular person or partnership, except in certain circumstances, as having been owned immediately before their issue to the particular person or partnership by a person who was not related to the particular person or partnership.

Shares that are not subject to this rule are described in subparagraphs (i) to (iii). More specifically, subparagraph (i) provides that shares issued as consideration for other shares will not be subject to this rule.

Subparagraph (ii) provides that shares issued as part of a transaction or series of transactions in which the person or partnership disposed of all or substantially all of the assets used in an active business carried on by that person or the members of the partnership or disposed of an interest in a partnership where all or substantially all of the partnership's assets were used in an active business carried on by the members of that partnership are not subject to this rule.

Subparagraph (iii) provides that shares issued by the corporation as stock dividends on other shares of the capital stock of the corporation will not be subject to this rule. Paragraph 248(5)(b) provides that a share received in payment of a stock dividend on a particular share of the capital stock of a corporation is deemed to be property substituted for that particular share. Therefore, the holding period in paragraph 110.62(1)(b) operates effectively where shares are received as stock dividends on other shares of the capital stock of a corporation.

The effect of the rule in paragraph 110.62(11)(g) is to require shares, other than those issued in circumstances provided for in the exceptions in subparagraphs (i), (ii) and (iii), to be owned for the full 24 month holding period by the taxpayer or persons or partnerships related to the taxpayer to qualify for the capital gains deduction for a qualifying cooperative conversion. This rule ensures that the holding period requirement provided under paragraph 110.62(1)(b) in respect of the subject shares cannot be circumvented through the issuance of shares of a corporation from treasury.

Similar interpretation rules apply in respect of the lifetime capital gains deduction for dispositions of qualified small business corporation shares (see subsection 110.6(14)).

These amendments are deemed to have come into force on January 1, 2024.

## **Clause 38**

### **Losses deductible**

ITA

111(1)(e)(ii)(A)

Paragraph 111(1)(e) contains rules for carryforwards of limited partnership losses.

In general, limited partnership losses may not exceed a limited partner's at-risk amount and the amounts that are required to be included in computing the tax credits of the taxpayer for the taxation year under the following rules:

- subsection 127(8) (investment tax credit in respect of a partnership),
- subsection 127.44(11) (CCUS tax credit in respect of a partnership),
- subsection 127.45(8) (clean technology investment tax credit in respect of a partnership),
- subsection 127.48(12) (clean hydrogen tax credit in respect of a partnership), and
- subsection 127.49(8) (CTM investment tax credit in respect of a partnership).

Clause 111(1)(e)(ii)(A) is amended to add a reference to new subsection 127.491(12), consequential on the introduction of the clean electricity investment tax credit. The effect of this amendment is to reduce losses available to a limited partner by the limited partner's share of a clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Year of death**

ITA

111(2)(b)

Subsection 111(2) permits the deduction of an individual's net capital losses claimed under paragraph 111(1)(b) in the year of death and in the immediately preceding taxation year against all sources of income. Subsection 111(1.1) determines the amount in respect of net capital losses which is deductible under paragraph 111(1)(b), and in so doing it also provides for the adjustment in net capital losses for carryover to another year to reflect differences in the inclusion rate for capital gains and losses in the loss year from the rate for the year in which the loss is claimed.

In the circumstances specific to the taxpayer's year of death and the immediately preceding taxation year, paragraph (2)(b) provides an adjusted rule respecting the application of paragraph

(1.1)(b), which takes into account the lifetime capital gains exemption provided under section 110.6.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, paragraph (2)(b) is amended to include the capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion under sections 110.61 and 110.62, respectively.

This amendment is deemed to have come into force on January 1, 2024.

## **Definitions**

ITA  
111(8)

### ***“non-capital loss”***

The definition “non-capital loss” determines a taxpayer’s non-capital loss for a taxation year using a formula. Variable E of this formula lists certain amounts to be included in a taxpayer’s non-capital loss.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, paragraph (b) of the description of E is amended to include, in determining a taxpayer’s non-capital loss for a taxation year, an amount deducted under section 110.61 and new section 110.62 in computing the taxpayer’s taxable income for the year.

This amendment is deemed to have come into force on January 1, 2024.

## **Clause 39**

### **Order of applying provisions**

ITA  
111.1

Section 111.1 sets out the order in which various deductions must be taken in computing taxable income.

Section 111.1 is amended to form two new subsections as a consequence of section 110.61 (employee ownership trusts) and new section 110.62 (qualifying cooperative conversions) which, respectively, provide for deductions in computing taxable income in respect of taxable capital

gains realized on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion.

New subsection 111.1(1) amends existing section 111.1 to include references to section 110.61 and new section 110.62 immediately after section 111 (losses) and before the deduction under section 110.6 (lifetime capital gains exemption). Consequently, in computing taxable income, taxpayers are required to claim deductions under section 110.61 and new section 110.62 before claiming deductions under section 110.6.

New subsection 111.1(2) provides that no amount may be deducted for a taxation year of an individual under section 110.6 in respect of any portion of a taxable capital gain to the extent that the portion of the taxable capital gain has been deducted under section 110.61 or 110.62. This prevents the double deduction of an amount under both section 110.6 and either of section 110.61 and 110.62.

This amendment applies to taxation years that begin after 2023.

## **Clause 40**

### **Dividend rental arrangements – exception**

ITA  
112(2.31) to (2.34)

Section 112 is one of the principal provisions dealing with the treatment of dividends received by a corporation resident in Canada from another corporation. Section 112 is amended to repeal subsections 112(2.31) to (2.34).

Subsection 112(2.3) denies an inter-corporate dividend deduction in respect of dividends received by a corporation in circumstances where a corporation has entered into a “dividend rental arrangement” (as defined in subsection 248(1)).

However, subsection 112(2.31) may provide an exception to the denial in subsection 112(2.3) for a dividend received on a DRA share (as defined in subsection 248(1)) in respect of which there is a dividend rental arrangement because of paragraph (c) of the definition “dividend rental arrangement” (*i.e.*, the dividend rental arrangement is a synthetic equity arrangement as defined in subsection 248(1)). Specifically, under paragraph 112(2.31)(b), a dividend received on a share in respect of which there is a synthetic equity arrangement will not be subject to subsection 112(2.3) if the taxpayer establishes that, throughout the particular period, no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share.

Subsection 112(2.32) sets out rules under which a taxpayer is able to satisfy the condition in paragraph 112(2.31)(b) by obtaining certain specified representations in writing from the counterparty or counterparties to the synthetic equity arrangement.

Subsection 112(2.33) is intended to ensure that the exception in subsection (2.31) is only available for the period during which the representations have been provided remain accurate.

Subsection 112(2.34) provides interpretive rules for the purpose of subsection 112(2.32).

Subsection 112(2.31) is repealed to eliminate the exception to subsection 112(2.3) for synthetic equity arrangements in respect of which the taxpayer has established that no tax-indifferent investor has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share. Consequential on the repeal of subsection 112(2.31), subsections 112(2.32) to (2.34) are also repealed.

These amendments apply in respect of dividends received after 2024.

## **Clause 41**

### **Annual adjustment — amounts**

ITA

117.1(2)(c)

Subsection 117.1(2) provides for the indexing of various amounts in the Act, including amounts on which certain personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index. Paragraph 117.1(2)(c) provides for the indexing of the lifetime capital gains exemption limit.

Consequential on the amendment to subsection 110.6(2), which increases the lifetime capital gains exemption limit to \$625,000 as of 2025, and the introduction of new subsection 110.6(2.2), which provides an additional amount for the lifetime limit for certain gains in 2024, paragraph 117.1(2)(c) is amended to provide for the indexing of the lifetime capital gains exemption limit of \$625,000 as of 2026.

The amendment to paragraph 117.2(c) applies to taxation years that begin after 2024, with indexing beginning for taxation years that begin after 2025. Consequently, no indexation of the lifetime capital gains exemption limit applies for the 2025 taxation year.

## **Clause 42**

### **Definitions**

ITA

118.041(1)

***“qualifying expenditure”***

A “qualifying expenditure” of an individual is an outlay or expense that is made or incurred during a taxation year, that is directly attributable to a qualifying renovation of an eligible dwelling of a qualifying individual or an eligible individual in respect of a qualifying individual.

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

Certain expenditures do not qualify for the Home Accessibility Tax Credit under this definition, including, for example, expenditures for routine maintenance, financing costs and expenditures made primarily to increase the value of a dwelling.

The definition “qualifying expenditure” is amended by adding an exclusion under new paragraph (k). Under this new paragraph, an expenditure included in computing the amount of a deduction under section 118.2 (Medical Expense Tax Credit) for any taxpayer for any taxation year cannot be a “qualified expenditure” for the purpose of the Home Accessibility Tax Credit under section 118.041.

This amendment comes into force on January 1, 2026.

### **Interaction with medical expense credit**

ITA  
118.041(4)

Subsection 118.041(4) currently provides that, despite paragraph 248(28)(b), an outlay or expense made or incurred by an individual may qualify for both the Home Accessibility Tax Credit, under section 118.041, and for the Medical Expense Tax Credit, under section 118.2, if that outlay or expense would otherwise qualify for the purposes of those credits.

Consequential to the amendment of the definition of “qualifying expenditure” in subsection (1), subsection (4) is repealed.

This amendment comes into force on January 1, 2026.

### **Clause 43**

#### **2024 Extension**

ITA  
118.1(29)

Section 118.1 provides a tax credit to individuals in respect of certain gifts made to qualified donees.

In response to the 2024 postal strike that began on November 15, 2024, new subsection 118.1(29) extends the deadline for making donations eligible for determining an individual's charitable donation tax credit for the 2024 tax year, until February 28, 2025. This new subsection will provide that gifts made before March of 2025 are deemed to have been made in a taxation year of an individual that ends after November 14, 2024, and before 2025 (the "donation year"), and not in the individual's 2025 taxation year, if

- a credit for the gift would be deductible under section 118.1 in computing the individual's tax payable under Part I for the year if it were made immediately before the end of the individual's donation year;
- the individual claims the amount of the gift under subsection 118.1(3) of the Act for the individual's donation year;
- the gift was a gift in the form of cash or was transferred by way of cheque, credit card, money order or electronic payment; and
- the gift was not made
  - through a payroll deduction, or
  - if the individual died after 2024, by the individual's will.

#### **Clause 44**

#### **Death of child — eligible individual**

ITA

122.62(10)(c)

Subsection 122.62(10) is a counterpart to subsection 122.62(9). Subsection 122.62(10) addresses circumstances in which there has been the death of a child for whom an individual was an eligible individual in respect of the Canada Child Benefit immediately before the death of the child. This subsection deems this individual to be an eligible individual in respect of the deceased qualified dependant for the purposes of the Canada Child Benefit for each of the six months following the death of the qualified dependant child if that qualified dependant is deemed to be a qualified dependant at the beginning of that month because of subsection 122.62(9).

This is a relieving provision that works in parallel with subsection 122.62(9) and allows an eligible individual to continue receiving the Canada Child Benefit for a deceased child for up to six months following the child's death.

New paragraph 122.62(10)(c) provides that an individual must, at the beginning of each month, continue to satisfy the conditions in paragraphs (c) to (e) of the definition “eligible individual” in section 122.6, in order to be eligible to receive the Canada Child Benefit for a deceased child for that month. These paragraphs generally prescribe certain residency requirements that must be met in order for an individual to be eligible for the Canada Child Benefit. They also exclude individuals who are exempt from tax as employees of a country other than Canada and those individual’s family members.

This amendment applies to months that begin after August 31, 2025.

## Clause 45

New section 122.93 introduces the Personal Support Worker Tax Credit and provides a refundable tax credit that may be claimed by individuals employed as eligible personal support workers for eligible health care establishments. The credit is determined at a rate of 5% of an eligible personal support worker's yearly eligible remuneration (up to a maximum annual benefit of \$1,100) for employment at an eligible health care establishment. This tax credit is available for the 2026, 2027, 2028, 2029 and 2030 taxation years.

## Definitions

ITA  
122.93(1)

New subsection 122.93(1) sets out definitions that apply for the purpose of the new personal support worker tax credit.

### *“eligible health care establishment”*

An “eligible health care establishment” is a hospital, a nursing care facility, a residential care facility, a community care facility for the elderly, a home health care establishment, and any other similar regulated health care establishment.

### *“eligible personal support worker”*

An “eligible personal support worker” for a taxation year is an individual:

- who performs duties of employment in the capacity of a personal support worker for an eligible health care establishment during the year,
- who, in the course of performing such duties, ordinarily provides one-on-one care and essential support to optimize and maintain another individual's health, well-being, safety, autonomy and comfort, consistent with that individual's health care needs as directed by a regulated health care professional or a provincial community health organization, and
- whose main duties of employment include assisting other individuals with activities of daily living and mobilization.

### *“return of income”*

A “return of income” is the return (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year by an eligible personal support worker or that would be required to be filed if the eligible personal support worker had tax payable under Part I of the Act for the taxation year. The Personal Support Worker Tax Credit is only available to an eligible personal support worker in a 2026 to 2030 taxation year who has filed a return of income for that year.

**“yearly eligible remuneration”**

“Yearly eligible remuneration” of an individual for a taxation year is, very generally, their employment income for the year, including salary, wages, and employment benefits (as well as similar tax-exempt income and benefits earned on a reserve) that is earned from performing duties as an eligible personal support worker for an eligible health care establishment and that is certified as such an amount by the individual’s employer in the prescribed form and manner. An employer is not required to track the number of hours an individual spent performing the duties described under the definition “eligible personal support worker” to provide a certification of the individual’s yearly eligible remuneration.

Employment income earned from performing duties for an eligible health care establishment in British Columbia, Newfoundland and Labrador, and the Northwest Territories are excluded from an individual’s yearly eligible remuneration, as these jurisdictions have signed bilateral agreements with the federal government to include a “Personal Support Workers and Related Professions Addendum” to their *Ageing with Dignity* funding agreements, which provide funding over five years to increase personal support workers’ wages.

These amendments apply to the 2026 and subsequent taxation years.

**Deemed overpayment – yearly eligible remuneration**

ITA  
122.93(2)

New subsection 122.93(2) provides the calculation of the amount that an eligible personal support worker claiming the Personal Support Worker Tax Credit in their return of income for the year is deemed to have paid on account of tax payable under Part I of the Act for the year. The credit is calculated at a rate of 5% of an eligible personal support worker’s yearly eligible remuneration for the taxation year. The maximum amount of the credit is \$1,100 for any taxation year. The credit is available for the 2026, 2027, 2028, 2029 and 2030 taxation years.

This amendment applies to the 2026 and subsequent taxation years.

**Effect of bankruptcy**

ITA  
122.93(3)

New subsection 122.93(3) applies in computing the Personal Support Worker Tax Credit where an eligible personal support worker becomes bankrupt in a particular calendar year. This subsection provides that, notwithstanding subsection 128(2), any reference to the taxation year of the bankrupt eligible personal support worker is deemed to be a reference to the calendar year. In addition, it provides that the yearly eligible remuneration from both the pre-bankruptcy and post-bankruptcy periods will be taken into consideration in computing the Personal Support Worker Tax Credit.

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This amendment applies to the 2026 and subsequent taxation years.

### **Special rules in the event of death**

ITA  
122.93(4)

New subsection 122.93(4) provides that the Personal Support Worker Tax Credit is available in respect of an eligible personal support worker who dies in a calendar year.

This amendment applies to the 2026 and subsequent taxation years.

### **Clause 46**

#### **Foreign tax deduction**

ITA  
126(1)(b)(ii)(A)(III)

Subsection 126(1) sets out rules with respect to the foreign tax credit for non-business income.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subclause 126(1)(b)(ii)(A)(III) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

#### **Amount determined for purposes of para. (2)(b)**

ITA  
126(2.1)(a)(ii)(A)(III)

Subsection 126(2.1) sets out rules with respect to the foreign tax credit for business income. In particular, subsection 126(2.1) sets out a limit for the amount of a taxpayer's deduction under subsection 126(2) in respect of businesses carried on by the taxpayer in a country other than Canada.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subclause 126(2.1)(a)(ii)(A)(III) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

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## **Employees of international organizations**

ITA  
126(3)(b)(iii)

Subsection 126(3) set out rules with respect to the foreign tax credit for Canadian-resident employees of certain international organizations. The credit that may be claimed under subsection 126(3) is determined by multiplying the employee's Part I tax otherwise payable for a taxation year by a fraction. The numerator of that fraction, determined under paragraph 126(3)(a), consists of the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) from employment with the organization; the denominator of the fraction, determined under paragraph 126(3)(b), consists generally of the amount by which the employee's income for the year (or, where section 114 applies, for the period or periods in the year throughout which the employee is resident in Canada) exceeds the deductions listed in subparagraph 126(3)(b)(iii).

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subparagraph 126(3)(b)(iii) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

## **Deductions for specified capital gains**

ITA  
126(5.1)

Subsection 126(5.1) provides a special rule for determining a foreign tax credit where an individual has claimed a capital gains exemption during a taxation year. The individual will be deemed to have claimed the exemption in a year in respect of those taxable capital gains specified by him in his tax return for the year. If the taxpayer does not specify the order, the Minister may do so. A related amendment to the definition of non-business income tax excludes any foreign tax on capital gains in respect of which an exemption has been claimed.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subsection 126(5.1) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

## **Definitions**

ITA

126(7)

***“non-business-income tax”***

The definition “non-business-income tax” in subsection 126(7) defines the “non-business-income tax” paid by a taxpayer for a taxation year to the government of a country other than Canada, for the purpose of determining the taxpayer’s foreign tax credit. Paragraph (g) of the definition reduces a taxpayer’s non-business-income tax by the amount of any foreign tax that may reasonably be regarded as attributable to a taxable capital gain or portion thereof in respect of which the taxpayer has claimed a capital gains exemption.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, paragraph (g) of the definition “non-business-income tax” in subsection 126(7) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

**Computation of qualifying incomes and losses**

ITA

126(9)(a)(ii)

Subsection 126(1) sets out the rules for claiming a credit in respect of foreign taxes on non-business income (that is, the foreign taxes imposed on investment income and other categories of foreign source non-business income). A credit in respect of foreign taxes on business income is provided under subsection 126(2). Neither credit may exceed the Canadian tax otherwise payable in respect of the foreign source income. Canadian tax otherwise payable on foreign source income is generally determined by reference to the ratio of the net income from sources in a foreign country to total income. The net foreign source income is the amount, if any, by which “qualifying incomes” (as defined in subsection 126(7)) from those sources exceeds “qualifying losses” (as defined in the same subsection) from those sources.

Pursuant to paragraph 126(9)(a)(ii), the qualifying incomes and qualifying losses for a taxation year of a taxpayer from sources in a country are determined without reference to, for the purpose of subparagraph 126(1)(b)(i), any portion of the income in respect of which an amount was deducted under the lifetime capital gains exemption in section 110.6 in computing the taxpayer’s income for the year.

Consequential on the introduction of section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subparagraph 126(9)(a)(ii) is amended to include references to these sections.

This amendment is deemed to have come into force on January 1, 2024.

## Clause 47

### Deductions from Part I tax

ITA

127

Section 127 allows a taxpayer to take certain deductions in computing tax payable in respect of, among other things, investment tax credits (ITCs).

The scientific research and experimental development (SR&ED) program delivers support to businesses through, among other things, an ITC under section 127. Currently, eligible expenditures under the SR&ED program are generally limited to certain expenditures of a current nature. Capital expenditures were removed from eligibility under the SR&ED program for property acquired after 2013. The 2024 Fall Economic Statement proposed to restore the eligibility of capital expenditures for the ITC under the SR&ED program. The rules would be generally the same as those that existed prior to 2014.

In addition, Budget 2025 proposed to increase the expenditure limit on which the enhanced 35 per cent rate can be earned from \$3 million to \$6 million. The taxable capital phase-out thresholds for determining the expenditure limit would also be increased from \$10 million and \$50 million to \$15 million and \$75 million, respectively.

Finally, the 2024 Fall Economic Statement also proposed to extend eligibility for the enhanced refundable ITC to eligible Canadian public corporations.

Section 127 is amended to effect these changes.

### Definitions

ITA

127(9)

#### ***“consolidated financial statements”***

“Consolidated financial statements” 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.

This amendment applies to taxation years beginning on or after December 16, 2024.

#### ***“consolidated group”***

“Consolidated group” means a group of entities in respect of which an ultimate parent entity (UPE) is required to prepare consolidated financial statements or would be so required if equity interests in any of the entities were traded on a public securities exchange.

The hypothetical “traded on a public securities exchange” component of the definition is relevant where an entity would otherwise be the UPE, but it is not required to prepare consolidated financial statements. In this case, the group includes all entities that would be included in the consolidated financial statements that the relevant entity would be required to prepare if it were traded on a public securities exchange. In applying this component of the definition, it is irrelevant whether or not equity interests of the particular entity are in fact able to be so traded, taking into account, among other things, the jurisdiction’s company law and/or regulations governing the relevant public securities exchange.

For instance, in Canada (and in certain other jurisdictions, such as the United States) there is generally a distinction drawn, in determining whether consolidated financial statements are required to be prepared, between entities which have equity interests traded on a public securities exchange and those whose equity interests are not so traded. In this case, the hypothetical trading on a public securities exchange component of the definition would be relevant in determining the entities in a group where the UPE is an entity whose equity interests are not traded on a public securities exchange.

This amendment applies to taxation years beginning on or after December 16, 2024.

### ***“contract payment”***

The definition “contract payment” in subsection 127(9) avoids the duplication of ITCs where a person performing SR&ED receives payments or compensation from another person in respect of that SR&ED.

There are a number of ways in which SR&ED can be performed. Taxpayers can perform SR&ED in-house, have someone else perform the SR&ED on their behalf (contract-SR&ED), or make payments for SR&ED to be carried on by certain third-party entities (third-party SR&ED).

A taxpayer is entitled to claim ITCs in respect of a “qualified expenditure” as defined in subsection 127(9). In the case of contract-SR&ED and third-party SR&ED, qualified expenditures of a performer are reduced by the amount of a payor’s contract payment to the performer. This ensures that both the payor and the performer cannot claim ITCs on the same qualified expenditure.

Paragraph (b) of the definition “contract payment” is amended, consequential on the addition of paragraph 37(1)(b), to ensure that expenditures of a capital nature are also relevant for the purposes of the definition.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### ***“critical mineral”***

The definition “critical mineral” in subsection 127(9) provides the list of minerals that are relevant for purposes of the 30% investment tax credit in respect of specified surface “grass-roots” mineral exploration, often referred to as the “critical mineral exploration tax credit”.

This definition is amended to add 12 additional minerals: bismuth, cesium, chromium, fluorspar, germanium, indium, manganese, molybdenum, niobium, tantalum, tin, and tungsten.

This amendment applies in respect of expenses renounced under a flow-through share agreement entered into after November 4, 2025.

### ***“eligible Canadian public corporation”***

An ECPC may be eligible for the enhanced refundable ITC.

In general, an ECPC is either a corporation that meets the four requirements of paragraph (a) or an eligible subsidiary. For more information on the “eligible subsidiary” definition, refer to the commentary on that definition.

A corporation must meet four requirements to qualify under paragraph (a) of the definition.

First, it must be resident in Canada (subparagraph (a)(i)).

Second, it must be a public corporation (as defined in subsection 89(1)) or would be such a public corporation if the words “designated stock exchange in Canada” in paragraph (a) of the definition public corporation in subsection 89(1) were read as “designated stock exchange” (subparagraph (a)(ii)). This component of the definition captures corporations listed on any designated stock exchange, regardless of whether the designated stock exchange is in Canada.

Third, the corporation must not be controlled, directly or indirectly in any manner whatever, by one or more non-resident persons (subparagraph (a)(iii)).

Fourth, subparagraph (a)(iv) requires that the corporation would not, if each share of its capital stock that is owned by a non-resident person were owned by a particular person, be controlled by the particular person. Subparagraph (a)(iv) generally parallels the hypothetical non-resident shareholder test of paragraph (b) of the definition “Canadian-controlled private corporation” in subsection 125(7) but adapted to the circumstances of a publicly-traded corporation.

Specifically, in light of the fact that a publicly-traded corporation may not be in a position to determine all of its public shareholders, particularly those with a small interest in the corporation, paragraph (a)(iv) provides that, absent actual knowledge, the determination is to be based on publicly available information. For this purpose, publicly available information includes information filed pursuant to applicable securities laws, such as the filings required under Part 5 of National Instrument 62-104. In that respect, a corporation would be able to rely on the filings

that are current as of the end of the prior taxation year and would not be required to take into account filings made in the current taxation year. This is intended to provide more certainty in allowing publicly-traded corporations to determine if this specific requirement is met at the beginning of the year. However, as mandated by subsection 127(10.1), all the other requirements of the definition would have to be satisfied throughout the taxation year for the corporation to qualify for the enhanced ITC.

The actual knowledge standard ensures that a corporation cannot disregard known shareholders the identity of which may not be publicly available, such as shareholders holding shares that may not be currently publicly tradeable. This standard, however, is not otherwise intended to impose a positive obligation on the corporation to inquire into the identity of its shareholders.

This amendment applies to taxation years beginning on or after December 16, 2024.

***“eligible subsidiary”***

“Eligible subsidiary” means a corporation that is resident in Canada, not less than 90% of the issued shares of each class of the capital stock of which are owned, directly or indirectly, by one or more corporations that are eligible Canadian public corporations (ECPCs) because of paragraph (a) of that definition (i.e., one or more ECPCs that are not themselves eligible subsidiaries). The reference to “indirectly” in paragraph (b) of the definition ensures that the 90% ownership test cannot be diluted below 90% within the ECPC corporate chain.

The definition is relevant to the definition “eligible Canadian public corporation”.

This amendment applies to taxation years beginning on or after December 16, 2024.

***“entity”***

“Entity” means a corporation, partnership or trust, or any other arrangement, association, organization or body whether registered or unregistered for which separate financial accounts are prepared.

This amendment applies to taxation years beginning on or after December 16, 2024.

***“financial statements”***

“Financial statements” means financial statements prepared in accordance with “acceptable accounting standards” as defined in subsection 18.21(1).

This amendment applies to taxation years beginning on or after December 16, 2024.

***“first term shared-use-equipment”***

Currently, ITCs are not available in respect of either first term shared-use-equipment or second term shared-use-equipment due to the repeal, in 2012, of paragraph 37(1)(b) in respect of expenditures made after 2013.

The definition “first term shared-use-equipment” described certain depreciable property of a taxpayer acquired before 2014 that was eligible for an ITC.

The definition “first term shared-used-equipment” is amended, consequential on the addition of paragraph 37(1)(b), to ensure that it will apply in respect of property acquired on or after December 16, 2024.

In addition, the definition “first term shared-use-equipment” is amended to correct a reference to subsection 127(11.5).

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

***“fiscal year”***

“Fiscal year” means an annual accounting period in respect of which a corporation prepares its financial statements.

This amendment applies to taxation years beginning on or after December 16, 2024.

***“flow-through mining expenditure”***

Subsection 127(9) provides various definitions relevant for the purposes of calculating the investment tax credits (ITCs) of a taxpayer.

The definition “flow-through mining expenditure” in subsection 127(9) defines the expenses that qualify for the 15% ITC in respect of specified surface “grass-roots” mineral exploration, often referred to as the “mineral exploration tax credit”. Under the existing definition, the credit is available in respect of eligible expenses incurred and renounced under a flow-through share agreement made after March 2024 and before April 2025.

The definition “flow-through mining expenditure” is amended to provide a two-year extension of the mineral exploration tax credit. The amended definition includes eligible expenses incurred by a corporation after March 2025 and before 2028, where the expenses are renounced under a flow-through share agreement entered into after March 2025 and before April 2027.

This amendment applies in respect of expenses renounced under a flow-through share agreement entered into after March 2025.

***“government assistance”***

The definition “government assistance” in subsection 127(9) is relevant for various provisions in section 127 that require the investment tax credit to be calculated by reference to the cost of property or the amount of an expenditure made net of any grant, inducement or other assistance received in respect of the cost of the property or the expenditure. The definition is also relevant for the purposes of the clean economy tax credits in sections 127.44, 127.45, 127.48 and 127.49.

The definition is amended to exclude the clean electricity investment tax credit in new section 127.491.

This amendment applies on or after April 16, 2024.

### ***“qualified expenditure”***

The definition “qualified expenditure” in subsection 127(9) sets out the type of expenditures incurred by a taxpayer on SR&ED that are eligible for ITCs. Currently, paragraph (a) of the definition “qualified expenditure” includes expenditures described in paragraph 37(1)(a).

Consequential on the addition of paragraph 37(1)(b), paragraph (a) of the definition “qualified expenditure” is amended to include expenditures described in paragraph 37(1)(b), and expenditures for first term shared-use-equipment and second term shared-use-equipment as those terms are defined in subsection 127(9).

Further, paragraph (d) of the definition “qualified expenditure” is repealed, as that paragraph is no longer applicable.

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### ***“second term shared-use-equipment”***

The definition “second term shared-use-equipment” is amended to correct a reference to subsection 127(11.5).

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### ***“ultimate parent entity”***

“Ultimate parent entity” in respect of a group of entities means the member of the group that would be the ultimate parent entity (as defined in subsection 233.8(1)) of the group if the group were a “multinational enterprise group” (as defined in subsection 233.8(1)).

This amendment applies to taxation years beginning on or after December 16, 2024.

## **Additions to investment tax credit**

ITA  
127(10.1)

Subsection 127(10.1) provides an enhanced 20% ITC in addition to the basic 15% ITC for certain SR&ED expenditures incurred by a Canadian-controlled private corporation (CCPC). As a result, such expenditures qualify for a total ITC of 35%.

The 2024 Fall Economic Statement proposed to extend eligibility for the enhanced refundable ITC to ECPCs. Subsection 127(10.1) is amended to apply in respect of a corporation that is an ECPC throughout the taxation year.

This amendment applies to taxation years beginning on or after December 16, 2024.

**Expenditure limit – CCPC**

ITA  
127(10.2)

Subsection 127(10.2) determines a corporation's expenditure limit for the purpose of the additional ITC provided in subsection 127(10.1).

Currently, the expenditure limit of a corporation for a particular taxation year is an amount from nil to \$3 million, as determined by the formula set out in subsection 127(10.2). The formula begins to reduce the expenditure limit where the taxable capital employed in Canada of the corporation and any associated corporations exceeds an initial threshold amount (currently, \$10 million). The expenditure limit is reduced to nil where taxable capital reaches a second threshold amount (currently, \$50 million).

Subsection 127(10.2) is amended in three respects. First, the maximum expenditure limit is increased to \$6 million. Second, the two threshold amounts for taxable capital employed in Canada are increased to \$15 million and \$75 million, respectively. Third, consequential on the extension of the refundable ITC to ECPCs (see subsections 127(10.1) and (10.6)), it is now specified that the particular corporation described in subsection 127(10.2) is a CCPC.

This amendment applies to taxation years beginning on or after December 16, 2024.

**Shared limit – associated CCPCs**

ITA  
127(10.3)

Subsection 127(10.3) allows a group of associated CCPCs to file an election with the Minister of National Revenue in which the group allocates the maximum expenditure limit for the group determined under subsection 127(10.2) among the members of the group.

Subsection 127(10.3) is amended to reflect the new election under subsection 127(10.32) allowing a group of associated CCPCs to have its expenditure limit for the enhanced SR&ED ITC determined based on the same revenue phase-out structure as ECPCs. See the commentary on subsection 127(10.32) for more information.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Revenue election for single CCPC**

ITA  
127(10.31)

Subsection 127(10.31) provides the new election allowing a CCPC that is not associated with another corporation to have its expenditure limit for the enhanced SR&ED ITC determined under subsection 127(10.6) using the same revenue phase-out structure as an ECPC that is not a member of consolidated group. A CCPC has the option of making this election each year. Where the election is made for a taxation year, the expenditure limit based on taxable capital employed in Canada under subsection 127(10.2) does not apply to the corporation for that year.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Revenue election for CCPC having associated corporations**

ITA  
127(10.32)

Subsection 127(10.32) provides the new election allowing a group of associated CCPCs to have its expenditure limit for the enhanced SR&ED ITC determined under subsection 127(10.6) based on the same revenue phase-out structure as ECPCs. Specifically, the expenditure limit under subsection 127(10.6) is to be calculated as if each CCPC in the group were an ECPC and the group were a consolidated group, subject to certain modifications described below.

First, the expenditure limit is to be calculated as if the amount determined under subparagraph (a)(ii) of the description of A in the formula in subsection (10.6) were the total of all amounts, each of which is the average, over the period of three fiscal years immediately preceding and ending in the last calendar year that ended before the end of the particular taxation year, of annual revenue reflected in the financial statements of each corporation that is a member of the group (paragraph (10.32)(c)).

As the fiscal years of the associated corporations may not coincide, paragraph (10.32)(c) provides that the relevant period corresponds to the three-fiscal-year period ending in the last calendar year that ended before the end of the particular taxation year. This generally parallels the current approach to determine taxable capital employed in Canada of a group of associated corporations under subsection 127(10.2).

The size of a group of associated corporations may vary during the three-fiscal-year lookback period, such as when a new corporation becomes, or ceases to be, associated. Where that is the case, the rule in paragraph (10.32)(c) requires first identifying all the corporations that are associated in the taxation year for which the expenditure limit is being determined, and then taking into account the revenue of all these corporations for the entire three-fiscal-year lookback period, regardless of whether such corporations were associated during that period. For instance, if during the three-fiscal-year lookback period (years 1, 2 and 3) a corporation becomes associated with a group in year 2, then by virtue of paragraph (10.32)(c) the revenue of the associated group for year 1 will be increased by the corporation's revenue for year 1 even though the corporation was not associated in year 1. This generally parallels the current approach to determine taxable capital employed in Canada of a group of associated corporations under subsection 127(10.2). This result is to be contrasted with that of a consolidated group under subsection 127(10.6) – see the commentary on subsection 127(10.6) for more information.

Second, such annual revenue must include each associated corporation's reasonable share of annual revenue reflected in the financial statements of any partnership or trust in which the corporation held an interest (subparagraph (10.32)(d)(i)). This modification ensures that the revenue of a partnership or trust in which an associated corporation hold an interest is taken into account, regardless of how such revenue is reported (if at all) on the financial statements of the corporation.

Third, the annual revenue may include reasonable adjustments to reflect the annual revenue of the group as that of a single economic entity (subparagraph (10.32)(d)(ii)). Since paragraph (10.32)(c) refers to unconsolidated "financial statements", subparagraph (10.32)(d)(ii) allows reasonable adjustments to reflect the annual revenue of the associated group as that of a single economic entity. This would cover, for instance, applicable intercompany transactions.

A group of associated CCPCs has the option of making the election under subsection 127(10.32) each year. Where the election is made for a taxation year, the expenditure limit based on taxable capital employed in Canada under subsection 127(10.2) does not apply to the group for that year.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Expenditure limit determination in certain cases**

ITA  
127(10.5)

Existing subsection 127(10.6) is renumbered as subsection 127(10.5). New subsection 127(10.6) now provides the expenditure limit for an ECPC – see the commentary on subsection 127(10.6).

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Expenditure limit – ECPC**

ITA  
127(10.6)

Subsection 127(10.6) determines an ECPC's expenditure limit for the purpose of the additional ITC provided in subsection 127(10.1).

The expenditure limit of a corporation for a particular taxation year is an amount from nil to \$6 million, as determined by a formula set out in subsection 127(10.6). The formula has the effect of reducing the expenditure limit to the extent that the applicable revenue reflected in the applicable financial statements exceeds a threshold amount. The applicable revenue corresponds to:

- If the ECPC is not a member of a consolidated group in the particular taxation year, the amount that is the average, over the period of three fiscal years immediately preceding and ending before the particular taxation year, of the ECPC's annual revenue based on the amounts reflected in the financial statements of the ECPC; and
- If the ECPC is a member of a consolidated group in the particular taxation year, the amount that is the average, over the period of three fiscal years immediately preceding and ending in the last calendar year that ended before the end of the particular taxation year, of the annual revenue reflected in the consolidated financial statements of the consolidated group.

In the case of a consolidated group, the consolidated financial statements of the consolidated group are those of the ultimate parent entity – see the commentary on the definitions “consolidated group” and “ultimate parent entity”.

The size of a consolidated group may vary during the three-fiscal-year lookback period, such as when a new entity becomes a member of the group or an existing member leaves the group. Where that is the case, the general rule in paragraph (a)(ii) of element A of subsection 127(10.2) requiring the use of the revenue of the consolidated group, based on how those revenues are actually reflected in the consolidated financial statements of the group, remains applicable. Accordingly, there is no requirement to make additional adjustments to the revenue of the group to account for a change in the size of the group during the three-fiscal-year lookback period if revenue adjustments for that change are not otherwise reflected in the consolidated financial statements of the group. For instance, if during the three-fiscal-year lookback period (years 1, 2 and 3) an entity becomes a member of a consolidated group in year 2 and the revenue reflected in the group's consolidated financial statements for year 1 (prepared in accordance with acceptable accounting standards as defined in subsection 18.21(1)) do not include the entity's revenue for year 1, then for purposes of subsection 127(10.6) the revenue of the group for year 1 do not have to be increased by the entity's revenue for year 1. This result is to be contrasted with that of a group of associated CCPCs electing under subsection 127(10.32) to have its expenditure limit determined under subsection 127(10.6) – see the commentary on subsection 127(10.32) for more information.

The expenditure limit provided for in subsection 127(10.6) may be subject to certain adjustments under subsection 127(10.64) – see the commentary on subsection 127(10.64).

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This amendment applies to taxation years beginning on or after December 16, 2024.

### **Expenditure limits – consolidated ECPCs**

ITA  
127(10.61)

Subsection 127(10.61) provides that the expenditure limit for a taxation year of an ECPC that is, at any time in the year, a member of a consolidated group is nil, except as otherwise provided in section 127. Subsection 127(10.61) generally parallels the existing rule for a group of associated CCPCs in subsection 127(10.21). See also the commentary on subsections 127(10.62) and (10.63) for more information.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Consolidated ECPCs**

ITA  
127(10.62)

Subsection 127(10.62) allows a consolidated group to file an election with the Minister of National Revenue in which the group allocates the maximum expenditure limit for the group determined under subsection 127(10.6) among the ECPCs that are members of the group. Subsection 127(10.62) generally parallels the existing rule for a group of associated CCPCs in subsection 127(10.3). See also the commentary on subsections 127(10.61) and (10.63) for more information.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Failure to file agreement**

ITA  
127(10.63)

Subsection 127(10.63) provides that in the event that a consolidated group fails to file an election within 30 days after the Minister has requested this information, the Minister will allocate the expenditure limit determined under subsection 127(10.6) among the group. Subsection 127(10.63) generally parallels the existing rule for a group of associated CCPCs in subsection 127(10.4). See the commentary on subsections 127(10.61) and (10.62) for more information.

This amendment applies to taxation years beginning on or after December 16, 2024.

### **Determinations in certain cases**

ITA

## 127(10.64)

Subsection 127(10.64) provides various application rules for determining a corporation's expenditure limit under subsection 127(10.2).

First, paragraph 127(10.64)(a) determines the expenditure limit of an ECPC that has two or more taxation years ending in the same calendar year and in two or more of those taxation years it is a member of a consolidated group in which another ECPC has a taxation year ending in the same calendar year. This rule provides that, subject to the prorating rule in paragraph 127(10.64)(b), the expenditure limit for each such taxation year of the ECPC is the amount allocated to the corporation for its first such taxation year under subsection 127(10.62) or (10.63). Paragraph 127(10.64)(a) generally parallels the existing rule for a group of associated CCPCs in (now) paragraph 127(10.5)(a).

Second, paragraph 127(10.64)(b) determines an ECPC's expenditure limit for a short taxation year. This provision applies to all ECPCs, whether or not members of a consolidated group, and requires a proration of the limit for any taxation year of less than 51 weeks in duration. It provides that an ECPC's expenditure limit for such a taxation year is its limit otherwise determined multiplied by the number of days in the taxation year and divided by 365. Paragraph 127(10.64)(b) generally parallels the existing rule for a CCPC in paragraph 127(10.5)(b).

Third, paragraphs 127(10.64)(c) and (d) determine the applicable revenue of an ECPC or UPE for a short fiscal year and require an increase (a "gross up") of the revenue for any fiscal year of less than 51 weeks in duration. It provides that the revenue reflected in the financial statements of the ECPC or the consolidated financial statements of the UPE for such a fiscal year is multiplied by 365 and divided by the number of days in the taxation year.

Fourth, paragraph 127(10.64)(e) determines the relevant period over which the average annual revenue of an ECPC or UPE (or electing CCPC or group of associated CCPCs) is calculated if there are less than three fiscal years. It provides that, in such a case, the average annual revenue is to be calculated over the actual number of fiscal years (i.e., one or two fiscal years).

These amendments apply to taxation years beginning on or after December 16, 2024.

### **Investment tax credit**

ITA

127(11.1)(c.1)

Paragraph 127(11.1)(c.1) is repealed, as that paragraph is no longer applicable.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Time of acquisition**

ITA  
127(11.2)

In general, subsection 127(11.2) provides that, for the purposes of claiming an ITC under subsection 127(5) or allocating an ITC under subsection 127(7) or (8), property is not considered to have been acquired by a taxpayer until the property is considered to have become “available for use” by the taxpayer. Subsection 127(11.2) is amended in two respects.

First, the reference to “qualified resource property”, which is no longer applicable, is removed.

Second, consequential on the addition of paragraph 37(1)(b), references to “first term shared-use-equipment” and “expenditures incurred to acquire property described in paragraph 37(1)(b)” are added.

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Adjustments to qualified expenditures**

ITA  
127(11.5)

Subsection 127(11.5) reduces, in certain circumstances, qualified expenditures incurred by a taxpayer. Subsection 127(11.5) is amended in two respects consequential on the addition of paragraph 37(1)(b).

First, paragraph 127(11.5)(a) is amended to require that, for the purposes of the definition “qualified expenditure” in subsection 127(9), the amount of a qualified expenditure in respect of a capital property is to be determined without reference to subsections 13(7.1) and (7.4).

Second, paragraph 127(11.5)(b) is added to require that where an expenditure is for first term shared-use-equipment or second term shared-use-equipment, only  $\frac{1}{4}$  of the capital cost of the equipment is taken into account and the capital cost of such property is to be determined without capitalized interest being added to the capital cost under section 21 and without reference to subsections 13(7.1) and (7.4).

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Non-arm’s length costs**

ITA  
127(11.6)

Subsection 127(11.6) provides rules for determining expenditures for the purposes of subsection 127(11.5) in respect of purchases of goods and services acquired from non-arm's length parties. Consequential on the addition of paragraph 37(1)(b), the mid-amble of subsection 127(11.6) and subparagraph 127(11.6)(d)(i) are amended by adding "capital" before the expression "cost to the taxpayer of the property".

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Interpretation for non-arm's length costs**

ITA  
127(11.8)

Subsection 127(11.8) provides additional rules relating to non-arm's length purchases of goods and services.

Consequential on the addition of paragraph 37(1)(b), paragraph 127(11.8)(c) is added to provide that the leasing of a property is considered to be the rendering of a service for purposes of subsections 127(11.6), (11.7) and (11.8).

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Certain non-arm's length transfers**

ITA  
127(33)

Subsections 127(33) to (35) apply where a non-arm's length transfer of property to another taxpayer would otherwise trigger the SR&ED ITC recapture provisions. Subsection 127(33) provides that the SR&ED ITC recapture provisions do not apply to a taxpayer who disposes of SR&ED property to a non-arm's length purchaser if the purchaser continues to use the property all or substantially all for SR&ED.

Consequential on the addition of paragraph 37(1)(b) and subclauses 37(8)(a)(ii)(A)(III) and (B)(III), subsection 127(33) is amended to ensure that the non-application of the recapture rules will remain in effect for non-arm's length transfers of SR&ED property on or after December 16, 2024.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

### **Clause 48**

#### **Refundable investment tax credit**

ITA  
127.1

Section 127.1 provides for the refundability of ITCs under certain circumstances. A qualifying corporation may be eligible for either a 40% or 100% refund for its ITCs depending on the nature of the expenditures.

### **Definitions**

ITA  
127.1(2)

Subsection 127.1(2) sets out definitions relevant for the purposes of section 127.1.

#### ***“qualifying income limit”***

The “qualifying income limit” definition sets out the threshold limit for determining whether a CCPC is a “qualifying corporation”, which is also defined in subsection 127.1(2).

The qualifying income limit of a corporation is an amount from nil to \$500,000, as determined by a formula that begins to reduce the limit where the taxable capital employed in Canada of the corporation and any associated corporations exceeds an initial threshold amount. The qualifying income limit is then reduced to nil where taxable capital reaches a second threshold amount. The relevant threshold amounts (currently, \$10 million and \$50 million) mirror those set out in subsection 127(10.2).

Consequential on the amendment to the threshold amounts in subsection 127(10.2), the threshold amounts used in determining the qualifying income limit of a CCPC are also increased to \$15 million and \$75 million, respectively.

This amendment applies to taxation years beginning on or after December 16, 2024.

#### ***“refundable investment tax credit”***

The definition “refundable investment tax credit” defines the portion of ITCs that are refundable in a taxation year of a taxpayer that are earned by the taxpayer in respect of a qualified expenditure as defined in subsection 127(9).

Consequential on the addition of paragraph 37(1)(b), subparagraph (f)(i) of the definition “refundable investment tax credit” is amended to add the expression “(other than expenditures of a capital nature)”. As a result, the rate of refund is 40% for SR&ED expenditures of a capital nature.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

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## **Addition to refundable investment tax credit**

ITA  
127.1(2.01)

Subsection 127.1(2.01) provides for the refundability of certain ITCs earned by a CCPC that is neither a qualifying corporation nor an excluded corporation as defined in subsection 127.1(2). For such a CCPC, the rate of refund of the 35% ITC is 100% for SR&ED expenditures of a current nature. Subsection 127(2.01) is amended in two respects.

First, consequential on the addition of paragraph 37(1)(b), subsection 127.1(2.01) is amended by adding new elements A and B and redesigning existing paragraphs (a) and (b) as elements C and D, respectively. As a result, the rate of refund of the 35% ITC is 40% for SR&ED expenditures of a capital nature and 100% for SR&ED expenditures of a current nature.

Second, subsection 127.1(2.01) is amended to apply in respect of an ECPC that is neither a qualifying corporation nor an excluded corporation as defined in subsection 127.1(2). As a result, such an ECPC is also eligible for the refundability of the 35% ITC at a rate of 40% for SR&ED expenditures of a capital nature and 100% for SR&ED expenditures of a current nature.

These amendments apply in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

## **Clause 49**

### **Deemed rebate in respect of fuel charges**

ITA  
127.42(9)

New subsection 127.42(9) provides that amounts paid under this section are deemed to have been paid as rebates in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act*.

This amendment applies to the 2021 and subsequent taxation years.

## **Clause 50**

### **Deemed amount 2019-2023**

ITA  
127.421(2)

Subsection 127.421(2) provides a method for calculating the amount of the Canada Carbon Rebate for Small Businesses for the 2019 to 2023 calendar years. It currently provides that if a corporation

had filed, on or before July 15, 2024, a return of income for a particular taxation year ending in 2023 (other than a final return on dissolution) it is deemed to have paid, on a date specified by the Minister of Finance, an amount on account of tax payable under Part I for that taxation year.

Subsection 127.421(2) is amended to extend the filing deadline until December 31, 2024. The filing deadline is extended to allow corporations who missed the initial filing deadline of July 15, 2024, to continue to file until December 31, 2024, for the Canada Carbon Rebate for Small Businesses for the 2019 to 2023 calendar years.

This amendment is deemed to have come into force on June 20, 2024.

### **Deemed amount after 2023**

ITA  
127.421(3)

Subsection 127.421(3) provides a method for calculating the amount of the Canada Carbon Rebate for Small Businesses for calendar years that are after 2023. Subsection 127.421(3) currently provides that a corporation that files a return of income for a particular taxation year ending in a calendar year after 2023 (other than a final return on dissolution) is, if the return is filed on or before July 15 of the following calendar year, deemed to have paid an amount on its balance-due day for the year, on account of tax payable under Part I for that taxation year.

Subsection 127.421(3) is amended to provide a fixed date of October 1 of the following calendar year as the date on which a corporation is deemed to have paid an amount on account of tax payable under Part I for the particular taxation year.

This amendment is deemed to have come into force on June 20, 2024.

### **Payment – not taxable**

ITA  
127.421(6)

Subsection 127.421(6) currently provides that the amount of tax that a taxpayer is deemed to have paid under subsection 127.421(2) or (3) is considered to be assistance received by the taxpayer from a government in the taxation year in which the assistance is received.

Subsection 127.421(6) is amended to provide that an amount deemed to have been paid on account of tax payable under subsection 127.421(2) or (3) is not to be included in computing the income of a corporation for a taxation year.

This amendment is deemed to have come into force on June 20, 2024.

### **Predecessor corporation – before 2023**

ITA  
127.421(8)

Subsection 127.421(8) currently provides that for the purposes of subsection 127.421(2), where there has been an amalgamation or merger of two or more corporations in a calendar year before 2023, the corporation filing a return of income in 2023 is deemed to be the same corporation as and a continuation of each predecessor corporation that was registered with the Minister to make remittances required under section 153 under the corporation's 2023 business number. This would allow an eligible successor corporation to receive an amount under subsection 127.421(2) in respect of preceding calendar years if the 2023 business number was used to make remittances in respect of persons employed by a predecessor corporation in a designated province in those calendar years.

Subsection 127.421(8) is amended to remove the word "merger". This amendment clarifies that subsection 127.421(8) is intended to only apply where there has been an amalgamation of two or more corporations in a calendar year before 2023.

This amendment is deemed to have come into force on June 20, 2024.

**Predecessor corporation — 2023 and subsequent years**

ITA  
127.421(9)

Subsection 127.421(9) is amended to remove the word "merger". This amendment clarifies that subsection 127.421(9) is intended to only apply where there has been an amalgamation of two or more corporations in a calendar year after 2022.

This amendment is deemed to have come into force on June 20, 2024.

**Deemed taxation year**

ITA  
127.421(11)

Subsection 127.421(11) currently addresses circumstances where a corporation may have more than one taxation year ending in a calendar year after 2023. To prevent a double payment to that corporation for the calendar year, subsection 127.421(11) provides that, for the purposes of subsection 127.421(3), if a corporation has more than one taxation year ending in the same calendar year, the particular taxation year is the first taxation year that ends in the calendar year.

Subsection 127.421(11) is amended by adding a reference to subsection 127.421(2) so that it also addresses circumstances where a corporation may have more than one taxation year in 2023.

This amendment is deemed to have come into force on June 20, 2024.

## Clause 51

### Definitions

ITA  
127.44(1)

#### ***“dual-use equipment”***

A portion of expenditures for “dual-use equipment” may qualify for CCUS tax credits under certain circumstances. To be included as dual-use equipment, equipment must be described in any of paragraphs (a) to (d) of the definition. In addition, in the case of property acquired before the first day of commercial operations of the CCUS project, the equipment must be verified by the Minister of Natural Resources as being dual-use equipment.

Subparagraph (c)(iii) of this definition is amended to clarify that the intended eligible property is the property that is incorporated into another property where the incorporation causes the other property to satisfy the description in any of paragraphs (a) or (b) or subparagraphs (c)(i) or (ii) (as opposed to the tools used to perform the conversion).

This amendment applies on or after January 1, 2022.

#### ***“excluded CCUS equipment”***

The definition “excluded CCUS equipment” is relevant for the purposes of determining what property may qualify under Class 57 of Schedule II to the Income Tax Regulations.

This definition is added to ensure that certain equipment that is expected to be used in hydrogen production is included in Class 57, while describing ineligible equipment more precisely. In particular, the scope of ineligible equipment used in hydrogen production is limited to equipment that would be required to produce hydrogen even if no CCUS process was applied by the taxpayer to produce the hydrogen. For instance, carbon dioxide capture equipment may indirectly support the hydrogen production process by reducing the burden on downstream hydrogen purification equipment. However, this capture equipment would not be considered “excluded CCUS equipment”, since it would not be required to produce hydrogen if no CCUS process was applied by the taxpayer to produce the hydrogen.

References to equipment expected to be used in natural gas processing and acid gas injection, as well as oxygen production equipment, are moved from paragraph (a) of Class 57 to this definition to improve readability.

This amendment applies on or after January 1, 2022.

#### ***“preliminary CCUS work activity”***

Expenditures in respect of a preliminary CCUS work activity cannot be included as qualified CCUS expenditures because of subparagraph 127.44(9)(b)(iii).

A preliminary CCUS work activity is an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of property described in Class 57 or 58 of Schedule II to the *Income Tax Regulations* in respect of the taxpayer's CCUS project. Generally, a preliminary CCUS work activity includes the activities described in paragraphs (a) to (e) of the definition.

Paragraph (e) of this definition is amended to exclude from the scope of preliminary CCUS work activities the clearing or excavating of land that is directly related to the installation of property described in Class 57 or 58 of Schedule II to the *Income Tax Regulations* or dual-use equipment.

This amendment applies on or after January 1, 2022.

***“qualified carbon capture expenditure”***

The definition “qualified carbon capture expenditure” is relevant to determining the amount of the taxpayer’s CCUS development tax credit under subsection (4) and CCUS refurbishment tax credit under subsection (5). In general terms, it represents a portion of the taxpayer’s capital expenditures incurred in the year to acquire property that is used for the capture aspect of a CCUS project (in contrast to property used in other parts of a CCUS project, such as for transportation, storage or use).

In general terms, variable A includes the capital cost to the taxpayer of the property acquired by the taxpayer in the year that is used for, or related to, the capture aspect of a CCUS project. Variable A, in its paragraph (b), also includes a portion of the capital cost of “dual-use equipment”. The included portion as a qualified carbon capture expenditure is the proportion that the output from the dual-use equipment that is expected to be used in a CCUS project is of total output over the period of the project’s “total CCUS project review period”.

The description of the portion of included water equipment in subparagraph (b)(ii) of variable A is amended slightly to correct the calculation of the portion of such dual-use equipment that is a qualified carbon capture expenditure. In particular, the word “returned from” are replaced by the words “supplied to” and the later phrase “returned to” is replaced by the words “processed by”. This change ensures that the calculation is consistent with a similar calculation in the context of the clean hydrogen investment tax credit in section 127.48 and is mathematically correct.

This amendment applies on or after March 28, 2023.

***“specified percentage”***

The definition "specified percentage" is the tax credit rate used to determine the amount of a taxpayer's CCUS development tax credit and the taxpayer's CCUS refurbishment tax credit under subsections 127.44(4) and (5).

The specified percentage is different depending on the type of qualified CCUS expenditure. For a qualified carbon capture expenditure, the rate also varies based on whether or not the carbon is captured directly from the ambient air.

Currently, the full credit rates apply in respect of expenditures incurred after 2021 and before 2031, and drop by half for expenditures incurred after 2030 and before 2041.

This definition is amended to extend the availability of the full credit rates by five years, so that expenditures incurred before 2036 will be eligible for the following credit rates:

- 60% for qualified carbon capture expenditures incurred to capture carbon directly from ambient air,
- 50% for other qualified carbon capture expenditures, and
- 37 1/2% for qualified carbon transportation expenditures, qualified carbon storage expenditures, and qualified carbon use expenditures.

These rates will drop by half for expenditures incurred after 2035 and before 2041.

This amendment is deemed to have come into force on November 4, 2025.

### **Deemed deduction**

ITA  
127.44(3)

Subsection 127.44(3) of the Act deems the amount that is deemed to have been paid on account of tax payable under subsection (2) to have been deducted from the taxpayer's tax otherwise payable under Part I for the purposes of section 127.44 and various rules, causing those rules to operate in the same manner whether a CCUS tax credit (as defined in subsection 127.44(1)) is obtained as a refund or deducted against tax otherwise payable.

Subsection 127.44(3) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Special rules — adjustments**

ITA  
127.44(9)

Subsection 127.44(9) of the Act contains several special rules that apply for the purposes of the CCUS tax credit.

Paragraph 127.44(9)(b) causes certain amounts to be excluded from a taxpayer's qualified CCUS expenditures, such as an expenditure to acquire property for which an investment tax credit is

claimed under section 127 or under another clean economy provision. Clause (C) of subparagraph (b)(ii) is amended to refer to any other “clean economy tax credit” as defined in subsection 127.47(1). This ensures that a CCUS tax credit cannot be claimed if another clean economy tax credit is deducted on the same amount. The reference to “claimed” is also replaced with “deducted” to ensure that the treatment of this exclusion is consistent with similar rules in the other clean economy provisions.

New clause (D) is added to the same subparagraph and effectively requires taxpayers to choose between CCUS tax credits and clean electricity investment tax credits for any property that is part of a “specified natural gas energy system” (as defined in subsection 127.491(1)). Accordingly, if a clean electricity investment tax credit is deducted by any person for any property that is part of a particular “specified natural gas energy system”, CCUS tax credits cannot be deducted for expenditures for other property in respect of the same system.

This amendment applies on or after April 16, 2024.

### **Late filing**

ITA  
127.44(17)

Subsection 127.44(17) is an administrative rule for the purpose of ensuring efficient administration of the CCUS tax credit by the Minister of National Revenue.

The rule generally permits the Minister to accept the late filing by a qualifying taxpayer of the prescribed form referred to in subsection (2) on or before the later of December 31, 2025 and the day that is one year after the taxpayer’s filing-due date referred to in subsection (2).

Subsection (17) is amended to provide an extension of the first late-filing deadline until December 31, 2026.

### **Clause 52**

Section 127.45 provides a refundable investment tax credit for certain investments in clean technology. Several amendments are being made to this section, including to extend the availability of the clean technology investment tax credit to certain equipment that supports the generation of electricity and/or heat from waste biomass.

### **Definitions**

ITA  
127.45(1)

*“clean technology property”*

Paragraph (d) of the definition “clean technology property” is amended and reorganized in several respects. In particular:

- Subparagraphs (d)(i) to (iv) of the definition “clean technology property” are amended to remove language that already appears in the capital cost allowance classes of Schedule II to the Regulations to which those subparagraphs refer.
- Subparagraph (d)(i) is amended to clarify that test wind turbines (within the meaning assigned by subsection 1219(3) of the Regulations) are excluded.
- Subparagraph (d)(iv) is amended to move the description of certain property used primarily to charge or dispense hydrogen to new subparagraph (d)(iv.1).
- Subparagraph (d)(v) is reorganized to clarify the conditions for equipment described in subparagraph (d)(vii) of Class 43.1 that would qualify under this subparagraph.
- Subparagraph (d)(vii) is amended consequential to the new definition of “small nuclear energy property”.
- Subparagraph (d)(viii) is added consequential to the addition of “waste biomass electricity generation equipment” and “waste biomass heat generation equipment” to the categories of property eligible for the clean technology investment tax credit.
- Subparagraph (d)(ix) is added to include property that is incorporated into another property as part of a “refurbishment” of the other property, where the other property is described in any of subparagraphs (d)(i) to (viii) and continues to be so described after the refurbishment is completed. See the explanatory notes to the definition of “refurbishment” in subsection 127.45(1) for more information.

The amendments to subparagraphs (d)(i) to (v) and (vii) and new subparagraph (d)(ix) are deemed to have come into force on March 28, 2023. New subparagraph (d)(viii) is deemed to have come into force on November 21, 2023.

#### ***“concentrated solar energy equipment”***

The definition of “concentrated solar energy equipment” captures certain equipment used all or substantially all to generate heat or electricity exclusively from concentrated sunlight; such equipment is then incorporated into the definition of “clean technology property” in subparagraph (d)(vi) of that definition.

Paragraph (g) is amended to replace the reference to “transmission equipment” with a reference to “eligible transmission equipment”, a newly-defined term in subsection 1104(13) of the Regulations. For more information, see the explanatory notes to “eligible transmission equipment” in subsection 1104(13) of the Regulations.

This amendment comes into force on November 17, 2025.

***“eligible bioenergy fuel”***

The definition “eligible bioenergy fuel” is added to subsection 127.45(1) to describe fuel derived from specified waste material that is used by a system to produce electricity or both electricity and heat.

This definition is deemed to have come into force on November 21, 2023.

***“excluded equipment”***

The definition of “excluded equipment” carves out certain types of property that are not intended to qualify as concentrated solar energy equipment. Paragraph (d) currently describes property included in Class 10 in Schedule II to the *Income Tax Regulations*.

Paragraph (d) is amended to make reference to vehicles rather than property included in Class 10.

This amendment is deemed to have come into force on March 28, 2023.

***“gaseous biofuel”, “liquid biofuel”, “solid biofuel”, “specified waste material” and “spent pulping liquor”***

These definitions are added to subsection 127.45(1) to describe certain feedstock and fuels relevant to the determination of whether systems, and consequently property, satisfy the requirements in the definitions of “waste biomass electricity generation equipment” and “waste biomass heat generation equipment”.

These definitions have the same meaning as in subsection 1104(13) of the Regulations.

The definition “specified waste material” describes eligible feedstock for waste biomass electricity generation equipment and waste biomass heat generation equipment.

The definition “spent pulping liquor” describes an eligible feedstock for waste biomass electricity generation equipment. However, spent pulping liquor would not be an eligible feedstock for waste biomass heat generation equipment.

The definitions “gaseous biofuel”, “liquid biofuel” and “solid biofuel” describe the types of fuels that could be produced from specified waste material and subsequently used to generate electricity, heat, or both electricity and heat, with either waste biomass electricity generation equipment or waste biomass heat generation equipment.

These definitions are deemed to have come into force on November 21, 2023.

***“non-clean technology use”***

The definition “non-clean technology use” is amended to replace the words “ceasing to be” with “not being” before the words “a clean technology property”.

This amendment is deemed to have come into force on March 28, 2023.

***“nuclear facility”***

The definition “nuclear facility” is added to clarify that, with respect to “small nuclear energy property”, a nuclear facility includes the site where the property is located, as well as any contiguous or adjacent sites where nuclear fission reactors are located or will be located.

This amendment is deemed to have come into force on March 28, 2023.

***“preliminary work activity”***

Expenditures in respect of a “preliminary work activity” cannot be included in the capital cost of clean technology property for purposes of computing a taxpayer’s clean technology investment tax credit because of new subparagraph 127.45(5)(a)(iv).

A preliminary work activity is an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of property. Generally, a preliminary work activity includes (but is not limited to) the activities described in paragraphs (a) to (e).

This definition is deemed to have come into force on March 28, 2023.

***“refurbishment”***

The definition “refurbishment” is relevant for the purposes of subparagraph (d)(ix) of the definition “clean technology property” in subsection 127.45(1).

Briefly, a qualifying taxpayer may claim the clean technology investment tax credit on the capital cost of a property that the taxpayer has acquired and that is described in any of subparagraphs (d)(i) to (viii) of the definition “clean technology property” if the property has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the entity.

In general terms, subparagraph (d)(ix) of the definition “clean technology property” provides that property that is incorporated into another property as part of a refurbishment of the other property, where the other property is described in any of subparagraphs (d)(i) to (viii), is “clean technology property”. Such property is subject to the other conditions set out in paragraphs (a) to (d), including that the property has not been used, or acquired for use or lease, for any purpose before it was acquired by the entity.

“Refurbishment” means significant alterations, renovations, improvements or additions to a property to substantially extend its useful life, increase its capacity or improve its efficiency.

This definition is deemed to have come into force on March 28, 2023.

***“small nuclear energy property”***

The definition of “small nuclear energy property” replaces the definition “small modular nuclear reactor”. The definition “small nuclear energy property” describes certain property that is part of a fixed location system that is used all or substantially all to generate heat or electricity from nuclear fission as determined on an annual basis. It requires that the property be located at a nuclear facility where, at the time the property becomes available for use, the total combined gross-rated thermal generating capacity of all planned and existing nuclear fission reactors at the facility is reasonably expected not to exceed 1,400 megawatts thermal. A nuclear facility includes the site where the property is located, as well as any contiguous or adjacent sites where nuclear fission reactors are located or will be located (see the commentary on the new definition “nuclear facility”). The definition of “small nuclear energy property” does not include an electricity generation capacity limit or a modularity requirement.

In addition, the property must be a reactor, a reactor vessel, a reactor control rod, a moderator, cooling equipment, heat generating equipment, nuclear fission fuel handling equipment, a containment structure, electrical generating equipment, equipment for the distribution of heat energy within the system, or equipment that is physically and functionally integrated with such property and that is ancillary equipment (such as control equipment) used solely to support the functioning of such property.

Certain property (including nuclear fission fuel and property used in nuclear waste disposal or storage) would not be eligible for the clean technology investment tax credit as small nuclear energy property.

This definition is deemed to have come into force on March 28, 2023.

***“specified percentage”***

The definition “specified percentage” is amended to clarify the interaction of former paragraphs (a) to (c) by ensuring that former paragraphs (b) and (c) (now renumbered as subparagraphs (b)(i) and (ii)) are explicitly subject to paragraph (a). This amendment clarifies the original intention of paragraph (a), which is to ensure that property acquired before March 28, 2023 is ineligible for the clean technology investment tax credit, even if it becomes available for use on or after March 28, 2023.

This amendment is deemed to have come into force on March 28, 2023.

***“waste biomass electricity generation equipment”***

The definition “waste biomass electricity generation equipment” is added to subsection 127.45(1) to establish eligibility criteria for property that uses specified waste material to generate electricity, or both electricity and heat.

Paragraph (a) sets out system-level requirements for the eligibility of property within a system that generates electricity, or both electricity and heat:

- The system must be used solely to generate electricity, or both electricity and heat, determined without reference to the recovery of chemicals from spent pulping liquor. While part of the system could be used to produce biofuel from specified waste material or upgrade the combustibility of specified waste material (see subparagraphs (b)(v) and (vi)), in either case any resulting fuel must be for use within the system. Property that is part of a system that produces any chemicals or fuel for sale would not be eligible.
- The material consumed by the system to produce electrical energy, or both electrical energy and heat energy, must derive all or substantially all of its energy content from specified waste material on an annual basis.
- The system must be located on a single site, or on contiguous or adjacent sites that function as a single integrated site, at which the activities described above are carried out. For example, property would not be considered part of an eligible system if it were located on a separate site that is not contiguous or adjacent to the site on which the activities described above are carried out.
- The system must not exceed a heat rate of 13,000 BTU per kilowatt-hour, as described by the formula in subparagraph (a)(iv).

Paragraph (b) describes property that could qualify as waste biomass electricity generation equipment, provided it is part of a system that meets the requirements in paragraph (a):

- Electrical generating equipment.
- Heat generating equipment that is used primarily to produce heat energy to operate electrical generating equipment, determined without reference to the recovery of chemicals from spent pulping liquor.
- Equipment that generates both electrical and heat energy.
- Certain heat recovery equipment.
- Equipment used to produce solid biofuel, liquid biofuel, or gaseous biofuel, all or substantially all from specified waste material (as measured by energy content), if that fuel is used solely to operate certain equipment described in paragraph (b). Equipment in this category must be described in any of subparagraphs (d)(xi), (xiii), (xvi) or (xx) of Class 43.1 in Schedule II to the Regulations.
- Equipment used to upgrade the combustibility of specified waste material that is used all or substantially all to operate certain equipment described above.
- Equipment for the distribution of heat energy within the system.
- Ancillary equipment that is physically and functionally integrated with, and used primarily to support the functioning of, equipment described above. This includes control, feedwater, and condensate equipment.
- Property described above that is incorporated into a system that would not otherwise be described in paragraph (a) if the incorporation causes the system to satisfy the description in paragraph (a). Property acquired and used prior to the system satisfying the description in paragraph (a) would not be eligible.

*Example*

A taxpayer owns and operates a waste biomass electricity generation system in 2024 that does not satisfy the description in paragraph (a). In 2025, the taxpayer acquires and incorporates Property A into the system. In 2026, the taxpayer acquires and incorporates Property B into the system. However, only after Property B is acquired and installed does the system satisfy the description in paragraph (a).

Property A would be ineligible, as its incorporation into the system does not cause the system to satisfy the description in paragraph (a). By contrast, if Property B was described in any of subparagraphs (b)(i) to (viii), it would potentially qualify as qualified waste biomass electricity generation equipment under paragraph (b)(ix).

Paragraph (c) describes certain property that would not be eligible for the clean technology investment tax credit as waste biomass electricity generation equipment.

For greater certainty in the context of systems that generate electricity, or both electricity and heat, from spent pulping liquor, eligible property would not include equipment used to process smelt that is produced through the combustion of spent pulping liquor in a chemical recovery boiler.

This definition is deemed to have come into force on November 21, 2023.

***“waste biomass heat generation equipment”***

The definition “waste biomass heat generation equipment” is added to subsection 127.45(1) to establish eligibility criteria for property that uses specified waste material to generate heat.

Paragraph (a) sets out system-level requirements for the eligibility of property within a system that generates heat:

- The system must be used solely to generate heat energy. While part of the system could be used to produce biofuel from specified waste material (other than spent pulping liquor) or upgrade the combustibility of specified waste material (see subparagraphs (b)(ii) and (iii)), in either case any resulting fuel must be for use within the system. Property that is part of a system that produces any chemicals or fuel for sale would not be eligible.
- The material consumed by the system to produce heat energy must derive all or substantially all of its energy content from specified waste material, other than spent pulping liquor, on an annual basis.
- The system must be on a single site, or on contiguous or adjacent sites that function as a single integrated site, at which the activities described above are carried out. For example, property would not be considered part of an eligible system if it were located on a separate site that is not contiguous or adjacent to the site on which the activities described above are carried out.

Paragraph (b) describes certain property that could qualify as waste biomass heat generation equipment, provided it is part of a system that meets the requirements in paragraph (a):

- Heat generating equipment.
- Equipment used to produce solid biofuel, liquid biofuel, or gaseous biofuel, all or substantially all from specified waste material (as measured by energy content), other than spent pulping liquor, if that fuel is used solely to operate certain equipment described in paragraph (b). Equipment in this category must be described in any of subparagraphs (d)(xi), (xiii), (xvi) or (xx) of Class 43.1 in Schedule II to the Regulations.
- Equipment used to upgrade the combustibility of specified waste material, other than spent pulping liquor, that is used all or substantially all to operate the equipment described above.
- Equipment for the distribution of heat energy within the system.
- Ancillary equipment that is physically and functionally integrated with, and used primarily to support the functioning of, equipment described above. This includes control, feedwater, and condensate equipment.
- Property described above that is incorporated into a system that would not otherwise be described in paragraph (a) if the incorporation causes the system to satisfy the description in paragraph (a). Property acquired and used prior to the system satisfying the description in paragraph (a) would not be eligible.

Paragraph (c) describes certain property that would not be eligible for the clean technology investment tax credit as waste biomass heat generation equipment.

This definition is deemed to have come into force on November 21, 2023.

### **Interpretative rule – small nuclear energy property**

ITA  
127.45(1.1)

Subsection 127.45(1.1) extends the application of section 127.45 to certain circumstances in which a qualifying taxpayer has acquired, or disposed of, a leasehold interest in a small nuclear energy property.

In general terms, a qualifying taxpayer may be entitled to a clean technology investment tax credit only where it acquires an ownership interest in a clean technology property. The deeming rule in subsection (1.1) effectively permits a qualifying taxpayer that has acquired a leasehold interest in a particular type of clean technology property (i.e., small nuclear energy property) to be treated as if it had acquired that property for the purposes of section 127.45. This rule could also apply where the leasehold interest has been acquired by a partnership by virtue of subsection 127.45(8).

Subsection (1.1) provides three deeming rules that apply for the purposes of section 127.45.

First, paragraph (a) generally provides that when a qualifying taxpayer acquires a leasehold interest in a small nuclear energy property, it is deemed to acquire that property at that time. Accordingly, section 127.45 generally will apply in the same manner as if the taxpayer acquired

the underlying property and the taxpayer may be entitled to a clean technology investment tax credit in relation to that property. However, the deemed acquisition date specified under paragraph (a) would be subject to the overriding rule in subsection 127.45(4), which provides that a property is deemed not to be acquired until the property has become “available for use” in accordance with the specified rules. The determination of when the property is available for use for the purpose of section 127.45 would be made as if the qualifying taxpayer had acquired the underlying property.

Second, paragraph (b) provides that the capital cost of the leasehold interest in the small nuclear energy property to the qualifying taxpayer is deemed to be its capital cost of that property. This paragraph ensures that, for the purposes of the calculating the taxpayer’s clean technology investment tax credit, the capital cost of the leasehold interest is treated as if it was the capital cost of a clean technology property (i.e., this is the starting point for determining the amount of the taxpayer’s clean technology investment tax credit). As with any other property, that capital cost may be reduced under subsection 127.45(5) for the purposes of determining the credit amount.

Third, paragraph (c) provides that the small nuclear energy property is deemed to be disposed of by the qualifying taxpayer when it ceases to hold the leasehold interest. The taxpayer is deemed to dispose of the property for proceeds of disposition equal to the fair market value of the property at the time it ceases to hold the leasehold interest. This rule may be relevant for the purposes of the recapture rules in subsections 127.45(11) and (12). The recapture rules could also apply in respect of the qualifying taxpayer if the underlying property is converted to an ineligible use or is exported from Canada.

This amendment is deemed to have come into force on March 28, 2023.

### **Time limit for application**

ITA  
127.45(3)

Subsection 127.45(3) places a time limit on filing the form necessary to be eligible for the clean technology investment tax credit; the prescribed form must be filed on or before the day that is one year after the taxpayer’s filing-due date for the year. If the form is filed after the taxpayer’s filing-due date but within the one-year period, the deemed payment under subsection (2) is deemed not to arise until the prescribed form and information have been filed with the Minister.

Subsection 127.45(3) is amended to extend the time limit for filing the prescribed form necessary to be eligible for the clean technology investment tax credit. Under the amendment, the prescribed form must be filed on or before the later of December 31, 2026 and the day that is one year after the taxpayer’s filing-due date for the year. This amendment is consistent with similar amendments being made to extend the time limits for filing prescribed forms for claiming other clean economy investment tax credits.

### **Special rules – adjustments**

ITA  
127.45(5)(a)

The introductory language of paragraph 127.45(5)(a) is amended to remove the reference to a capital property. This amendment is intended to facilitate the other changes described below.

Subparagraph 127.45(5)(a)(i) is amended to clarify that the clean technology investment tax credit will not be denied in respect of a property where an earlier clean technology investment tax credit amount was claimed in respect of the same property. This amendment is intended to facilitate additional claims under amended subsections (7) and (9) in a subsequent tax year, once amounts of assistance have been repaid or unpaid amounts in respect of the property are ultimately paid. However, subparagraph 127.45(5)(a)(i) continues to ensure that a clean technology investment tax credit cannot be deducted twice on the same amount.

Subparagraph 127.45(5)(a)(ii) is amended to make reference to any “clean economy tax credit” as defined in subsection 127.47(1). This ensures that a clean technology investment tax credit cannot be claimed if another clean economy tax credit is deducted on the same amount.

Subparagraph 127.45(5)(a)(ii.1) further clarifies that no clean technology investment tax credit is available in respect of a property on which either the CCUS tax credit or the clean hydrogen investment tax credit has been claimed on any part of the capital cost of that property. This amendment ensures that the clean technology tax credit cannot be claimed on any property where the CCUS tax credit or the clean hydrogen tax credit was deducted in respect of the same property.

Subparagraph 127.45(5)(a)(iv) is added to exclude amounts in respect of an expenditure incurred for a preliminary work activity from the cost of clean technology property.

This amendment is deemed to have come into force on March 28, 2023.

### **Environmental compliance**

ITA  
127.45(5.1)

Subsection 127.45(5.1) prevents a qualifying taxpayer from obtaining a clean technology investment tax credit if there is substantial non-compliance by the taxpayer with the requirements of any environmental laws, by-laws and regulations that are applicable to the property at the time the property becomes available for use. The general purpose of this rule is to prevent the provision of incentives to support environmental objectives through the tax system in circumstances where laws for the protection of the environment are being disregarded or violated in significant ways.

The significance of the infraction would have to be assessed based on the facts and circumstances and the objectives and purposes of the applicable laws, by-laws and regulations.

This amendment is deemed to have come into force on November 21, 2023.

### **Compliance — reasonable efforts**

ITA  
127.45(5.2)

Subsection 127.45(5.2) provides temporary relief in certain circumstances where waste biomass electricity generation equipment or waste biomass heat generation equipment is part of a system that is temporarily operated in a manner that is a “non-clean technology use” as defined in subsection 127.45(1). Property that previously qualified for the clean technology investment tax credit that is operated in manner that is a “non-clean technology use” would ordinarily become subject to the recapture rules in subsections 127.45(11) to (18). Subsection (5.2) is generally similar to existing subsections 1104(14) and (15) of the Regulations, which provide similar temporary relief in the context of Classes 43.1 and 43.2.

Paragraph (a) provides that property that is part of a system mentioned above can be considered to be operated in the required manner at a particular time during a period of deficiency, failing or shutdown of the system that is beyond the control of the qualifying taxpayer, if the taxpayer makes all reasonable efforts to rectify the difficulty causing the deficiency, failing or shutdown within a reasonable period of time.

Paragraph (b) is intended to accommodate situations of ownership of property by other persons as part of the same system. It provides that, for the purposes of paragraph (a), a system described in paragraph (a) may include property of another person or partnership if the following conditions are met:

- The property, if it were owned by the taxpayer, would reasonably be considered to be part of the taxpayer’s system.
- The property utilizes electrical energy or heat energy obtained from the system.
- The operation of the property is necessary for the taxpayer’s system to operate in the required manner.
- At the time that the taxpayer’s system first became operational, the deficiency, failing or shutdown in the operation of the property could not reasonably have been anticipated by the taxpayer to occur within five years after that time.

This amendment is deemed to have come into force on November 21, 2023.

### **Deemed deduction**

ITA  
127.45(6)

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Consequential on the enactment of the clean electricity investment tax credit, subsection 127.45(6) is amended to deem a deduction of the clean technology investment tax credit for the purpose of section 127.491.

This amendment is deemed to have come into force on April 16, 2024.

### **Repayment of assistance**

ITA  
127.45(7)

Subsection 127.45(7) is amended to clarify that a clean technology investment tax credit may be available in respect of amounts of government or non-government assistance that have been repaid, where that assistance previously reduced the capital cost of clean technology property under paragraph 127.45(5)(b.1).

This amendment deems a separate clean technology property to be acquired in the year of repayment, provided that a recapture event described in paragraph 127.45(11)(c) has not occurred in respect of the property on which an assistance amount has been repaid.

This amendment is deemed to have come into force on March 28, 2023.

### **Unpaid amounts**

ITA  
127.45(9)

Where an amount in respect of a clean technology property is unpaid on the day that is 180 days after the end of a taxation year in which a deduction in respect of a clean technology investment tax credit would otherwise be available, that amount is excluded from the capital cost of the particular property for the purpose of computing the taxpayer's clean technology investment tax credit under paragraph 127.45(9)(a).

Subsection 127.45(9) is amended to clarify that a clean technology investment tax credit may be available for amounts in respect of a clean technology property that are paid more than 180 days after the end of a taxation year in which a deduction in respect of a clean technology investment tax credit would otherwise be available.

In order to facilitate claims for such amounts, paragraph 127.45(9)(b) is amended to deem a separate clean technology property to be acquired in the year of payment, provided that a recapture event described in paragraph 127.45(11)(c) has not occurred in respect of the property for which the amount has ultimately been paid.

This amendment is deemed to have come into force on March 28, 2023.

### **Election by member to pay tax**

ITA  
127.45(18.1)

Subsection 127.45(18.1) enables a qualifying taxpayer that is a member of a partnership during the partnership's fiscal period to elect to pay the entire amount determined in respect of the partnership under subsections 127.45(16) and (17).

This amendment is deemed to have come into force on March 28, 2023.

### **Joint and several liability**

ITA  
127.45(18.2)

Subsection 127.45(18.2) creates joint and several liability (or, for civil law, solidary liability) for partnership members for any tax determined because of subsections 127.45(16) and (17) in respect of the partnership, except to the extent that the tax has been paid by a qualifying taxpayer that elected under subsection 127.45(18.1) or has been allocated to a member of the partnership and added to its tax payable under subsection 127.45(17). Both current and former members of the partnership are subject to this rule.

This amendment is deemed to have come into force on March 28, 2023.

### **Former member liability**

ITA  
127.45(18.3)

Under subsection 127.45(18.2), a taxpayer who was formerly a member of a partnership and had claimed a clean technology investment tax credit in respect of the partnership may be jointly and severally, or solidarily, liable for recapture tax. Subsection 127.45(18.3) limits this liability to the total of all amounts that the former member received as a clean technology investment tax credit because of its membership in the partnership.

This amendment is deemed to have come into force on March 28, 2023.

## **Clause 53**

### **Definitions**

ITA  
127.46(1)

***“regular tax credit rate”***

This term means the “specified percentage” as defined in subsections 127.44(1), 127.45(1) and 127.48(1), as the case may be, and is the tax credit rate available for taxpayers who meet the labour requirements in respect of certain clean economy tax credits.

The definition “regular tax credit rate” in subsection 127.46(1) is amended to add a reference to new subsection 127.491(1), consequential on the introduction of the clean electricity investment tax credit.

### ***“specified tax credit”***

For the purposes of the labour requirements in section 127.46, this term means a CCUS tax credit under section 127.44, a clean technology investment tax credit under section 127.45, and a clean hydrogen tax credit under section 127.48.

The definition “specified tax credit” in subsection 127.46(1) is amended to add a reference to the clean electricity investment tax credit under new section 127.491.

These amendments apply on or after April 16, 2024.

### **Reduced or regular rate**

ITA  
127.46(2)

Subsection 127.46(2) specifies that, in order to qualify for the “regular tax credit rate”, an incentive claimant must elect in prescribed form and manner to meet the labour requirements. An incentive claimant that does not elect under subsection (2) is limited to claiming the CCUS tax credit, the clean technology investment tax credit or the clean hydrogen tax credit at the “reduced tax credit rate”, which is ten percentage points less than the rate that would otherwise be available in respect of those credits under section 127.44, 127.45 or 127.48, as applicable.

Where an incentive claimant elects to meet the labour requirements but fails to do so, the incentive claimant generally maintains its entitlement to the tax credit at the regular tax credit rate but will be required to take corrective measures or pay related penalties. An incentive claimant loses its entitlement to a tax credit at the regular tax credit rate if it fails to meet the labour requirements knowingly or in circumstances amounting to gross negligence. Subsections 127.46(6) and (7) specify the ordinary consequences of failing to meet the prevailing wage and apprenticeship requirements, respectively, in the absence of intentional conduct or gross negligence. Subsection 127.46(9) sets out the consequences of intentional conduct or gross negligence.

Subsection 127.46(2) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

## Exception

ITA  
127.46(15)

Subsection 127.46(15) specifies that the labour requirements do not apply to a specified tax credit claimed for the acquisition of off-road zero emission vehicles or to the acquisition and installation of low carbon heating equipment. Subsection (15) is amended to provide a more specific description of the type of property that is not subject to the labour requirements.

This amendment applies in respect of specified property prepared or installed on or after November 28, 2023.

## Clause 54

### Definitions

ITA  
127.47(1)

Section 127.47 provides rules that apply where a “clean economy tax credit” (as defined in subsection 127.47(1)) is determined at a partnership level before allocation to its members.

These amendments would extend these partnership rules to the clean electricity investment tax credit.

These amendments apply on or after April 16, 2024.

### ***“clean economy allocation provision”***

For the purposes of section 127.47, “clean economy allocation provision” means any of the following specific partnership allocation rules:

- subsection 127.44(11) (CCUS tax credit),
- subsection 127.45(8) (clean technology investment tax credit),
- subsection 127.48(12) (clean hydrogen tax credit), and
- subsection 127.49(8) (CTM investment tax credit).

The definition of “clean economy allocation provision” is amended to add a reference to new subsection 127.491(12), consequential on the introduction of the clean electricity investment tax credit.

### ***“clean economy expenditure”***

The definition “clean economy expenditure” serves to consolidate expenditures that qualify for the clean economy tax credits.

A “clean economy expenditure” means a qualified CCUS expenditure (as defined in and determined under section 127.44), as well as the capital cost of a clean technology property (as defined and determined under section 127.45), of an eligible clean hydrogen property (as defined and determined under section 127.48) or of a CTM property (as defined and determined under section 127.49).

The definition “clean economy expenditure” is amended to add a reference to the capital cost of a “clean electricity property” as defined and determined under new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

### ***“clean economy provision”***

A “clean economy provision” means any of sections 127.44, 127.45, 127.46, 127.48 and 127.49 and Part XII.7.

This definition allows the tiered partnership rule in new subsection 127.47(7) to apply for the purposes of all clean economy provisions.

The definition “clean economy provision” is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

### ***“clean economy tax credit”***

A “clean economy tax credit” means any of the following investment tax credits:

- a CCUS tax credit, as defined in subsection 127.44(1),
- a clean technology investment tax credit, as defined in subsection 127.45(1),
- a clean hydrogen tax credit, as defined in subsection 127.48(1), and
- a CTM investment tax credit, as defined in subsection 127.49(1).

This definition serves to consolidate the clean economy tax credits for the purposes of limiting the total clean economy tax credit amount based on reasonableness under subsection 127.47(2) and, for limited partners, based on the partner’s at-risk amount under subsection 127.47(3). It is also relevant for the purpose of apportioning any aggregate credit amounts back to each clean economy tax credit under subsection 127.47(4).

The definition “clean economy tax credit” is amended to add a reference to the “clean electricity investment tax credit”, as defined in new subsection 127.491(1).

## **Multiple tax credits**

ITA  
127.47(4.1)

In general terms, subsection 127.47(4.1) provides a rule clarifying the amount that a taxpayer that is a member of a partnership is deemed to have paid on account of its tax payable under Part I of the Act under each of the clean economy tax credits.

Each clean economy tax credit provides that where a qualifying taxpayer files a prescribed form containing prescribed information on or before its filing-due date for a taxation year, the taxpayer is deemed to have paid on its balance-due date for the year an amount on account of its tax payable equal to the taxpayer's clean economy tax credit – as defined in subsection 127.47(1).

In general terms, a clean economy tax credit of a qualifying taxpayer is the total of the following amounts:

- The total of all amounts each of which is the specified percentage of an amount that qualifies for the particular credit.
- Where the taxpayer is a member of a partnership, the total of all amounts that is required by the applicable clean economy allocation provision – as defined in subsection 127.47(1) – is to be added to the taxpayer's clean economy tax credit.

Where a property is eligible property for more than one clean economy tax credit, a qualifying taxpayer is generally limited to claiming only one of the tax credits on the cost of the property. In such circumstances, proposed subsection 127.47(4.1) ensures that where property is owned at the partnership level, each member of the partnership may generally claim any one – but not more than one - credit that they have been allocated by a partnership under the partnership allocation rules. An exception ensures that the dual-use equipment rules in the CCUS and clean hydrogen context still allow each portion of the property to support a credit claim.

The following illustrates the application of proposed subsection 127.47(4.1).

### **Example – Allocation of Clean Economy Tax Credits**

Partner A and Partner B are limited partners of a limited partnership, and Partner C is the general partner. All three partners are taxable Canadian corporations.

The partners make the following contributions: Partner A, \$10,000; Partner B, \$10,000; Partner C, a nominal amount.

The taxation year of Partner A, Partner B and Partner C is the calendar year. The fiscal period of the partnership is also the calendar year.

In year 1, partnership acquires a property that qualifies as clean technology property (as defined under subsection 127.45(1)) and clean electricity property (see definition in proposed subsection 127.491(1)) for \$20,000. The property becomes available for use in year 2 (see subsection 127.45(4) and proposed subsection 127.491(4)). The capital cost of the property at the end of year 2 is \$20,000.

The following illustrates how the computation rule in proposed subsection 127.47(4.1) is intended to apply to Partner A and Partner B as limited partners of the partnership.

#### Partner A

The amount that Partner A may obtain under subsection 127.45(2) is equal to Partner A's clean technology investment tax credit for year 2, which is the total of all amounts required under subsection 127.45(8) to be added in computing its clean technology investment tax credit at the end of the year. Under this allocation provision, the clean technology investment tax credit is computed at the partnership level as if the partnership were a taxable Canadian corporation and its fiscal period were its taxation year, and the portion of the tax credit amount that can reasonably be considered to be Partner A's share thereof is added in computing its tax credit at the end of year 2.

Assuming that the specified percentage is 30%, the notional tax credit at the partnership level (using the fiction that the partnership is a taxable Canadian corporation) would be \$6,000. The capital cost of the property to the partnership at the end of year 2 is \$20,000. The special capital cost adjustment rules in subsection 127.45(5) do not apply in computing the capital cost of the property to the partnership. More specifically, the partnership is neither deducting the clean technology investment tax credit nor the clean electricity investment tax credit, no other person has deducted any clean economy tax credit in respect of the property, and Partner A does not have a capital cost in the property.

Partner A's share of the partnership's clean technology investment tax credit is \$3,000 (which is 50 % of \$6,000), regardless of Partner B.

The share of Partner A's clean electricity investment tax credit of the partnership that it may obtain under subsection 127.491(2) would be determined in a similar manner under subsection 127.491(13). With a specified percentage of 15%, the clean electricity investment tax credit at the partnership level would be \$3,000, and Partner A's share of it would be \$1,500.

Partner A can decide which of the \$3,000 clean technology investment tax credit or the \$1,500 clean electricity investment tax credit it wants to claim, regardless of which investment tax credit Partner B decides to claim. Partner A would choose the higher amount, unless Partner A is in fact ineligible for the clean technology investment tax credit.

Under subsection 127.47(6), the partnership will be deemed to have received the amount of the investment tax credit claimed by Partner A at the end of fiscal period 2 for the purposes of subsection 13(7.1).

#### Partner B

Similarly, the amount that Partner B may obtain under subsection 127.45(2) or under subsection 127.491(2) for year 2 is \$3,000 and \$1,500 respectively.

Depending on Partner B's eligibility for each credit, Partner B can claim the \$3,000 clean technology investment tax credit or the \$1,500 clean electricity investment tax credit, regardless of which investment tax credit Partner A claims.

Under subsection 127.47(6), the partnership will be deemed to have received the amount of the investment tax credit claimed by Partner B at the end of fiscal period 2 for the purposes of subsection 13(7.1).

This amendment is deemed to have come into force on March 28, 2023.

## **Clause 55**

ITA  
127.48

Several changes are proposed for the legislation that implements the clean hydrogen tax credit. The amendments generally apply as of March 28, 2023, consistent with the effective date for the clean hydrogen tax credit, except as otherwise provided.

## **Definitions**

ITA  
127.48(1)

Subsection 127.48(1) provides various definitions relevant for the purpose of the clean hydrogen tax credit.

### ***“eligible clean hydrogen property”***

“Eligible clean hydrogen property” means property, other than “excluded property”, that meets all three conditions in paragraphs (a) to (c).

Paragraph (c) lists six categories of eligible property in subparagraphs (i) to (vi).

Subparagraph (c)(vi), which describes certain conversion property, is amended to clarify that the eligible clean hydrogen property in this subparagraph is the property that is incorporated into another property that would not otherwise be described in subparagraphs (i) to (v) if the incorporation causes the other property to satisfy the description in any of subparagraphs (i) to (v) (as opposed to the tools used to perform the conversion).

### ***“non-hydrogen or ammonia use”***

The definition “non-hydrogen or ammonia use” describes one of the circumstances where property that was previously an eligible clean hydrogen property could become subject to the recapture rules in subsections 127.48(21) and (22).

This definition is amended to clarify that, in applying the point-in-time test, the use in question results in the property not being an eligible clean hydrogen property, rather than “ceasing” to be eligible.

***“preliminary clean hydrogen work activity”***

Expenditures for a “preliminary clean hydrogen work activity” cannot be included in the capital cost of eligible clean hydrogen property because of paragraph 127.48(10)(e).

A preliminary clean hydrogen work activity is an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of eligible clean hydrogen property. Generally, a preliminary clean hydrogen work activity includes (but is not limited to) the activities described in paragraphs (a) to (e).

Paragraph (e) of this definition is amended to exclude from the scope of preliminary clean hydrogen work activities excavation that is directly related to the installation of eligible clean hydrogen property.

**Deemed deduction**

ITA  
127.48(3)

Subsection 127.48(3) ensures that any amount deemed to have been paid on account of tax payable under subsection 127.48(2) is also deemed to have been deducted from the taxpayer’s tax otherwise payable under Part I.

Subsection 127.48(3) is amended to add a reference to new section 127.491, consequential on the introduction of the clean electricity investment tax credit.

This amendment is deemed to have come into force April 16, 2024.

**Time limit for application**

ITA  
127.48(4)

Subsection 127.48(4) places a time limit on filing the form necessary to be eligible for the clean hydrogen tax credit.

Currently, the prescribed form claiming the clean hydrogen tax credit must be filed on or before the later of December 31, 2025 and the day that is one year after the taxpayer’s filing-due date for the year.

This subsection is amended to extend the first deadline to December 31, 2026 to allow more time for clean hydrogen projects to file the prescribed form in respect of acquisitions of eligible clean hydrogen property.

### **Calculation of carbon intensity**

ITA  
127.48(6)

Subsection 127.48(6) contains various rules that apply for the purposes of calculating the actual and expected carbon intensities of hydrogen produced and to be produced by a clean hydrogen project of a taxpayer.

Paragraph (6)(b) requires a “cradle-to-gate” approach in determining carbon intensity by requiring an assessment of the emissions from the production of hydrogen by the project, together with upstream emissions from the production of inputs to the hydrogen-production process, in applying the Fuel LCA Model.

Paragraph (b) is amended to exclude the items listed in new paragraph (6)(j) from the general “cradle-to-gate” carbon intensity calculation.

Paragraph (6)(d) provides that, if hydrogen is produced from eligible hydrocarbons, any captured carbon that is subject to an “ineligible use” (as defined in subsection 127.44(1)) is deemed not to be captured.

Paragraph (d) is amended to provide that, for the purposes of calculating the carbon intensity of a clean hydrogen project, any captured carbon that is subject to an “eligible use” (also defined in subsection 127.44(1)) is deemed to be permanently stored.

Paragraph (6)(e) describes how electricity generated by the taxpayer or purchased (either from the provincial grid or under an eligible power purchase agreement) and used in connection with a clean hydrogen project is to be taken into account in calculating the carbon intensity of the project.

The preamble of paragraph (e) is amended to clarify that the relevant electricity generated or purchased to be taken into account in calculating carbon intensity under this subsection is the electricity used in connection with the hydrogen production of the project.

Clause (e)(i)(B) is also amended to clarify that the inputs used in eligible on-site generation must be any or a combination of hydrogen, an eligible heat source described in new subparagraphs (i)(i) or (ii) or eligible hydrocarbons (with carbon dioxide captured using a CCUS process).

Subsection 127.48(6) is also amended by adding new paragraphs (6)(i) to (n) to implement additional rules with respect to the calculation of carbon intensity.

New paragraph (6)(i) describes how certain types of eligible heat used in connection with hydrogen production or electricity production in support of a clean hydrogen project are to be taken into account in calculating the carbon intensity of the project.

If the heat source is not described in one of the categories listed in subparagraph (i)(i) or (ii), then the carbon intensity of the project is deemed to be greater than 4.5 (and the project would not be eligible for the clean hydrogen tax credit). This is to ensure that clean hydrogen projects do not use heat produced from an ineligible source (e.g., heat produced from burning diesel or coal).

New paragraph (6)(j) provides that the contribution to carbon intensity of delivering, collecting, recovering, treating or recirculating water, and energy used in compressing hydrogen beyond 30 bar, may be disregarded in the calculation of carbon intensity.

New paragraph (6)(k) provides that the emissions related to certain by-products of the hydrogen production process (off-gas, oxygen, certain nitrogen and heat) are to be attributed to the production of hydrogen.

New paragraphs (6)(l) and (m) provide that the emissions related to certain heat produced indirectly from hydrogen production and energy used in hydrogen purification are also to be attributed to hydrogen production.

New paragraph (6)(n) replaces and modifies the previous paragraph (6)(i), which provides that the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document* is to apply conclusively with respect to the calculation of carbon intensity, except as otherwise provided in section 127.48. The modification removes the reference to the timing of the applicable version to allow for more recent versions of the modelling guidance to apply.

### **Capital cost of clean hydrogen property**

ITA  
127.48(10)

Subsection 127.48(10) contains several rules relating to the determination of the capital cost of eligible clean hydrogen property for the purpose of section 127.48.

Under paragraph (10)(a), the capital cost of eligible clean hydrogen property cannot include any amounts in respect of which a clean hydrogen tax credit was previously deducted by any person, or for which any other clean economy tax credits (as defined in subsection 127.47(1)) are deducted by any person.

The introductory language of paragraph (a) is amended to remove the reference to a capital property. This amendment is intended to facilitate other changes described below.

Subparagraph (a)(i) is amended to clarify that the clean hydrogen tax credit will not be denied in respect of a property where an earlier clean hydrogen tax credit amount was claimed in respect of

the same property. This amendment is intended to facilitate additional claims for the clean hydrogen tax credit in respect of a property under subsections 127.48(11) and (13) in a subsequent tax year, once amounts of assistance have been repaid or unpaid amounts in respect of the property are ultimately paid. However, subparagraph 127.48(10)(a)(i) continues to ensure that a clean hydrogen tax credit cannot be deducted twice on the same amount.

This amendment also clarifies that certain eligible clean hydrogen property that also qualifies as “dual-use equipment” (as defined in subsection 127.44(1)) is not precluded from being eligible for both the CCUS tax credit and the clean hydrogen tax credit, provided that different portions of the property’s capital cost are used to claim each credit.

Subparagraph (10)(a)(ii) is amended to make reference to any “clean economy tax credit” as defined in subsection 127.47(1). This ensures that a clean hydrogen tax credit cannot be claimed if another clean economy tax credit is deducted on the same amount.

### **Repayment of assistance**

ITA  
127.48(11)

Subsection 127.48(11) applies if a taxpayer has repaid (or has not received and can no longer reasonably be expected to receive), in a particular taxation year, an amount of government assistance or non-government assistance that was applied to reduce the capital cost of eligible clean hydrogen property under paragraph 127.48(10)(c) for a preceding year.

Subsection 127.48(11) is amended to clarify that a clean hydrogen tax credit may be available in respect of amounts of the repaid assistance, by deeming a separate eligible clean hydrogen property to be acquired in the year of repayment, provided that a recapture event described in paragraph 127.48(21)(c) has not occurred in respect of the property on which an assistance amount has been repaid.

### **Unpaid amounts**

ITA  
127.48(13)

Subsection 127.48(13) provides that if any part of the capital cost of a taxpayer’s eligible clean hydrogen property is unpaid on the day that is 180 days after the end of the taxation year in which the property was acquired, that part of the cost is excluded from the capital cost of the property for the purpose of computing the taxpayer’s clean hydrogen tax credit under paragraph 127.48(13)(a).

Subsection 127.48(13) is amended to clarify that a clean hydrogen tax credit may be available for amounts in respect of an eligible clean hydrogen property that are paid more than 180 days after the end of the taxation year in which a deduction in respect of the clean hydrogen tax credit would otherwise be available.

In order to facilitate claims for such amounts, paragraph 127.48(13)(b) is amended to deem a separate eligible clean hydrogen property to be acquired in the year of late payment, provided that a recapture event described in paragraph 127.48(21)(c) has not occurred in respect of the property for which the amount has ultimately been paid.

### **Property deemed in respect of qualified project**

ITA  
127.48(13.1)

Subsection 127.48(13.1) is added for greater certainty to prevent certain property from being excluded from eligibility for the clean hydrogen tax credit due to taxpayers' inability to provide clean hydrogen project plans to the Minister of Natural Resources because the Minister of Natural Resources was not yet accepting them. In these circumstances, provided the project becomes a qualified clean hydrogen project in due course, subsection (13.1) deems the property to have been acquired in respect of a qualified clean hydrogen project.

### **Annual information reporting requirement**

ITA  
127.48(15)

Subsection 127.48(15) requires a taxpayer that had deducted a clean hydrogen tax credit to file, with its tax return for each taxation year that begins during the compliance period of the taxpayer's qualified clean hydrogen project, a prescribed form containing prescribed information regarding the operations of the project.

To ensure that operational information at the start of a project's compliance period is provided in a timely manner, subsection (15) is amended to extend this reporting requirement to taxation years that begin or end during the project's compliance period.

For example, with this change, if a project's compliance period begins on June 30, 2026, and the taxpayer has taxation years ending on July 31, the taxpayer would be required to file the prescribed form under this subsection for the taxation year ending on July 31, 2026.

### **Shared filing**

ITA  
127.48(16.1)

Subsection 127.48(16.1) is added as a relieving rule that applies when more than one person may be required to file various forms, documentation or information in respect of the same clean hydrogen project.

Under this subsection, the documentation filed by one person with full and accurate disclosure is deemed to have been filed by each person to whom the relevant filing requirement applies in respect of the clean hydrogen project.

For example, if a clean hydrogen project is owned by a partnership, one member of the partnership may file the compliance reports required under subsection (16) on behalf of other members that are subject to the same reporting requirements.

### **Recovery and recapture – partnerships**

ITA  
127.48(25)

When a member of a partnership has claimed a clean hydrogen tax credit in respect of a project allocated to it by a partnership under subsection 127.48(12), subsection 127.48(25) provides that subsections 127.48(18) to (23) apply to determine amounts in respect of the partnership as if it were a taxable Canadian corporation and as if the deemed corporation had claimed all the clean hydrogen tax credits that were claimed by any member of the partnership.

Subsection 127.48(25) is amended to clarify that the rules in section 127.47 take precedence, and that this subsection applies regardless of whether the relevant clean hydrogen tax credit was claimed by a current or former member of the partnership.

### **Election by member**

ITA  
127.48(27)

Subsection 127.48(27) enables a taxable Canadian corporation that is a member of a partnership at the end of the partnership's fiscal period to elect to pay the entire amount determined in respect of the partnership under subsection 127.48(25).

Subsection 127.48(27) is amended to clarify that the amount determined under subsection 127.48(25) is in respect of the fiscal period of the partnership, and not the taxation year of the member.

### **Joint, several and solidary liability**

ITA  
127.48(28)

Subsection 127.48(28) creates joint and several liability (or, for civil law, solidary liability) for partnership members for any tax determined because of subsection 127.48(25) in respect of the partnership, except to the extent that the tax has been paid by a taxable Canadian corporation that elected under subsection 127.48(27) or has been allocated to a member of the partnership and added to its tax payable under subsection 127.48(26).

Subsection 127.48(28) is amended to specify that both current and former members of the partnership are subject to this rule, and that, in order for the limitation of liability provision under paragraph 127.48(28)(a) to apply, the corresponding amount must be added to the tax payable of a qualifying taxpayer under subsection 127.48(26).

This amendment seeks to ensure that recovery and recapture taxes applicable in the partnership context are payable by and collectable from taxable entities.

Subsection (28) is also amended to clarify that an amount under subsection (25) is determined in respect of the partnership's fiscal period and the "year" in paragraph (28)(b) refers to the electing member's taxation year that includes the end of the partnership's fiscal period.

### **Former member liability**

ITA  
127.48(28.1)

Under amended subsection 127.48(28), a taxpayer who was formerly a member of a partnership and had claimed a clean hydrogen tax credit in respect of the partnership may be jointly and severally, or solidarily, liable for recovery and recapture tax. New subsection 127.48(28.1) limits this liability to the total of all amounts that the former member received as a clean hydrogen tax credit because of its membership in the partnership.

### **Clause 56**

Section 127.49 provides a refundable investment tax credit for certain investments in clean technology manufacturing (the "CTM investment tax credit"). Several amendments are being made to the CTM investment tax credit, primarily to deal with polymetallic mining, as well as to address certain other technical points. Unless otherwise indicated, these amendments are deemed to have come into force on January 1, 2024.

### **Definitions**

ITA  
127.49(1)

#### ***"CTM property"***

The definition "CTM property" describes property for which the CTM investment tax credit may be available. The definition contains four general requirements, which are set out in paragraphs (a) to (d). It also excludes certain property ("excluded property"), which is the subject of a separate definition in subsection 127.49(1).

Subparagraphs (d)(i) to (vi) currently set out the specific types of eligible property that may qualify, based on certain specific capital cost allowance classes set out in Schedule II to the Regulations.

Paragraph (d) is amended to add new subparagraph (d)(vii), which includes property that is incorporated into another property described in any of subparagraphs (i) to (vi) as part of a “refurbishment” of the other property, provided that on the completion of the refurbishment, the other property is still described in any of subparagraphs (i) to (vi).

### **“CTM use”**

To be eligible for the CTM investment tax credit, a taxpayer must acquire the relevant property for a CTM use. If the taxpayer does not use the property for a CTM use, it may be subject to recapture in respect of the related credit.

Under the existing definition, all property used in a “qualifying mineral activity” had to produce *all or substantially all* “qualifying materials” in order to qualify as a CTM use. Amendments to the definition “CTM use” are intended to permit a property used in connection with certain such activities to produce a lesser proportion of “qualifying materials” (i.e., *primarily* qualifying materials) and still qualify as a CTM use.

The activities that will qualify for the new “primarily” test are described in paragraph (a) of the definition “qualifying mineral activity” (i.e., the extraction of resources from a mineral deposit or a tailing pond) and paragraph (b) of that definition (i.e., a “specified mineral processing activity” that is performed at a mine site or well site). The determination of whether the use of a particular property meets this test must be made in accordance with the value of all commercial outputs as set out in subsection 127.49(2.2). Mine sites or well sites can include tailing ponds and mills located at these sites.

CTM property must still be used all or substantially to produce qualifying materials if the specified mineral processing activity occurs at a location other than a mine site or well site. The determination of whether the use of a particular property meets the “all or substantially all” test must also be made in accordance with the value of all commercial outputs as set out in subsection 127.49(2.2).

See the explanatory notes to the subsection 127.49(2.2) for further details on the valuation of commercial outputs from qualifying mineral activities.

### **“independent engineer or geoscientist”**

The definition “independent engineer or geoscientist” is added to subsection 127.49(1). This definition establishes the requirements for individuals who can make the certification required by subsection 127.49(2.1). That certification is required to be filed in respect of a CTM investment tax credit where the property that is the subject of the claim is, or will be, used either in the extraction of resources from a mineral deposit or tailing pond, or in a specified mineral processing activity that is performed at a mine site or well site.

In addition to meeting the requirements of the definition “qualified professional engineer or professional geoscientist” in subsection 127(9), an independent engineer or geoscientist for the purposes of section 127.49 must also be at arm’s length with, independent of, and not employed by each taxpayer claiming a related CTM investment tax credit. In the context where a partnership acquires a CTM property and its partners will each claim their reasonable share of the resulting CTM investment tax credit, a related CTM investment tax credit may refer to the credits claimed by the other partners on their shares of the capital cost of the same CTM property.

For example, if A, B and C are all taxable Canadian corporations that are partners in a partnership that will each claim their share of a CTM investment tax credit on CTM property acquired by the partnership, and subsection (2.1) applies to require a certification by an independent engineer or geoscientist, that independent engineer or geoscientist must be at all times at arm’s length with, independent of, and not employed by each of A, B and C.

### ***“qualifying material”***

One of the objectives of the CTM investment tax credit is to encourage investment in the extraction and processing of key critical minerals as well as similar recycling activities and similar synthetic graphite activities in the definition “qualifying mineral activities”. The qualifying materials are lithium, cobalt, nickel, copper, rare earth elements and graphite.

The definition “qualifying material” is amended to add the following key critical minerals:

- antimony;
- gallium;
- germanium;
- indium; and
- scandium.

This amendment applies in respect of property that is acquired and becomes available for use on or after November 4, 2025.

### ***“qualifying mineral activity”***

The definition “qualifying mineral activity” is amended:

- first, to simplify the definition by incorporating some elements into a new definition (“specified mineral processing activity”);
- second, to distinguish specified mineral processing activities that occur at a mine or well site from those that occur at other locations; and
- finally, to renumber former paragraphs (c) to (e) (now contained in paragraphs (d) to (f)) and make minor related changes.

For more information on the first change, see the explanatory notes to “specified mineral processing activity”.

The second change facilitates the operation of the “primarily” and “all or substantially all” tests set out in paragraphs (b) and (c) of the definition “CTM use”. For more information, see the explanatory notes to the definition “CTM use”.

### ***“refurbishment”***

The definition “refurbishment” is relevant for the purposes of subparagraph (d)(vii) of the definition “CTM property” in subsection 127.49(1). In particular, subparagraph (d)(vii) of that definition describes certain property that is incorporated into other property described in any of subparagraphs (d)(i) to (vi) as part of the “refurbishment” of that other property.

For these purposes, “refurbishment” means significant alterations, renovations, improvements or additions to a property to substantially extend its useful life, increase its capacity or improve its efficiency.

### ***“safe harbour price”, “safe harbour price method” and “specified fair market value method”***

Where a taxpayer acquires a CTM property for use in a qualifying mineral activity, it must meet one of two production tests in the “CTM use” definition for the taxpayer to be eligible for a CTM investment tax credit. Thereafter, if the property is converted to a use other than a CTM use (defined as a “non-CTM use”), the taxpayer may be subject to recapture under subsection 127.49(12).

To constitute a “CTM use”, the property must be used to produce “primarily” or “all or substantially all” qualifying materials, depending on the type of activity that the asset is used in and where the activity is performed. The determination of whether these “primarily” and “all or substantially all” tests have been met is to be made based on the value of all expected or actual commercial outputs, determined in accordance with subsection 127.49(2.2).

In computing the expected and actual values of commercial outputs produced using the relevant CTM property, the taxpayer may choose to use either the “specified fair market value method” (paragraph 127.49(2.2)(a)) or the “safe harbour price method” (paragraph 127.49(2.2)(b)). Once chosen, the election is binding on the taxpayer for all relevant taxation years to determine whether the property is used, and continues to be used, in a qualifying “CTM use”.

In general terms, use of the safe harbour price method allows a taxpayer to “lock in” the value of commercial outputs from the particular property based on the safe harbour price of those outputs, determined at the end of the taxation year of the taxpayer in which the relevant CTM investment tax credit is deducted in respect of that property. The “safe harbour price” is defined as the five-year historical average spot price of each output, calculated using either:

- prices from a recognized commodities exchange; or

- if such prices are not available with respect to that output, prices determined in accordance with normal and accepted commercial practices in the industry.

By contrast, the specified fair market value method requires an annual determination of expected or actual values of commercial outputs produced using the relevant CTM property to be made on the basis of the fair market value of those outputs for each relevant taxation year.

### ***“specified mineral processing activity”***

The definition “specified mineral processing activity” is added to subsection 127.49(1). This definition contains activities formerly described in paragraph (b) of “qualifying mineral activity”. The definition “qualifying mineral activity”, in turn, is amended by cross-referencing “specified mineral processing activity”.

### ***“specified percentage”***

The definition “specified percentage” is amended to clarify the interaction of former paragraphs (a) to (e) by ensuring that former paragraphs (b) to (e) (now renumbered as subparagraphs (b)(i) to (iv)) are explicitly subject to paragraph (a). This amendment clarifies the original intention of paragraph (a), which is to ensure that property acquired before January 1, 2024 is ineligible for the CTM investment tax credit, even if it becomes available for use on or after January 1, 2024.

## **Certification requirement**

ITA  
127.49(2.1)

For certain qualifying mineral activities (in particular, extraction or specified mineral processing activities performed at a mine or well site), the availability of the CTM investment tax credit will be based on a “primarily” test, rather than an “all or substantially all” test, with respect to the production of qualifying materials (see the discussion above on the amendments to the definition “CTM use”). Accordingly, to support those claims for the CTM investment tax credit, taxpayers are required, under subsection 127.49(2.1), to submit a certification in the prescribed form from an independent engineer or geoscientist.

As part of the certification, the independent engineer or geoscientist must attest that property is being used, or will be used, at a particular mine or well site of the taxpayer (or a partnership of which the taxpayer is a member), and in accordance with a plan that primarily targets qualifying materials. Whether the “primarily” test is met is to be determined using the value of all commercial outputs expected to be produced, in accordance with subsection (2.2).

The certification must be submitted with the claim form required under subsection 127.49(2).

## **Valuation of commercial outputs**

ITA

## 127.49(2.2)

In computing the expected and actual values of commercial outputs produced from the relevant CTM property for purposes of paragraphs (b) or (c) of the “CTM use” definition, the taxpayer may choose to use either the “specified fair market value method” (paragraph 127.49(2.2)(a)) or the “safe harbour price method” (paragraph 127.49(2.2)(b)). Each of these terms is defined in subsection 127.49(1).

In general terms, taxpayers may elect under paragraph (2.2)(a) to use the fair market value of commercial outputs to determine whether property will meet the “primarily” or “all or substantially all” tests. If this method is selected, the value of commercial outputs must be determined on an annual basis and may fluctuate. Alternatively, paragraph (2.2)(b) permits the taxpayer to elect to use the “safe harbour price method” to value its outputs. Under this method, the value of all commercial outputs will be “locked in” based on the “safe harbour price” and will not fluctuate after the year in which the credit is deducted by the taxpayer.

An election made under subsection (2.2) must be filed together with the prescribed form referred to in subsection 127.49(2) and is binding on the taxpayer with respect to the property to which the election applies for all relevant taxation years.

See the explanatory notes to the definitions “specified fair market value method” and “safe harbour price method” for further details on the two permitted valuation methods.

### Example

In 2025, Company A acquires a CTM property solely to extract resources from a mineral deposit (i.e., activities described in paragraph (a) of the “qualifying mineral activity” definition). Company A begins to use the property for this purpose in 2025, but does not commence commercial production in 2025. Company A has a December 31 year-end and wishes to claim a CTM investment tax credit under subsection 127.49(2) in connection with the acquisition of the property.

In accordance with subsection 127.49(2.1), Company A retains an independent engineer or geoscientist, who is to certify in the prescribed form that the property is being used in accordance with a plan that primarily targets qualifying materials, determined based on the value of all commercial outputs expected to be produced. The determination of these values must be made in accordance with subsection 127.49(2.2).

Under subsection 127.49(2.2), Company A must elect to use either the “specified fair market value method” for measuring each expected and actual commercial output (which may fluctuate year-to-year with the value of each output) or the “safe harbour price method” for each such output (which will be tied to the “safe harbour price”, determined at the end of 2025).

The plan for the mineral deposit projects that the deposit will produce 100,000 grams of gold and 2,000,000 kilograms of copper. No other commercial outputs are projected.

Company A determines that, as at December 31, 2025:

- The fair market value of copper is \$10 per kilogram. This is the fair market value of copper for the year using the specified fair market value method.
- The five-year historical average spot price of copper, using prices from a recognized commodities exchange, is \$7.50 per kilogram. This is the safe harbour price of copper for the year using the safe harbour price method.
- The fair market value of gold is \$100 per gram. This is the fair market value of gold for the year using the specified fair market value method.
- The five-year historical average spot price of gold, using prices from a recognized commodities exchange, is \$125 per gram. This is the safe harbour price of gold for the year using the safe harbour price method.

Based on these values, the value of all expected commercial outputs from the property during the taxpayer's 2025 taxation year would be:

<b>Commercial Output</b>	<b>Expected Production</b>	<b>Expected Value of production (\$) – Specified Fair Market Value Method</b>	<b>Expected value of production (%)</b>	<b>Expected Value of production (\$) – Safe Harbour Price Method</b>	<b>Expected value of production (%)</b>
Copper	2,000,000 kg	\$20,000,000 (2,000,000 x \$10)	66.67%	\$15,000,000 (2,000,000 x \$7.50)	54.5%
Gold	100,000 g	\$10,000,000 (100,000 x \$100)	33.33%	\$12,500,000 (100,000 x \$125)	45.5%
<b>TOTAL</b>		<b>\$30,000,000</b>	<b>100%</b>	<b>\$27,500,000</b>	<b>100%</b>

In this case, Company A could elect to use either the specified fair market value method or the safe harbour price method; in both cases, it would meet the “primarily” test described in paragraph (b) of the “CTM use” definition because a majority of the production (by value) from the property is expected to be qualifying materials. Company A must make this election in accordance with subsection 127.49(2.2) and the chosen method must be utilized for the purposes of the certification of the independent engineer or geoscientist under subsection 127.49(2.1).

In 2026, Company A continues to use the property to extract mineral resources from the deposit and has not yet commenced commercial production. However, the fair market values of both copper and gold have changed. In particular, as at December 31, 2026, Company A determines that:

- The fair market value of copper is now \$5 per kilogram. This is the fair market value of copper for the year using the specified fair market value method.
- The fair market value of gold is now \$125 per gram. This is the fair market value of gold for the year using the specified fair market value method.

The safe harbour prices of both copper and gold remain unchanged, since they are both still based on the five-year historical average spot prices of those commodities, determined as of December 31, 2025.

As a result, the expected commercial outputs from the property during the taxpayer's 2026 taxation year would be:

<b>Commercial Output</b>	<b>Expected Production</b>	<b>Expected Value of production (\$) – Specified Fair Market Value Method</b>	<b>Expected value of production (%)</b>	<b>Expected Value of production (\$) – Safe Harbour Price Method</b>	<b>Expected value of production (%)</b>
Copper	2,000,000 kg	\$10,000,000 (2,000,000 x \$5)	40%	\$15,000,000 (2,000,000 x \$7.50)	54.5%
Gold	100,000 g	\$12,500,000 (100,000 x \$125)	60%	\$12,500,000 (100,000 x \$125)	45.5%
<b>TOTAL</b>		<b>\$22,500,000</b>	<b>100%</b>	<b>\$27,500,000</b>	<b>100%</b>

Assuming Company A elected to use the safe harbour price method, it would continue to be viewed as using the property to produce primarily qualifying minerals (i.e., copper) based on the safe harbour price of both copper and gold. However, if Company A elected to use the specified fair market value method, it would no longer be viewed as using the property to produce primarily qualifying minerals and could be subject to recapture of its CTM investment tax credit on the basis that it would no longer be using the property for a “CTM use”.

### **Time limit for application**

ITA  
127.49(3)

Subsection 127.49(3) places a time limit on filing the form necessary to be eligible for the clean technology manufacturing investment tax credit; the prescribed form must be filed on or before the day that is one year after the taxpayer's filing-due date for the year. If the form is filed after the taxpayer's filing-due date but within the one-year period, the deemed payment under

subsection (2) is deemed not to arise until the prescribed form and information have been filed with the Minister.

Subsection 127.49(3) is amended to extend the time limit for filing the prescribed form necessary to be eligible for the clean technology manufacturing investment tax credit. Under the amendment, the prescribed form must be filed on or before the later of December 31, 2026 and the day that is one year after the taxpayer's filing-due date for the year. This amendment is consistent with similar amendments being made to extend the time limits for filing prescribed forms for claiming other clean economy investment tax credits.

### **Special rules – adjustments**

ITA

127.49(5)(a)

The introductory language of paragraph 127.49(5)(a) is amended to remove the reference to a capital property. This amendment is intended to facilitate the other changes described below.

Subparagraph 127.49(5)(a)(i) is amended to clarify that the CTM investment tax credit will not be denied in respect of a property where an earlier CTM investment tax credit amount was claimed in respect of the same property. This amendment is intended to facilitate additional claims for the CTM investment tax credit in respect of a property under subsections (7) and (9) in a subsequent tax year, once amounts of assistance have been repaid or unpaid amounts in respect of the property are ultimately paid. However, subparagraph 127.49(5)(a)(i) continues to ensure that a CTM investment tax credit cannot be deducted twice on the same amount.

Subparagraph 127.49(5)(a)(ii) is amended to make reference to any “clean economy tax credit” as defined in subsection 127.47(1). This ensures that a CTM investment tax credit cannot be claimed if another clean economy tax credit is deducted on the same amount.

Subparagraph 127.49(5)(a)(ii.1) further clarifies that no CTM investment tax credit is available in respect of any part of the capital cost of a property if either a CCUS tax credit or a clean hydrogen tax credit has been claimed in respect of that property. This amendment ensures that the CTM investment tax credit cannot be claimed on any property where either the CCUS tax credit or the clean hydrogen tax credit was deducted in respect of the same property.

### **Deemed deduction**

ITA

127.49(6)

Consequential on the enactment of the clean electricity investment tax credit, subsection 127.49(6) is amended to deem a deduction of the CTM investment tax credit for the purpose of section 127.491.

This amendment is deemed to come into force on April 16, 2024.

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## Repayment of assistance

ITA  
127.49(7)

Subsection 127.49(7) is amended to clarify that a CTM investment tax credit may be available in respect of amounts of government or non-government assistance that have been repaid, where that assistance previously reduced the capital cost of CTM property under paragraph 127.49(5)(c).

This amendment deems a separate CTM property to be acquired in the year of repayment, provided that a recapture event described in paragraph 127.49(11)(c) has not occurred in respect of the property on which an assistance amount has been repaid.

## Unpaid amounts

ITA  
127.49(9)

Where an amount in respect of a CTM property is unpaid on the day that is 180 days after the end of a taxation year in which a deduction in respect of a CTM investment tax credit would otherwise be available, that amount is excluded from the capital cost of the particular property for the purpose of computing the taxpayer's CTM investment tax credit under paragraph 127.49(9)(a).

Subsection 127.49(9) is amended to clarify that a CTM investment tax credit may be available for amounts in respect of a CTM property that are paid more than 180 days after the end of the taxation year in which a deduction in respect of a CTM investment tax credit would otherwise be available.

In order to facilitate claims for such amounts, paragraph 127.49(9)(b) is amended to deem a separate CTM property to be acquired in the year of payment, provided that a recapture event described in paragraph 127.49(11)(c) has not occurred in respect of the property for which the amount has ultimately been paid.

## Election by member to pay tax

ITA  
127.49(18.1)

Subsection 127.49(18.1) enables a qualifying taxpayer that is a member of a partnership during the partnership's fiscal period to elect to pay the entire amount determined in respect of the partnership under subsections 127.49(16) and (17).

## Joint and several liability

ITA  
127.49(18.2)

Subsection 127.49(18.2) creates joint and several liability (or, for civil law, solidary liability) for partnership members for any tax determined because of subsections 127.49(16) and (17) in respect of the partnership, except to the extent that the tax has been paid by a qualifying taxpayer that elected under subsection 127.49(18.1) or has been allocated to a qualifying taxpayer and added to its tax payable under subsection 127.49(17). Both current and former members of the partnership are subject to this rule.

### **Former member liability**

ITA  
127.49(18.3)

Under subsection 127.49(18.2), a taxpayer who was formerly a member of a partnership and had claimed a CTM investment tax credit in respect of the partnership may be jointly and severally, or solidarily, liable for recapture tax. Subsection 127.49(18.3) limits this liability to the total of all amounts that the former member received as a CTM investment tax credit because of its membership in the partnership.

### **Clause 57**

Section 127.491 provides a fully refundable investment tax credit for clean electricity property acquired by qualifying entities. Key differences between this investment tax credit and the clean technology investment tax credit include the credit rate, eligible properties and eligible credit recipients; in many other respects, the clean electricity investment tax credit rules are similar to the rules for the clean technology investment tax credit from a technical perspective.

Section 127.491 is effective as of April 16, 2024, in respect of property that is not part of a project the construction of which began before March 28, 2023 – where indicated, certain rules apply in respect of property that is acquired and becomes available for use on or after December 16, 2024 or November 4, 2025. For more detail regarding how the effective date applies in relation to acquisitions of property, see the commentary below on the definition “specified percentage” in subsection 127.491(1) and on subsections 127.491(3) and (7). Subsection 127.491(3) also applies in relation to qualifying corporations that are not subject to tax on their income.

### **Definitions**

ITA  
127.491(1)

Subsection 127.491(1) provides various definitions relevant for the purpose of the clean electricity investment tax credit.

***“actual emission intensity”***

The definition "actual emission intensity" is relevant for the purpose of subsection 127.491(18) which provides for a recovery tax in respect of a “specified natural gas energy system” (as defined in subsection 127.491(1)) – see explanatory notes on that subsection and definition for more information.

“Actual emission intensity” in the context of the clean electricity investment tax credit means the actual quantity of carbon dioxide (measured in tonnes) that is released into the atmosphere for each gigawatt hour of electrical energy produced by a specified natural gas energy system, as determined by the formula in the definition “emission intensity” which is also defined in subsection 127.491(1).

Actual emission intensity is a key component of the compliance report that is required to be filed with the Minister of National Revenue and the Minister of Natural Resources under subsection 127.491(19) for each operating year (cumulative 365 days of operations of the system) during the compliance period of the system. It is also a key component of the “average actual emission intensity” of a “specified natural gas energy system”, which is relevant for the purpose of the recovery rule in subsection 127.491(18).

***“average actual emission intensity”***

The “average actual emission intensity” of a “qualified natural gas energy system” means the average of the reported actual emission intensity for each “operating year” of the system’s “compliance period”, weighted by the quantity of electrical energy produced each year. The terms “actual emission intensity”, “operating year” and “compliance period” are also defined in subsection 127.491(1).

The average actual emission intensity is determined by the formula  $((A \times B) + (C \times D) + (E \times F) + (G \times H) + (I \times J)) \div K$ .

Variables A, C, E, G and I each represent the actual emission intensity of electrical energy produced by the system for each operating year of the compliance period.

Variables B, D, F, H and J each represent the quantity, in gigawatt hours, of electrical energy produced by the system in an operating year of the compliance period.

Variable K represents the total quantity, in gigawatt hours, of electrical energy produced by the system over the compliance period.

The average actual emission intensity is used to determine the amount of any recovery amount for the system at the end of its compliance period, under subsection 127.491(18).

For more information, see the commentary on the definitions “actual emission intensity”, “operating year” and “compliance period” and on subsection 127.491(18).

***“clean electricity investment tax credit”***

The definition “clean electricity investment tax credit” is relevant primarily for the purpose of computing the amount of a qualifying entity’s tax credit that may be claimed under subsection 127.491(2) for a taxation year.

The definition includes the total of two elements.

The first element – paragraph (a) – is the specified percentage of the capital cost to a qualifying entity of clean electricity property that is acquired in the year.

The second element – paragraph (b) – applies where the entity is a member of a partnership that acquired clean electricity property, and is the amount required by subsection 127.491(12) to be added in computing the entity’s clean electricity investment tax credit at the end of the year.

***“clean electricity property”***

The definition “clean electricity property” is added to describe the property for which the clean electricity investment tax credit may be available for a qualifying entity. The definition contains five general requirements, which are set out in paragraphs (a) to (e).

Paragraph (a) requires the property not to be part of a project for which construction commenced before March 28, 2023. The parenthetical text explicitly excludes some pre-construction activities from being considered “construction” for this purpose. If a major project is undertaken in discrete phases for bona fide business or engineering reasons, each phase could be determined to be a separate project by the Minister for the purposes of this paragraph under subsection 127.491(34).

Paragraph (b) sets out requirements regarding the location of the property. In particular, it requires that the property be situated in Canada and be intended for use exclusively in Canada. It also ensures that certain wind and water energy properties (more fully described in subparagraphs (d)(v) and (d)(xiv) of Class 43.1 in Schedule II to the Regulations) are included if they are installed in Canada’s exclusive economic zone.

Paragraph (c) requires that the property has not been used or acquired for use or lease before it was acquired by the entity, to ensure that the credit is available only for new property.

Paragraph (d) requires that, if the property is leased by the qualifying entity to another person, that person must also be a “qualifying entity”. Alternatively, it also permits the property to be leased to a partnership all the members of which are qualifying entities. Paragraph (d) also requires that the leased property be leased in the ordinary course of carrying on a business in Canada by the qualifying entity whose principal business is one of the specified activities, or any combination thereof.

Paragraph (e) requires that the property be described in one of subparagraphs (i) to (x), which describe specific types of property. The types of qualifying property are as follows:

- Property that would be described in subparagraph (d)(ii) of Class 43.1 in Schedule II to the Regulations, if that subparagraph were read without reference to its clause (A) (subparagraph (i)).
- Property that is described in subparagraphs (d)(v), (vi) or (xiv) of Class 43.1 in Schedule II to the Regulations, but excluding a test wind turbine (within the meaning assigned by subsection 1219(3) of the *Income Tax Regulations*) (subparagraph (ii)).
- “Concentrated solar energy equipment”, as defined in subsection 127.45(1), that is part of a system used solely for the purpose of generating electrical energy, exclusively from concentrated sunlight (subparagraph (iii)).
- Nuclear energy property – see definition in subsection 127.491(1) for more information (subparagraph (iv)).
- Equipment that is described in subparagraph (d)(vii) of Class 43.1 in Schedule II to *Income Tax Regulations* that is used exclusively for the purpose of generating electrical energy, or both electrical and heat energy, solely from geothermal energy, if the property is part of a system that meets certain conditions. The system has to export more electrical energy than heat energy on a net annual basis and must not extract fossil fuels for sale (subparagraph (v)).
- Waste biomass electricity generation equipment, as defined in subsection 127.45(1), that is part of a system that exports more electrical energy than heat energy on a net annual basis (subparagraph (vi)).
- Property that is described in subparagraphs (d)(xviii) or (xix) of Class 43.1 in Schedule II to the *Income Tax Regulations*, excluding equipment that uses any fossil fuel in operation (subparagraph (vii)).
- Qualified natural gas energy equipment (subparagraph (viii)) – see definition in subsection 127.491(1).
- Qualified interprovincial transmission equipment (subparagraph (ix)) – see definition in subsection 127.491(1).
- Property that is incorporated into another property as part of a “refurbishment” of the other property, where the other property is described in any of subparagraphs (i) to (ix) and continues to be so described after the refurbishment is completed (subparagraph (x)) – see “refurbishment” definition in subsection 127.491(1).

### **“compliance period”**

The definition “compliance period” is relevant primarily for the purposes of subsection 127.491(18), which provides for the potential recovery of previously deducted clean electricity investment tax credits, and subsection 127.491(19), which provides for annual information reporting requirements.

The “compliance period” in respect of a “specified natural gas energy system” (as defined in subsection 127.491(1)) of a taxpayer means the period of time beginning on the “start-up date” of the system and ending on the last day of the fifth “operating year” (as defined in subsection

127.491(1)) of the system. This period may be longer than five years if the system experiences any shutdown time. For more information, see the commentary on the definitions “operating year”, “qualified natural gas energy system” and “specified natural gas energy system” in this subsection.

***“dedicated geological storage”***

The definition “dedicated geological storage” is relevant for the definition “emission intensity”, and has the same meaning as in subsection 127.44(1), which is the definitions subsection for carbon capture utilization and storage tax credit rules. In general terms, “dedicated geological storage” means a geological formation that is located in a designated jurisdiction; is capable of permanently storing captured carbon; is authorized and regulated for the storage of captured carbon under the laws of the “designated jurisdiction” (which is defined in subsection 127.44(1)); and is a formation in which no captured carbon is used for enhanced oil recovery.

***“designated provincial Crown corporation”***

The definition “designated provincial Crown corporation” is relevant for the definition “qualifying corporation” in subsection 127.491(1).

A corporation is such a corporation if

- under paragraph (a) of the definition, not less than 90% of the shares (except directors’ qualifying shares) or of the capital of which is owned by one or more persons each of which is His Majesty in right of a province,
- under paragraph (b) of the definition, it is one of the listed territorial Crown corporations, or
- under paragraph (c) of the definition, all of the shares (except directors’ qualifying shares) or of the capital of which is owned by one or more persons each of which is a corporation described in paragraph (a) or (b).

***“emission intensity”***

The definition “emission intensity” is relevant for the purpose of the definitions “actual emission intensity” and “average actual emission intensity” in subsection 127.491(1) and subsection 127.491(18), which provides for a recovery amount payable in respect of a “specified natural gas energy system” (as defined in subsection 127.491(1)). See explanatory notes on those definitions and that subsection for more information.

“Emission intensity” in the context of the clean electricity investment tax credit means the tonnes of carbon dioxide emissions that are released into the atmosphere for each gigawatt hour of electrical energy produced by a qualified natural gas energy system (which is also a specified natural gas energy system), as determined by the formula A divided by B in the definition.

In general terms, variable A in the formula is total emissions in tonnes of carbon dioxide released during an operating year of the system. It is equivalent to total carbon dioxide emissions from the

combustion of fuel less emissions attributed to the production of useful thermal energy exported and the tonnes of carbon dioxide captured and stored in dedicated geological storage.

Variable B in the formula is the total electrical energy in gigawatt hours generated during the operating year of the system.

All measurements must be determined in a manner that is acceptable to the Minister of Natural Resources.

### ***“government assistance”***

“Government assistance” has the same meaning as in subsection 127(9). That definition in subsection 127(9) is amended to exclude the clean electricity investment tax credit – see explanatory notes on the amendment to that definition.

The capital cost of property that is eligible for the clean electricity investment tax credit is reduced by the amount of any government assistance or non-government assistance pursuant to paragraph 127.491(9)(c). Those amounts could become eligible for the clean electricity investment tax credit if they are subsequently repaid, pursuant to subsection 127.491(11). For more information, see the commentary on those subsections.

### ***“ineligible use”***

The definition “ineligible use” describes two of the circumstances where a previous clean electricity property could become subject to the recapture rules in subsections 127.491(16) and (17).

The first circumstance applies a point-in-time test: if, after its acquisition by a qualifying entity, the property no longer meets the criteria for being a clean electricity property (other than the requirement that it was not previously used), it will be treated as having been converted to an ineligible use.

The second circumstance is in respect of “qualified natural gas energy equipment” that is part of a qualified natural gas energy system. An ineligible use of that property occurs, under subparagraph (b)(ii), if the “actual emission intensity” (as defined in subsection 127.491(1)) of the electrical energy produced by the system in an “operating year” (as defined in subsection 127.491(1)) is greater than 65 tonnes of carbon dioxide per gigawatt hour of electrical energy, for an operating year that begins after the fifth operating year but before the twenty-first operating year of the system. An average actual emission intensity that exceeds 68.5 tonnes of carbon dioxide per gigawatt hour of electrical energy during the compliance period of the system (the period beginning on the “start-up date” of the system and ending on the last day of the fifth operating year) would trigger a recovery amount as determined under subsection 127.491(18) – see explanatory notes on the definition “compliance period” and that subsection.

Subsection 127.491(33) provides temporary relief in certain circumstances where waste biomass electricity generation equipment, qualified natural gas energy equipment or qualified

interprovincial transmission equipment is part of a system that is temporarily operated in a manner that is an “ineligible use” as defined in subsection 127.491(1) – see explanatory notes on subsection 127.491(33).

### **“non-government assistance”**

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

The capital cost of property that is eligible for the clean electricity investment tax credit is reduced by the amount of any government assistance or non-government assistance pursuant to paragraph 127.491(9)(c). Those amounts could become eligible for the clean electricity investment tax credit if they are subsequently repaid, pursuant to subsection 127.491(11). For more information, see the commentary on those subsections.

### **“nuclear energy property”**

The definition “nuclear energy property” is relevant for the purposes of subparagraph (e)(iv) of the definition “clean electricity property” in subsection 127.491(1).

“Nuclear energy property” means property that is part of a fixed location system that meets the following conditions:

- the system is used all or substantially all to generate electrical energy, or a combination of electrical energy and heat energy, from nuclear fission as determined on an annual basis, and
- the system exports more electrical energy than heat energy on a net annual basis.

In addition, the property must be a reactor, a reactor vessel, a reactor control rod, a moderator, cooling equipment, heat generating equipment, nuclear fission fuel handling equipment, a containment structure, electrical generating equipment, equipment for the distribution of heat energy within the system, or equipment that is physically and functionally integrated with such property and that is ancillary equipment (such as control equipment) used solely to support the functioning of such property. Certain property (including nuclear fission fuel and property used in nuclear waste disposal or storage) would not be eligible for the clean electricity investment tax credit as nuclear energy property.

### **“operating year”**

The definition “operating year” is relevant in respect of a “specified natural gas energy system” (as defined in subsection 127.491(1)) and the recovery tax provided in subsection 127.491(18) – see commentary below on the related definition and subsection for more information.

An “operating year” in the context of a specified natural gas energy system means each cumulative 365-day period during which the system operates (i.e., produces any amount of electrical energy). As a result, any period during which the system is not operating is disregarded in the calculation of a system’s operating year.

The first operating year of a system begins on its “start-up date” and ends on the day the system achieves 365 days of operations – see the commentary below on the definition “start-up date” in subsection 127.491(1). The next operating year would begin on the day after the first operating year ends and run for the next cumulative 365-day period.

For example, if the first day of the compliance period of a qualified natural gas energy system is on January 1, 2025, and it has 30 days of shutdown time before accumulating 365 days of operations, the system’s first operating year would end on January 30, 2026.

***“preliminary work activity”***

Expenditures in respect of a “preliminary work activity” cannot be included in the capital cost of clean electricity property for purposes of computing a qualifying entity’s clean electricity investment tax credit because of subparagraph 127.491(9)(a)(v).

This expression has the meaning assigned in subsection 127.45(1) – see proposed definition in subsection 127.45(1). In general terms, in the context of the clean electricity investment tax credit, a preliminary work activity is an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a qualifying entity of eligible clean electricity property, including (but not limited to) the activities described in paragraphs (a) to (e) of the definition “preliminary work activity”.

***“qualified interprovincial transmission equipment”***

The definition “qualified interprovincial transmission equipment” is relevant for subparagraph (e)(ix) of the definition “clean electricity property” in subsection 127.491(1).

A property is qualified interprovincial transmission equipment if it is primarily used, as determined on an annual basis, to transmit or manage electrical energy that originates in, or is destined for, a province other than the province in which the property is located.

It must also be one of the following types of property:

- equipment for the transmission of electrical energy, including cables and switches, that is rated for voltages of at least 69 kilovolts;
- electrical transmission structures, including towers and lattices; or
- related equipment used to manage electrical energy, including transformers, electric power conditioning equipment and control equipment, that is directly connected to equipment described above.

Property that is a building or “distribution equipment” (defined in subsection 248(1)) would not be eligible for the clean electricity investment tax credit as qualified interprovincial transmission equipment.

***“qualified natural gas energy equipment”***

The definition “qualified natural gas energy equipment” is relevant for the purposes of subparagraph (e)(viii) of the definition “clean electricity property” in subsection 127.491(1), which includes such equipment in the list of property that can be eligible for the clean electricity investment tax credit, to the extent that all of the other conditions in the latter definition are met.

The definition “qualified natural gas energy equipment” lists the conditions that must be met for a property to be such equipment in paragraphs (a) to (d).

Paragraph (a) requires that the property be part of a system that meets the conditions listed in subparagraphs (i) to (vii):

- (i) the system is fuelled all or substantially all by the combustion of natural gas (as determined on an annual basis) and is not fuelled by anything other than the combustion of gaseous fuels,
- (ii) the system is used solely for the purpose of generating electrical energy, or a combination of electrical energy and heat energy (capturing carbon dioxide associated with fuel combustion is permitted),
- (iii) the system exports more electrical energy than heat energy on a net basis as determined on an annual basis,
- (iv) the system is physically and functionally integrated with equipment that captures and compresses carbon dioxide for transportation,
- (v) less than 50% of the gross electrical energy generated by the system is used to power the equipment referred to in subparagraph (iv), as determined on an annual basis,
- (vi) the system is not expected to exceed an emission intensity of 65 tonnes of carbon dioxide per gigawatt hour of gross electrical energy generated, and
- (vii) a system evaluation has been issued for the system by the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources.

Paragraph (b) provides that the property must be equipment listed in any of subparagraphs (i) to (viii). This includes ancillary equipment that is physically and functionally integrated with and used solely to support the functioning of equipment described in subparagraphs (b)(i) to (vi). Ancillary equipment includes control, feedwater, condensate and emissions monitoring equipment.

Subparagraph (b)(viii) includes property described in subparagraphs (b)(i) to (vii) that is incorporated into a system that would not otherwise be described in paragraph (a) if the incorporation causes the system to satisfy the description in paragraph (a). Property acquired and used prior to the system satisfying the description in paragraph (a) would not be eligible.

#### *Example*

*A taxpayer owns and operates a natural gas energy system in 2024 that does not satisfy the description in paragraph (a). In 2025, the taxpayer acquires and incorporates Property A into the system. In 2026, the taxpayer acquires and incorporates Property B into the system.*

*However, only after Property B is acquired and installed does the system satisfy the description in paragraph (a).*

*Property A would be ineligible, as its incorporation into the system does not cause the system to satisfy the description in paragraph (a). By contrast, if Property B was described in any of subparagraphs (b)(i) to (vii), it would potentially qualify as qualified natural gas energy equipment under paragraph (b)(viii).*

Paragraph (c) provides that the Minister of Natural Resources must have verified that the particular equipment is equipment described in paragraph (b), if the equipment is acquired before the “start-up date” (as defined in subsection 127.491(1)) of the system. See the commentary on the definition “start-up date” for more information.

Paragraph (d) describes certain property that would not be eligible for the clean electricity investment tax credit as qualified natural gas energy equipment.

#### ***“qualified natural gas energy system”***

The definition “qualified natural gas energy system” is relevant for the purposes of subsection 127.491(18) which is a recovery rule where the “average actual emission intensity” (as defined in subsection 127.491(1)) of the electricity produced by a “specified natural gas energy system” (which is defined in subsection 127.491(1) as a system that has, at any time, been a qualified natural gas energy system) is greater than 65 tonnes of carbon dioxide per gigawatt hour of electrical energy. The definition is also relevant for the definition “ineligible use” in subsection 127.491(1) which is relevant for the recapture rules in subsections 127.491(16) and (17).

A system is a qualified natural gas energy system if it meets the conditions provided in paragraph (a) of the definition “qualified natural gas energy equipment” in subsection 127.491(1) – see explanatory notes on that definition for more information.

See the commentary on the definition “specified natural gas energy system” for more information.

#### ***“qualified validation firm”***

The definition “qualified validation firm” is relevant for the purposes of preparing the “system plan” for a “specified natural gas energy system” (both expressions are defined in subsection 127.491(1)). This may be requested by the Minister of Natural Resources as part of a system evaluation under paragraph 127.491(8).

A “qualified validation firm” means, in respect of a “specified natural gas energy system” of a taxpayer, an engineer or engineering firm that meets the requirements in paragraphs (a) to (d). These include requirements to be registered and in good standing with a professional association that has the authority or recognition by law of a jurisdiction, to have insurance coverage, to be independent of, and to deal at arm’s length with and not to be an employee of the taxpayer, and to meet requirements described in guidelines of the Minister of Natural Resources.

**“qualified verification firm”**

The definition “qualified verification firm” is relevant for the purposes of the compliance report to be filed by a qualifying entity under paragraph 127.491(19) in respect of the fifth “operating year” of a “qualified natural gas energy system” (both expressions are defined in subsection 127.491(1)). The compliance report must include a verification report prepared by a “qualified verification firm” in respect of the actual emission intensity of the system during each operating year of the compliance period as required under paragraph 127.491(19)(d).

A “qualified verification firm” means, in respect of a “specified natural gas energy system” of a taxpayer, a firm that meets the requirements in paragraphs (a) to (e). These include requirements to be either registered and in good standing with a professional association that has the authority or recognition by law of a jurisdiction or a verification body accredited in good standing under the *Clean Fuel Regulations*, to have insurance coverage, to be independent of, and to deal at arm’s length with and not to be an employee of the taxpayer or the “qualified validation firm” in respect of the system, to meet requirements described in guidelines of the Minister of Natural Resources, and to have expertise in auditing natural gas energy systems to demonstrate compliance with *Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity*.

**“qualifying corporation”**

The definition “qualifying corporation” lists through paragraphs (a) to (i) the corporations that are eligible for the clean electricity investment tax credit as a “qualifying entity” as defined in subsection 127.491(1).

The eligibility of the Canada Infrastructure Bank (paragraph (g)) applies in respect of property that is acquired and becomes available for use on or after December 16, 2024, while the eligibility of Canada Growth Fund Inc. and its wholly-owned subsidiaries (paragraph (h)) applies in respect of property that is acquired and becomes available for use on or after November 4, 2025.

**“qualifying entity”**

The definition “qualifying entity” is relevant in determining whether an entity is eligible for the clean electricity investment tax credit.

A qualifying entity means a qualifying corporation or a qualifying trust, as defined for the purposes of section 127.491.

This definition ensures that only qualifying corporations or qualifying trusts are eligible for the clean electricity investment tax credit. Qualifying entities that are members of a partnership that acquires clean electricity property may also be eligible for this investment tax credit because of subsection 127.491(12).

***“qualifying trust”***

The definition “qualifying trust” ensures that only a trust that meets the conditions provided in the definition are eligible for the clean electricity investment tax credit.

A trust is a qualifying trust if, at all relevant times, the trust meets the following conditions:

- The beneficiaries of the trust are solely corporations described in paragraph 149(1)(o.2).
- The trust is a limited partner of a partnership.
- The sole undertaking of the trust is the holding of its interest in the partnership together with any ancillary activities.

See commentary on subsection 127.491(13) which provides a rule regarding assistance in the context of trusts.

***“refurbishment”***

The definition “refurbishment” is relevant for the purposes of subparagraph (e)(x) of the definition “clean electricity property” in subsection 127.491(1).

Briefly, a qualifying entity may claim the clean electricity investment tax credit on the capital cost of a property that the entity has acquired and that is described in any of subparagraphs (e)(i) to (ix) of the definition “clean electricity property” if the property has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the entity.

In general terms, subparagraph (e)(x) of the definition “clean electricity property” provides that property that is incorporated into another property as part of a refurbishment of the other property, where the other property is described in any of subparagraphs (e)(i) to (ix), is “clean electricity property”. Such property is subject to the other conditions set out in paragraphs (a) to (d), including that the property has not been used, or acquired for use or lease, for any purpose before it was acquired by the entity.

“Refurbishment” means significant alterations, renovations, improvements or additions to a property to substantially extend its useful life, increase its capacity or improve its efficiency.

***“specified natural gas energy system”***

This term means a system that is, or was at any time, a qualified natural gas energy system.

This term is relevant for the recovery rule in subsection 127.491(18) that may apply if the average actual emission intensity of the electricity produced by the system is greater than 65 tonnes of carbon dioxide per gigawatt hour of electrical energy for the “compliance period” of a system that was a “qualified natural gas energy system” at any time during the period. See commentary on those definitions in subsection 127.491(1) and on subsection 127.491(18) for more information.

***“specified percentage”***

The definition “specified percentage” sets out the rates for determining the amount of the clean electricity investment tax credit.

Under paragraph (a), the rate is nil for property that is acquired before April 16, 2024, determined without reference to subsection 127.491(7), which otherwise deems property not to have been acquired until it is available for use. Accordingly, property that is acquired before April 16, 2024, but becomes available for use on or after that day, is ineligible for the clean electricity investment tax credit.

Under paragraph (b), the rate is 15 per cent for property acquired on or after April 16, 2024 and before January 1, 2035.

Under paragraph (c), the rate is nil for property acquired after December 31, 2034. Subsection 127.491(7) would deem property that was acquired in 2034 or earlier, but became available for use in 2035, to be acquired in 2035 so that it would be subject to the nil rate.

However, the above-noted rates could be reduced by ten percentage points if the claimant does not elect to meet the labour requirements set out in section 127.46. See the explanatory notes to the proposed amendments to that section for more information.

***“start-up date”***

The definition “start-up date” is relevant for the definitions “compliance period” and “operating year”, and these definitions are relevant for the purposes of the definition “specified natural gas energy system” and the recovery rule provided in subsection 127.491(18).

The “start-up date” of an operating year marks the start of the first operating year of a specified natural gas energy system and thus the start of the “compliance period” of the system. The start-up date means the first day on which the system generates electrical energy for sale.

***“system plan”***

The definition “system plan” is relevant for the purposes of the definition “qualified natural gas energy system” in subsection 127.491(1) and subsection 127.491(8), under which the Minister of Natural Resources may request certain information and documentation including a system plan and, to the extent that it is not provided, may refuse to complete an evaluation of the system.

A “system plan” means a plan for a qualified natural gas energy system of a qualifying entity that must be prepared by a qualified validation firm (as defined in subsection 127.491(1)), must include a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the system, must set out expected emission intensity and other ratios relevant to determining whether the system is a qualified natural gas energy system and must include any information required in guidelines published by the Minister of Natural

Resources. The system plan must be filed by the entity with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources.

### **Clean electricity investment tax credit**

ITA

127.491(2)

Subsection 127.491(2) provides rules under which the amount of the clean electricity investment tax credit is to be paid or credited to a qualifying entity for a year where the entity has filed a prescribed form containing prescribed information on or before the entity's filing-due date (within the meaning assigned by subsection 248(1)).

In the case of a qualifying entity that is a taxable Canadian corporation (paragraph (a) of the definition "qualifying corporation") or a qualifying trust, paragraph 127.491(2)(a) deems the amount of the clean electricity investment tax credit to have been paid on account of tax payable by the entity for the year, where the entity has filed with its return of income for the year a prescribed form containing prescribed information. The deemed payment will effectively reduce the entity's tax payable for the year, if any, and result in a refund to the extent the clean electricity investment tax credit exceeds its amount otherwise owing under the Act.

In the case of an entity that is described in any of paragraphs (b) to (i) of the definition "qualifying corporation", the Minister shall, with all due dispatch, pay to the entity an amount equal to its clean electricity investment tax credit for the year, if the entity satisfies the conditions set forth in subsection 127.491(3). The reference to paragraphs (g) and (i) applies in respect of property that is acquired and becomes available for use on or after December 16, 2024 and the reference to paragraph (h) applies in respect of property that is acquired and becomes available for use on or after November 4, 2025.

### **Section 149 entities**

ITA

127.491(3)

Subsection 127.491(3) provides conditions that a qualifying corporation described in any of paragraphs (b) to (i) of that definition must satisfy to be entitled to a clean electricity investment tax credit under subsection 127.491(2).

As provided under subsection (3), such corporation must agree in writing with the Minister to be subject to the provisions of the *Income Tax Act* in respect of their entitlement to the clean electricity investment tax credit, with any modifications that the circumstances require. Otherwise, they are not entitled to the clean electricity investment tax credit.

The reference to paragraph (g) and (i) applies in respect of property that is acquired and becomes available for use on or after December 16, 2024 and the reference to paragraph (h) applies in respect of property that is acquired and becomes available for use on or after November 4, 2025.

## **Interpretive rule – nuclear energy property**

ITA  
127.491(4)

Subsection 127.491(4) extends the application of section 127.491 to certain circumstances in which a qualifying entity has acquired, or disposed of, a leasehold interest in a nuclear energy property.

In general terms, a qualifying entity may be entitled to a clean electricity investment tax credit only where it acquires an ownership interest in a clean electricity property. The deeming rule in subsection (4) effectively permits a qualifying entity that has acquired a leasehold interest in a particular type of clean electricity property (i.e., nuclear energy property) to be treated as if it had acquired that property for the purposes of section 127.491. This rule could also apply where the leasehold interest has been acquired by a partnership by virtue of subsection 127.491(12).

Subsection (4) provides three deeming rules that apply for the purposes of section 127.491.

First, paragraph (a) generally provides that when a qualifying entity acquires a leasehold interest in a nuclear energy property, it is deemed to acquire that property at that time. Accordingly, section 127.491 generally will apply in the same manner as if the entity acquired the underlying property and the entity may be entitled to a clean electricity investment tax credit in relation to that property. However, the deemed acquisition date specified under paragraph (a) would be subject to the overriding rule in subsection 127.491(7), which provides that a property is deemed not to be acquired until the property has become “available for use” in accordance with the specified rules. The determination of when the property is available for use for the purpose of section 127.491 would be made as if the qualifying entity had acquired the underlying property.

Second, paragraph (b) provides that the capital cost of the leasehold interest in the nuclear energy property to the qualifying entity is deemed to be its capital cost of that property. This paragraph ensures that, for the purposes of calculating the qualifying entity’s clean electricity investment tax credit, the capital cost of the leasehold interest is treated as if it was the capital cost of a clean electricity property (i.e., this is the starting point for determining the amount of the qualifying entity’s clean electricity investment tax credit). As with any other property, the capital cost maybe reduced under subsection (9) for the purposes of determining the credit amount.

Third, paragraph (c) provides that the nuclear energy property is deemed to be disposed of by the qualifying entity when it ceases to hold the leasehold interest. The qualified entity is deemed to dispose of the property for proceeds of disposition equal to the fair market value of the property at the time it ceases to hold the leasehold interest. This rule may be relevant for the purposes of the recapture rules in subsections 127.491(16) and (17). The recapture rules could also apply in respect of the qualifying entity if the underlying property is converted to an ineligible use or is exported from Canada.

## **Amount payable**

ITA  
127.491(5)

Subsection 127.491(5) provides that any amount payable by a qualifying entity under this section is deemed to be payable as a tax or as a payment in lieu of tax, as the case may be.

This subsection reflects that taxable Canadian corporations and qualifying trusts, as well as corporations that do not have to pay tax under Part I of the Act on their income, are eligible to obtain a clean electricity investment tax credit and may be subject to the recovery and recapture rules in section 127.491.

**Time limit for application**

ITA  
127.491(6)

Subsection 127.491(6) places a time limit on filing the form necessary to be eligible for the clean electricity investment tax credit.

The prescribed form claiming this tax credit must be filed on or before the day that is one year after the qualifying entity's filing-due date for the year or December 31, 2026, whichever is later. A consequential change to subsection 220(2.2) removes the Minister's discretion to waive this requirement.

If the form is filed after the entity's filing-due date but on or before the deadline above, the deemed payment under subsection (2) is deemed not to arise under that subsection until the prescribed form and information have been filed with the Minister.

**Time of acquisition**

ITA  
127.491(7)

Subsection 127.491(7) deems clean electricity property not to have been acquired until it has become available for use by a qualifying entity. Accordingly, the clean electricity investment tax credit cannot be claimed before the year the property is available for use, even if expenditures to acquire the property are incurred in an earlier year. This could also impact the specified percentage applicable during the phase-out period – see the commentary above on the definition “specified percentage” in subsection 127.491(1) for more information.

**Qualified natural gas energy system evaluation**

ITA  
127.491(8)

Subsection 127.491(8) provides that the Minister of Natural Resources may request from a qualifying entity all documentation and information necessary for the Minister of Natural Resources to complete a qualified natural gas energy system evaluation, including a system plan, and may refuse to complete the evaluation if such documentation or information is not provided by the entity.

### **Special rules — adjustments**

ITA

127.491(9)

Subsection 127.491(9) sets out various rules to determine the capital cost of clean electricity property to a qualifying entity. By excluding amounts from the capital cost of property in the context of the clean electricity investment tax credit, these rules operate to in effect deny support under this tax credit to the extent described.

Subparagraph (a)(i) ensures that a clean electricity investment tax credit cannot be deducted twice on the same amount.

Under subparagraph (a)(ii), the clean electricity investment tax credit is not available for any amount in respect of which any other “clean economy tax credit” (as defined in subsection 127.47(1)) was deducted by any person. This prevents multiple credits from being claimed in respect of the same amount. Note that, in the context of property of a partnership, this rule applies at the partnership level because of the operation of subsection 127.491(12) which in effect directs the partnership to apply these rules as if the partnership were a taxable Canadian corporation, and then allocate out the members’ reasonable shares. For more information on the interaction of subparagraph (a)(ii) and partnerships, see the commentary on subsections 127.491(12) and subsection 127.47(4.1).

Subparagraph (a)(iii) provides that amounts added to the cost of property by virtue of section 21 do not form part of the capital cost of a clean electricity property for the purposes of the clean electricity investment tax credit.

In the case of a property that is part of a qualified natural gas energy system, under subparagraph (a)(iv), the capital cost of the property cannot include any amount if a CCUS tax credit was deducted by any person in respect of any property that is part of the system. This rule is intended to effectively require taxpayers to choose between CCUS tax credits and clean electricity investment tax credits for the system.

Under subparagraph (a)(v), expenditures incurred in respect of a “preliminary work activity” cannot be included in the capital cost of a clean electricity property. “Preliminary work activity” has the same definition for the purposes of both section 127.491 and for the clean technology investment tax credit rules in section 127.45. See the commentary on subsection 127.45(1) with regard to that defined term for more information.

Finally, under subparagraph (a)(vi), the capital cost of a clean electricity property cannot include any amount on which either a CCUS tax credit under section 127.44 of the Act or a clean hydrogen tax credit under section 127.48 of the Act was deducted in respect of any part of the capital cost of the property by any person. This rule is intended to apply specifically in the context of dual-use equipment (CCUS) and dual-use equipment described in clauses (c)(iii)(B), (c)(iii)(D), or subparagraphs (c)(iv) to (vi) of the definition “eligible clean hydrogen property” in subsection 127.48(1) of the Act to prevent any portion of property that is benefitting from support under those investment tax credits from receiving support under the clean electricity investment tax credit. For example:

- A taxpayer has acquired a piece of dual-use electricity generation equipment for \$1,000,000 that is expected to support a qualified CCUS project and a qualified clean hydrogen project, with 50 per cent of the power generated by the equipment to be used for the CCUS project with another 30 per cent for the clean hydrogen project. The CCUS tax credit and clean hydrogen tax credit would be available on the portion of the capital cost of the equipment in the respective usage proportions, applying to 80 per cent of the capital cost of the property in total (i.e., \$500,000 plus \$300,000).
- The taxpayer sells the remaining 20 per cent of power generated by the equipment to the grid.
- If the equipment meets the definition “clean electricity property”, the taxpayer would be prevented from obtaining the clean electricity investment tax credit on the remaining capital cost of the equipment (\$200,000) because of subparagraph (a)(vi) if it has obtained either, or in this case both, the CCUS tax credit or the clean hydrogen tax credit on the electricity generation equipment.

Under paragraph (b), the cost of a qualifying entity’s clean electricity property is determined without reference to subsections 13(7.1) and (7.4) of the Act. Among other things, this allows clean electricity investment tax credits to be disregarded in determining the cost of clean electricity property for these purposes.

Under paragraph (c), the capital cost of clean electricity property is reduced by amounts relating to “government assistance” and “non-government assistance” (as those terms are defined in subsection 127(9)) that can reasonably be considered to be in respect of the property, except amounts received or receivable from the Canada Infrastructure Bank or from Canada Growth Fund Inc. or any of its wholly-owned subsidiaries.

Subparagraph (c)(i) reduces the capital cost of clean electricity property by assistance received in or before the taxation year in which the property was acquired (or was deemed to be acquired). Subparagraph (c)(ii) reduces the capital cost of clean electricity property in circumstances where an amount has not yet been received during the year, but the qualifying entity is nevertheless entitled to receive the amount in the year, or can be reasonably be expected to receive the amount in the year or a subsequent year, and that amount would be government assistance or non-government assistance to the entity if it were received by the entity. Amounts that are repaid or that, having reduced the capital cost of property under paragraph (9)(c), are no longer expected to be received may be eligible for the clean electricity investment tax credit under subsection 127.491(11).

Under paragraph (d), adjustments in subsections 127(11.6) to 127(11.8) may apply to the cost of property transferred between non-arm's length parties for the purposes of the clean electricity investment tax credit. Those rules are imported for the purpose of the clean electricity investment tax credit, subject to certain necessary adjustments.

### **Deemed deduction**

ITA  
127.491(10)

Subsection 127.491(10) ensures that any amount determined under subsection 127.491(2) is also deemed to have been deducted from the taxpayer's tax otherwise payable under Part I. This deeming rule applies for the purpose of various provisions of the Act. It causes these rules to operate in the same manner whether the clean electricity investment tax credit is received as a refund or is actually deducted against tax otherwise payable.

### **Repayment of assistance**

ITA  
127.491(11)

The capital cost of clean electricity property may be reduced under paragraph 127.491(9)(c) by the amount of "government assistance" and "non-government assistance" that is received, is receivable or is reasonably expected to be received, in respect of the property. If such assistance is subsequently repaid or can no longer reasonably be expected to be received, those amounts may once again be eligible for the clean electricity investment tax credit because of subsection 127.491(11). A property must be acquired in the year to obtain an investment tax credit under section 127.491 (see the definition "clean electricity investment tax credit" in subsection 127.491(1)). Accordingly, a separate property is deemed to have been acquired to enable the investment tax credit to be claimed in respect of the later year provided that a recapture event described in paragraph 127.491(16)(c) has not occurred in respect of the property on which an assistance amount has been repaid.

### **Partnerships**

ITA  
127.491(12)

Subsection 127.491(12) applies if a qualifying entity in a particular taxation year is a member of a partnership, and a clean electricity investment tax credit would be determined in respect of the partnership if it were a taxable Canadian corporation. The clean electricity investment tax credit rules are generally intended to apply to partnerships and their partners that are qualifying entities in a manner similar to the partnership rules for the investment tax credits under section 127 of the Act, subject to important modifications to the partnership rules made for the clean economy investment tax credits described in section 127.47 which will include the clean electricity

investment tax credit, to which subsection 127.491(12) is subject – see the commentary on section 127.47, including new proposed amendments to that section, for more information.

### **Trust — assistance received by beneficiary**

ITA

127.491(13)

Subsection 127.491(13) provides for a reduction of the expenditures incurred by a partnership and on which a partnership may calculate a clean electricity investment tax credit where a qualifying trust is a member of the partnership, and a beneficiary of the trust or the trust has received, is entitled to receive or can reasonably be expected to receive government assistance or non-government assistance. In such a case, the amount of the assistance that may reasonably be considered to be in respect of a clean electricity property for which a clean electricity investment tax credit has been allocated by a partnership to the trust is deemed to have been received by the partnership as government assistance or non-government assistance, as the case may be, in respect of the property.

This provision essentially mirrors subsection 127.47(5), with adjustments made to be applicable in respect of a qualifying trust that is a member of a partnership.

### **Unpaid amounts**

ITA

127.491(14)

Subsection 127.491(14) ensures that if any part of the capital cost of a particular clean electricity property of a qualifying entity is unpaid on the day that is 180 days after the end of the taxation year of a qualifying entity in which the clean electricity property was acquired, that part of the cost is added to the capital cost of a separate clean electricity property that is deemed to be acquired at the time that the unpaid amount is paid, unless the particular property has been converted to an ineligible use, disposed of or exported from Canada (i.e. subject to a recapture event).

### **Tax shelter investment**

ITA

127.491(15)

Subsection 127.491(15) provides that the clean electricity investment tax credit is unavailable if a clean electricity property (or an interest in a person or partnership with a direct or indirect interest in such property) is a tax shelter investment under section 143.2. This approach is consistent with that taken for the other clean economy investment tax credits.

### **Recapture — conditions for application**

ITA  
127.491(16)

Subsection 127.491(16) sets out three conditions that trigger the application of recapture of all or part of the clean electricity investment tax credit under subsection (17).

The first condition in paragraph (a) is that a taxpayer acquired a clean electricity property within a particular period. More specifically, paragraph (a) requires, in the case of a clean electricity property other than qualified natural gas energy equipment, that the taxpayer acquired the property in the particular year or in any of the preceding ten calendar years. Subsection 127.491(7) deems clean electricity property not to have been acquired until it has become available for use by a qualifying entity. This means that the recapture rules could apply based on actions that occur during the ten calendar years after a property becomes available for use. In the case of a qualified natural gas energy equipment, the period is 20 calendar years, so recapture could apply based on actions that occur during the 20 calendar years after a property becomes available for use.

Paragraph (b) requires that the taxpayer became entitled to a clean electricity investment tax credit in respect of all or a portion of the capital cost of the clean electricity property referred to in paragraph (a).

Paragraph (c) requires that the property be converted to an ineligible use (see proposed definition in subsection 127.491(1) and related explanatory notes), be exported from Canada or be disposed of. Paragraph (c) does not apply if the property was previously converted to an ineligible use or exported from Canada, which ensures that recapture is not triggered twice for the same property. In cases where the property has been disposed of without having previously been converted to an ineligible use or exported from Canada, recapture may be deferred in some cases by virtue of subsections 127.491(22) and (23).

## **Recapture**

ITA  
127.491(17)

Where recapture applies in respect of a clean electricity property, the recapture amount is effectively calculated based on the proportion of the value of the property that has been used by the taxpayer prior to its conversion to an ineligible use, its export or its disposition. For example, if a clean electricity property is sold to an arm's length party for 80% of the original capital cost of the property to the taxpayer, 80% of the clean electricity investment tax credit associated with that property will be recaptured. Similarly, if a clean electricity property is converted to an ineligible use at a time when its fair market value is 50% of its original capital cost, 50% of the clean electricity investment tax credit associated with that property will be recaptured. Recapture of the clean electricity investment tax credit will in no case exceed the taxpayer's clean electricity investment tax credit associated with the particular property (variable A). Variable B is the amount of any previous recovery amount paid by the taxpayer in respect of the property that is qualified natural gas energy equipment under subsection 127.491(18).

Where a clean electricity property is disposed of to a person that deals at arm's length with the taxpayer, variable C of the formula in subsection 127.491(17) is the proceeds of disposition of the particular property. In other cases (being the disposition to a non-arm's length party, conversion to an ineligible use or export), variable C of the formula in subsection 127.491(17) is the fair market value of the particular property. Variable D is the capital cost of the property that applied for the purposes of the clean electricity investment tax credit. There is an exception to the recapture rules if the property is disposed of to certain related persons, in which case recapture may be deferred pursuant to subsections 127.491(22) and (23).

### **Recovery — qualified natural gas energy systems**

ITA  
127.491(18)

While the compliance period offers some flexibility for a qualified natural gas energy system to meet the emission intensity requirement, subsection 127.491(18) may require a qualifying entity to pay a recovery amount in respect of qualified natural gas energy equipment if, at the end of the compliance period of its qualified natural gas energy system, the average actual emission intensity of the electricity produced is greater than 68.5 tonnes of carbon dioxide per gigawatt hour of electrical energy. After the compliance period, qualified natural gas energy systems must achieve an actual emission intensity of 65 tonnes of carbon dioxide per gigawatt hour of electrical energy beginning after the fifth operating year but before the twenty-first operating year of the system, or be subject to recapture pursuant to subsection 127.491(17).

The amount for which the qualifying entity is liable to pay, on or before its balance-due day for the year, is determined by the formula  $A - B$ , applied to each qualified natural gas energy system.

Variable A is the total amount of clean electricity investment tax credits, each of which is based on the specified percentage that was applied to the capital cost of qualified natural gas energy equipment that was part of a system in determining a clean electricity investment tax credit of the taxpayer.

Variable B is the total of all amounts each of which can reasonably be considered to be the portion of any amount previously paid by the taxpayer because of subsection (17) in respect of the equipment. Variable B represents recapture of a clean electricity investment tax credit previously imposed in respect of the equipment. It ensures that recovery under subsection (18) is net of amounts that have already been repaid.

### **Compliance — emission intensity**

ITA  
127.491(19) and (20)

Subsection 127.491(19) sets out the requirement for a taxpayer that has deducted a clean electricity investment tax credit in respect of a qualified natural gas energy system to file with both the Minister of National Revenue and the Minister of Natural Resources, within 180 days after the end of each of the first twenty operating years, a compliance report containing certain information in respect of that operating year.

For the compliance report in respect of the system's fifth operating year, the taxpayer is required to include a report prepared by a "qualified verification firm" that verifies the "actual emission intensity" for each "operating year" in the compliance period. Each of those terms is defined in subsection 127.491(1).

Among other things, this information is relevant for the determination of the system's average actual emission intensity at the end of the compliance period, which will be used to determine the amount of any recovery tax payable under subsection 127.491(18).

Under subsection 127.491(20), the Minister of Natural Resources will review each of a qualifying entity's compliance reports and the Minister of National Revenue may, in consultation with the Minister of Natural Resources, make a determination or redetermination of the actual emission intensity of the electrical energy produced by the system.

### **Failure to report**

ITA  
127.491(21)

Subsection 127.491(21) sets out a penalty that applies if a taxpayer fails to file a compliance report for a qualified natural gas energy system as required by subsection 127.491(19). There is a separate penalty for each compliance report that the taxpayer fails to file as required.

In general terms, the penalty is 4% of the amount of the clean electricity investment tax credit, prorated to provide a daily amount in respect of the failure to file, but not exceeding the total clean electricity investment tax credit deducted by the qualifying entity in respect of the project.

Variable A is the total clean electricity investment tax credits deducted by the taxpayer in respect of the system before the applicable deadline set out in subsection (19), while variable B is the number of days during which the failure continues.

### **Certain related party transfers**

ITA  
127.491(22) and (23)

Subsection 127.491(22) sets out conditions for the deferral of recapture under subsection 127.491(23).

Under subsection 127.491(22), recapture of the clean electricity investment tax credit will be deferred where clean electricity property is disposed of by a qualifying entity to a related qualifying entity in circumstances where the property would be clean electricity property to the purchaser (but for the requirement that the property have not been previously used under paragraph (c) of the definition “clean electricity property”). This relieving provision is intended to facilitate bona fide transfers of clean electricity property within corporate groups. It is similar to subsection 127(33), which provides for deferral of the recapture of certain other investment tax credits where property is transferred to a non-arm’s length party.

Subsection 127.491(23) provides for the deferred recapture. It generally causes the transferee to be treated as if it had claimed investment tax credits of the transferor in respect of the property, ensuring that the transferee is subject to recapture if it changes the use of the property to an ineligible use, or disposes of or exports the property. To achieve this result, subsection 127.491(23) makes subsection 127(34) applicable, with such modifications as the circumstances require.

### **Recapture event reporting requirement**

ITA

127.491(24) and (25)

Where a recapture event described in subsection 127.491(16) occurs, or a deferral of recapture occurs because a qualifying entity has transferred clean electricity property to a related qualifying entity under subsections 127.491(22) and (23), the qualifying entity is required to notify the Minister in prescribed form and manner on or before the entity’s filing-due date for that year. Consequential amendments to subsections 152(4) and (4.01) will extend the assessment period in respect of clean electricity investment tax credit recapture assessments where the notification has not been filed in prescribed form and manner.

Subsection (25) provides a similar reporting requirement for partnerships.

### **Recapture and recovery – partnerships**

ITA

127.491(26) to (28)

Subsection 127.491(26) provides a mechanism for the recapture or recovery of a clean electricity investment tax credit received through a partnership. This mechanism in general terms directs a partnership to apply the rules in subsections (16) to (18) and (23) as if the partnership were itself a taxable Canadian corporation.

Subsection (27) then directs the partnership to reasonably allocate the tax determined because of subsection (26) among the members of the partnership unless subsection 127.491(28) applies.

All members of the partnership, regardless of when they acquired their partnership interest, would generally be liable to pay a share of an amount payable because of this rule.

Subsection (28) provides an election enabling a member of a partnership that is a taxable Canadian corporation to elect to pay the total amount of recapture or recovery tax determined under subsection (26) that would otherwise have to be allocated out to members of the partnership for payment.

### **Joint and several, or solidary, liability**

ITA  
127.491(29) and (30)

Subsection 127.491(29) creates joint and several liability (common law) or solidary liability (civil law) for partnership members for any amount determined because of subsection 127.491(26) in respect of the partnership. Paragraphs 127.491(29)(a) and (b) provide exceptions to this joint, several and solidary liability. Under paragraph (a), the joint, several and solidary liability does not apply in relation to amount of tax that has been allocated to certain qualifying entities under subsection 127.491(27). For this purpose, allocation to any qualifying entity, other than one that is exempt from tax under Part I of the Act and that has not entered into an agreement under subsection 127.491(3) to be effectively subject to such tax, is effective to remove the joint and several or solidary liability. Under paragraph (b), an amount that has been paid by a taxable Canadian corporation that elected under subsection 127.491(28) is also not subject to joint, several or solidary liability.

Subsection 127.491(30) limits the liability of a former member of the partnership to the total amount of clean electricity investment tax credit obtained by the member as a result of its membership in the partnership.

### **Interest on recovery tax**

ITA  
127.491(31)

Subsection 127.491(31) provides that, when applying subsection 161(1) to an amount of recovery tax payable under subsection 127.491(18), the balance-due day of a qualifying entity for the taxation year is deemed to be the balance-due day of the taxation year for the related clean electricity investment tax credit under subsection 127.491(2). This creates a liability for interest from the taxation year in which the tax credit was originally claimed.

### **Environmental compliance**

ITA  
127.491(32)

Subsection 127.491(32) prevents a qualifying entity from obtaining a clean electricity investment tax credit if there is substantial non-compliance of the entity with the requirements of any environmental laws, by-laws and regulations that are applicable to the property at the time the

property become available for use. The general purpose of this rule is to prevent the provision of incentives to support environmental objectives through the tax system in circumstances where laws for the protection of the environment are being disregarded or violated in significant ways.

The significance of the particular infraction would have to be assessed based on the facts and circumstances and the objectives and purposes of the applicable laws, by-laws and regulations.

### **Compliance — reasonable efforts**

ITA

127.491(33)

Subsection 127.491(33) provides temporary relief in certain circumstances where waste biomass electricity generation equipment, qualified natural gas energy equipment, or qualified interprovincial transmission equipment is part of a system that is temporarily operated in a manner that is an “ineligible use” as defined in subsection 127.491(1). Property that previously qualified for the clean electricity investment tax credit that is operated in manner that is an “ineligible use” would ordinarily become subject to the recapture rules in subsections 127.491(16) and (17). Subsection (33) is generally similar to existing sections 1104(14) and (15) of the Income Tax Regulations, which provide similar relief in the context of Classes 43.1 and 43.2.

Paragraph (a) provides that property that is part of a system mentioned above can be considered to be operated in the required manner at a particular time during a period of deficiency, failing or shutdown of the system that is beyond the control of the qualifying entity, if the entity makes all reasonable efforts to rectify the difficulty causing the deficiency, failing or shutdown within a reasonable period of time.

Paragraph (b) is intended to accommodate situations of ownership of property by other persons as part of the same system. It provides that, for the purposes of paragraph (a), a system described in paragraph (a) may include property of another person or partnership if the following conditions are met:

- The property, if it were owned by the entity, would reasonably be considered to be part of the entity’s system.
- The property uses electrical energy or heat energy obtained from the system, transports or stores carbon dioxide obtained from the system, or generates or stores electricity that is transmitted by the system
- The operation of the property is necessary for the entity’s system to operate in the required manner.
- At the time that the entity’s system first became operational, the deficiency, failing or shutdown in the operation of the property could not reasonably have been anticipated by the entity to occur within the next five years.

### **Project**

ITA  
127.491(34)

Property that is part of a project that began construction before March 28, 2023 is generally not eligible for the clean electricity investment tax credit (see discussion above on paragraph (a) of the definition of “clean electricity property” in subsection 127.491(1)). Some pre-construction activities are excluded from being considered “construction” for this purpose.

Subsection 127.491(34) provides that if a major project is undertaken in discrete phases for bona fide business or engineering reasons, each phase could be determined as being a separate project for this purpose by the Minister. It is not expected that such a determination be made by the Minister for every project.

### **Authority of the Minister of Natural Resources**

ITA  
127.491(35)

Subsection 127.491(35) gives the Department of Natural Resources the authority to publish technical guidance that will apply conclusively with respect to engineering and scientific matters, for the purpose of determining whether a property is a clean electricity property. The Department of Natural Resources already publishes such a technical guide for property in Classes 43.1 and 43.2 of Schedule II to the Regulations and for Canadian renewable and conservation expense purposes, and similar income tax rules to 127.491(35) specify that such guidance is conclusive with regard to engineering and scientific matters (see for example the definition “Canadian renewable and conservation expense” in subsection 66.1(6) of the Act).

### **Clean electricity investment tax credit — purpose**

ITA  
127.491(36)

Subsection 127.491(36) is an interpretative provision that describes the intended purpose of the clean electricity investment tax credit: to encourage the investment of capital in the deployment of clean electricity property in Canada.

### **Clause 58**

#### **Adjusted taxable income determined**

ITA  
127.52(1)(d.1)

Paragraph 38(a.1) provides that the taxable capital gains inclusion rate is 0% on the donation of publicly listed securities to qualified donees. Paragraph 125.52(1)(d.1) provides that the taxable

capital gains inclusion rate on the donation of publicly listed securities will be 3/10 (or 30%) for the purposes of computing an individual's minimum tax.

Paragraph 125.52(1)(d.1) is amended to provide that this paragraph would not apply to donations of a flow-through class of property (as defined in section 54). As such, donations of a flow-through class of property would not be subject to the AMT. Donations of a flow-through share class of property are addressed in new paragraph 127.52(1)(d.2). This amendment applies to taxation years that begin after 2023.

ITA  
127.52(1)(d.2)

This amendment adds new paragraph 127.52(1)(d.2). This amendment provides that the taxable capital gains inclusion rate on the donation of publicly listed securities will be 3/10 (or 30%) for the purposes of computing an individual's minimum tax of the capital gain that is the "true" capital gain from the disposition of a flow-through share class of property. This amendment applies to taxation years that begin after 2023.

ITA  
127.52(1)(h)(vi)

Paragraph 127.52(1)(h) limits the amounts deductible under sections 110 to 110.7 for the purposes of computing an individual's minimum tax – only those amounts specifically listed in this paragraph may be deducted.

Subparagraph 127.52(1)(h)(vi) provides for a deduction of all gains that were subject to a deduction under subsection 110.61(2) (capital gains deduction for a qualifying business transfer to an employee ownership trust). This subparagraph is amended to add a reference to subsection 110.62(2) (capital gains deduction for a qualifying cooperative conversion of a corporation to a worker cooperative).

This amendment applies to taxation years that begin after 2023.

## **Clause 59**

### **Application of section 127.5**

ITA  
127.55(f)

Section 127.55 limits the application of the alternative minimum tax set out in section 127.5.

Paragraph 127.55(f) is amended to add a reference to trusts established under:

- a law of Canada or a province if the trust is for the benefit of an Indigenous group, community, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, or
- a treaty or a settlement agreement between His Majesty in right of Canada, or His Majesty in right of a province, and an Indigenous group, community, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*

provided that all, or substantially all, of the contributions to the trust before the end of the year are amounts paid under the law, treaty, or settlement agreement described above, or are reasonably traceable to those amounts (“Settlement Trusts”).

As a result, these trusts would not be subject to alternative minimum tax.

An exemption from the alternative minimum tax would also be provided for trusts where all of the beneficiaries are any combination of the following persons or entities:

- A. all of the members of a recognized Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B. a public body performing a function of government in Canada (within the meaning of the *Income Tax Act*) in relation to an Indigenous group, community, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- C. a registered charity or a non-profit organization that is organized and operated primarily for health, education, social welfare, or community improvement for the benefit of the members of an Indigenous group, community, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- D. a corporation, all of the shares or capital of which are owned by any combination of persons or entities described in paragraph (b) or (c) above, a Settlement Trust, or another corporation described in this clause; or
- E. a Settlement Trust.

These amendments will apply to taxation years that begin after 2023.

## **Clause 60**

### **Where individual bankrupt**

ITA

128(2)(e)(ii)(A)

Paragraph 128(2)(e) provides rules applicable where an individual has become bankrupt and requires the trustee in bankruptcy, on behalf of the individual, to file a return of the individual’s income computed as if the individual were not entitled to any deduction in the computation of taxable income other than certain losses carried over from other years.

Clause 128(2)(e)(ii)(A) is amended to include references to sections 110.61 and 110.62, consequential on the introduction of these sections, which provide for capital gain exemptions

available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively. This ensures that, in computing the individual's taxable income for the year, there may be deducted amounts claimed under sections 110.61 and 110.62 to the extent that the amounts claimed are in respect of an amount included in income under subparagraph (e)(i).

This amendment is deemed to have come into force on January 1, 2024.

ITA  
128(2)(f)(iii)

Paragraph 128(2)(f) requires an individual who is bankrupt at any time in a taxation year to file an income tax return for the year, in addition to the return required under paragraph 128(2)(e) to be filed by the trustee in bankruptcy. For this purpose, the individual's income is to be determined as if certain listed deductions were not available.

Subparagraph 128(2)(f)(iii) is amended to include in the list of deductions that are not available a deduction under section 110.61 and new section 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively.

This amendment is deemed to have come into force on January 1, 2024.

## **Clause 61**

### **Definitions**

ITA  
129(4)

The definitions "income" or "loss" in subsection 129(4) determine what income or loss from a source that is a property means for the purposes of determining a corporation's "aggregate investment income" (AII) for a taxation year. AII is relevant in establishing the corporation's surtax liability under section 123.3, the availability of the general rate reduction under section 123.4, and the "non-eligible refundable dividend tax on hand" balance.

Paragraph (b) of the definition "income" or "loss" provides that no account is to be taken of income or loss from a property that is incident to or pertains to an active business carried on by the corporation, or that is used or held by the corporation principally to gain or produce income from an active business.

Consequential on the introduction of the new elective relief mechanism with respect to "foreign accrual business income" (FABI) earned by a controlled foreign affiliate of a Canadian corporation in section 93.4, paragraph (b) is amended and reorganized to ensure that, where an election under subsection 93.4(2) has been filed by the corporation or by a partnership of which the corporation is a member (or of which the corporation is deemed to be a member under

subsection 93.1(3), which provides a look-through rule for tiered partnership structures), no account is to be taken of the portion of an amount included in a corporation's income under subsection 91(1) (or deducted under subsection 91(4)) to the extent that it can reasonably be considered to be attributable to the FABI of a controlled foreign affiliate.

More specifically, new clause (b)(iii)(A) is meant to ensure that, where an election under subsection 93.4(2) has been made, the "FABI amount" for the year under that subsection (i.e., the portion of the amount, if any, included in computing the taxpayer's income for the year under subsection 91(1) that may reasonably be regarded as attributable to the FABI of any controlled foreign affiliate) – which would generally not be included in AII had it been earned directly by the Canadian corporation – is not indirectly included in the corporation's AII through the foreign accrual property income (FAPI) regime. Similarly, new clause (iii)(B) aims to ensure that deductions claimed under subsection 91(4) in computing the corporation's income do not unduly reduce the corporation's AII if the deduction can reasonably be considered to be attributable to foreign accrual tax paid in respect of FABI.

For more information, see the commentary on subsection 93.4(2).

### *Example*

#### Facts

*Canco is a Canadian corporation which holds all of the issued and outstanding shares of CFA, a controlled foreign affiliate of Canco.*

*CFA earns income that is included in FAPI, a portion of which can (in some years) reasonably be considered to be attributable to FABI.*

*Over years 1 through 4, the situation can be summarized as follows:*

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
<i>FAPI (other than FABI)</i>	100	-	-	30
<i>FABI</i>	<u>(50)</u>	<u>50</u>	<u>20</u>	<u>20</u>
<i>Total 91(1) inclusion</i>	50	50	20	50
<i>Foreign Accrual Tax</i>	(10)	(10)	(4)	-
<i>Relevant Tax Factor</i>	<u>1.9</u>	<u>1.9</u>	<u>4</u>	<u>4</u>
<i>Total 91(4) deduction</i>	(19)	(19)	(16)	-

#### Analysis

#### Determining Canco's AII without the amendment to paragraph (b) of the "income" or "loss" definition

*Without the amendment to paragraph (b) of the definition "income" or "loss", the following amounts – representing the difference between the amount included in computing Canco's*

*income for the year under subsection 91(1) and the amount deducted in computing Canco's income for the year under subsection 91(4) – would be included in Canco's AII for each year pursuant to the new relevant tax factor rules:*

*Year 1: \$31*

*Year 2: \$31*

*Year 3: \$4*

*Year 4: \$50*

*Determining Canco's AII with the amendment to paragraph (b) of the "income" or "loss" definition*

*By virtue of new subparagraph (b)(iii) of the definition "income" or "loss" in subsection 129(4), the following amounts are included in Canco's AII for each year:*

*Year 1: \$31*

*In Year 1, Canco earned FAPI (other than FABI) and generated a foreign accrual business loss (FABL). Thus, no portion of the amounts included and deducted in computing Canco's income under subsections 91(1) and (4), respectively, can reasonably be considered to be attributable to CFA's FABI. Consequently, subparagraph (b)(iii) does not apply and the amount included in Canco's AII for the year is unchanged.*

*Year 2: \$31*

*In Year 2, CFA earned \$50 of income from FABI sources, which is included in computing Canco's income for the year under subsection 91(1). However, because of the application of paragraph (b) of the FABI definition in subsection 93.4(1), CFA's FABL amount of \$50 from Year 1 results in CFA having \$0 of FABI in Year 2. It would thus be reasonable to consider that no portion of CFA's tax liability is attributable to FABI, such that no election under subsection 93.4(2) could be made (hence the relevant tax factor of 1.9). Consequently, new subparagraph (b)(iii) would not apply and an amount of \$31 – representing the difference between the amount included in Canco's income for the year under subsection 91(1) and the amount deducted in computing Canco's income for the year under subsection 91(4) – would be included in Canco's AII for the year.*

*Year 3: \$0*

*In Year 3, Canco can file an election under subsection 93.4(2) and it is reasonable to consider that the entirety of the amounts included and deducted in computing Canco's income for the year under subsections 91(1) and (4), respectively, are attributable to CFA's FABI. As such, both amounts will be disregarded in determining Canco's AII for the year. In other words, the amount of \$20 included in Canco's income under subsection 91(1) will not be included in Canco's AII*

*and the amount of \$16 deducted in computing Canco's income under subsection 91(4) cannot be used to reduce Canco's AII for the year (if, for example, Canco had other sources of AII in the year, the \$16 deduction under subsection 91(4) could not be applied against it).*

*Year 4: \$30*

*In Year 4, Canco earns \$20 of FABI and \$30 of FAPI (other than FABI) and pays no tax. While the FABI amount (i.e., the portion of an amount in respect of a share that has been included in computing the income of Canco under subsection 91(1) for a taxation year or for any of the 5 immediately preceding taxation years that can reasonably be regarded as attributable to the FABI of CFA) is a cumulative amount, clause (iii)(A) only applies to disregard amounts added to the FABI amount for the year, or in this case, \$20. Therefore, although no foreign tax was paid in the year, Canco could file an election under subsection 93.4(2) in order to ensure that an amount of \$20 is disregarded in calculating its AII for the year, resulting in an addition of \$30 to its AII for the year.*

In the French version of the Act, the definitions “income” and “revenue” are also reorganized in order to better align with the English definitions.

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

## **Clause 62**

ITA  
131

Section 131 sets out rules relating to the taxation of mutual fund corporations and their shareholders, including the rules in subsection 131(8) that define the expression “mutual fund corporation”. Section 131 is amended by adding a limitation to preclude a corporation from being a mutual fund corporation even if it would otherwise qualify under subsection 131(8) (for more information, see the commentary on new subsections 131(8.2) and (8.3)).

### **Meaning of *mutual fund corporation***

ITA  
131(8)

Subsection 131(8) defines the expression “mutual fund corporation”. In general, a corporation is a mutual fund corporation if it is a Canadian public corporation (as defined in subsection 89(1)), its only undertaking is the investment of its funds and its issued shares are redeemable on demand and their fair market value is no less than 95% of the fair market value of all the corporation's issued shares.

Consequential on the introduction of new subsections 131(8.2) and (8.3), this subsection is amended to add a reference to those provisions. As a result, even if a corporation qualifies as a mutual fund corporation under this subsection, it will not be a mutual fund corporation for

purposes of the Act if it is described in subsection (8.2) and not subject to the exception in subsection (8.3). For more information, see the commentary on subsections (8.2) and (8.3).

This amendment generally applies to taxation years that begin on or after January 1, 2025.

### **Substantial interest**

ITA  
131(8.2)

New subsection 131(8.2) introduces a restriction deeming a corporation not to be a mutual fund corporation even if that corporation otherwise qualifies under subsection 131(8). This subsection does not apply to corporations which are “prescribed labour-sponsored venture capital corporations” as defined in section 6701 of the Regulations.

Paragraphs (a) and (b) provide two requirements each of which must be met in order for this subsection to apply to preclude a corporation from being a mutual fund corporation.

The requirement in paragraph (a) is met if “specified persons” have a “substantial interest” in the corporation. For purposes of this subsection, “specified persons” are defined as a person (including a trust) or partnership, or any combination of persons or partnerships that do not deal with each other at arm’s length. A “substantial interest” in a corporation is defined as a fair market value interest in the corporation of over ten per cent.

The requirement in paragraph (b) is met if the corporation is controlled by, or for the benefit of, the “specified persons” referred to in paragraph (a) who hold a substantial interest in the corporation.

This amendment applies to taxation years that begin on or after January 1, 2025, unless a corporation was controlled by or for the benefit of a *real estate investment trust* (as defined in subsection 122.1(1) of the Act) on April 16, 2024, in which case this subsection applies to taxation years of the corporation that begin on or after January 1, 2026. This extension is intended to provide certain taxpayers with legacy mutual fund corporation structures sufficient time to respond to this new rule.

### **Exception**

ITA  
131(8.3)

New subsection 131(8.3) provides an exception from the application of subsection 131(8.2) for a corporation during the first two years of its existence, provided that the aggregate fair market value of the shares of the corporation owned by the “specified persons” (as described in subsection (8.2)) does not exceed 5 million dollars. This exception recognizes that a start-up mutual fund corporation may exceed the ten per cent fair market value threshold during its initial

capital-raising stage as a result of a specified person with a controlling interest providing an initial capital investment.

This amendment generally applies to taxation years that begin on or after January 1, 2025.

### **Clause 63**

#### **Agricultural cooperatives – tax-deferred patronage dividends**

ITA  
135.1

Section 135.1 of the Act provides a tax deferral in respect of patronage payments received by eligible members of eligible agricultural cooperatives in the form of shares of the cooperative. Absent the tax deferral, such payments would be taxable to the member in the year of receipt. The income inclusion is generally deferred until the disposition (or deemed disposition) of the share by the eligible member. The cooperative is also able to avoid the withholding obligation that would otherwise apply on such payments. However, the cooperative would have a withholding obligation if and when the shares are redeemed.

#### **Definitions**

ITA  
135.1(1)

#### ***“tax deferred cooperative share”***

The definition "tax deferred cooperative share" in subsection 135.1(1) sets out the type of shares that are eligible for beneficial treatment under section 135.1. Under the current version of the definition, such shares must be issued after 2005 and before 2026.

The definition is amended to apply in respect of eligible shares issued after 2005 and before 2031.

### **Clause 64**

#### **Cooperative not private corporation**

ITA  
136(1)

Section 136 provides rules that apply to certain cooperative corporations. For the purposes of the Act, these cooperatives corporations are generally considered not to be private corporations, except for purposes of certain provisions that are listed in subsection 136(1).

Subsection 136(1) is amended to add the definition “qualifying cooperative conversion” in subsection 248(1) as another instance in which these cooperative corporations are treated as private corporations. This means that a cooperative corporation (as described under section 136) will be treated as a private corporation for the purposes of the definition “qualifying cooperative conversion” in subsection 248(1), which is referenced in the new 10-year capital gains reserve under subparagraph 40(1)(a)(iii) and subsection 40(1.4), the new capital gains deduction under section 110.62 for qualifying cooperative conversions.

For more information, see the commentary to new subparagraph 40(1)(a)(iii) and subsection 40(1.4), section 110.62 and the definition “qualifying cooperative conversion” in subsection 248(1).

This amendment is deemed to have come into force on January 1, 2024.

## **Clause 65**

### **Deemed fair market value**

ITA  
142.7(4)

Subsection 142.7(4) is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

This amendment applies to taxation years and fiscal periods that begin after November 4, 2025.

## **Clause 66**

### **Definitions**

ITA  
146(1)

Consequential on the introduction of tax rules applicable to RRSPs established at the direction of an unclaimed property authority, the definitions “benefit”, “issuer”, “refund of premiums”, and “retirement savings plan” in subsection 146(1) are amended.

See the additional commentary for the new definitions “unclaimed property authority” and “unlocated individual” in subsection 248(1), as well as the commentary on new subsections 146(23) and (24).

### ***“benefit”***

The definition “benefit” describes amounts received from an RRSP that are required to be included in an annuitant's income under subsection 146(8). Paragraphs (a) to (c.1) of the definition set out various exemptions from being a taxable “benefit”.

The definition is amended to add paragraph (c.2) to the list of amounts paid out of an RRSP that are exempted from being a “benefit” to a taxpayer. Paragraph (c.2) will exclude amounts paid or transferred from an RRSP to an unclaimed property authority. As a result, for the purposes of subsection 146(8) of the Act, the amount will not be a taxable benefit.

This amendment applies in respect of amounts paid or transferred to an unclaimed property authority after December 31, 2026.

### ***“issuer”***

The definition “issuer” means the trustee or other person described in the definition of “retirement savings plan” with whom the annuitant has arranged to establish an RRSP. This definition is amended to include an arrangement established at the direction of an unclaimed property authority. In cases where the annuitant is an unlocated individual, an unclaimed property authority (or a delegated agent) may function as an issuer of an RRSP, notwithstanding the ordinary requirement that an annuitant and an issuer enter into a contract.

This amendment comes into force on January 1, 2027.

### ***“refund of premiums”***

The definition “refund of premiums” is relevant in determining the amount that, on the death of an annuitant under an RRSP, is included in a beneficiary's income rather than the annuitant's income. The definition is amended such that a payment out of an RRSP held under the direction of unclaimed property authority is not a “refund of premiums”. Among other things, the practical effect is to turn off the rollover rules in paragraph 60(1). Survivor beneficiaries who claim and receive RRSP property held under the direction of an unclaimed property authority will have a taxable income inclusion under subsection 146(8) unless they receive a tax-deferred transfer via new subsection 146(24).

This amendment comes into force on January 1, 2027.

### ***“retirement savings plan”***

The definition “retirement savings plan” is relevant for determining the types of arrangements that qualify to register with the Canada Revenue Agency as an RRSP. This definition is amended to include the arrangements or plans established by unclaimed property authorities. Two of the traditional requirements to be a “retirement savings plan” (i.e., an annuitant is a contracting party; contributions are made by the annuitant or a spouse to the issuer of the plan) will not apply to arrangements established at the direction of an unclaimed property authority.

This amendment comes into force on January 1, 2027.

### **Acceptance of plan for registration**

ITA  
146(3)

Subsection 146(3) provides rules for the types of RRSPs that may qualify for registration. New paragraph 146(3)(c) is added to permit RRSPs established under the direction of an unclaimed property authority in respect of an unlocated individual to qualify for registration notwithstanding that it does not meet the prescribed conditions under subsection 146(2).

See the additional commentary in the amendments to subsection 248(1) that introduce the definitions of unclaimed property authority and unlocated individual.

This amendment comes into force on January 1, 2027.

### **Transfer of funds**

ITA  
146(16)

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

Paragraph (a.2) of the French version of subsection 146(16) was erroneously repealed. Paragraph (a.2) permits transfers from an RRSP to an FHSA under certain conditions. This amendment restores paragraph (a.2) in the French version of the Act.

This amendment is deemed to have come into force on June 20, 2024.

### **Unclaimed property authority RRSP – post-death treatment**

ITA  
146(23)

Subsection 146(23) is introduced to modify rules for an RRSP established by an unclaimed property authority in respect of an unlocated individual. This new subsection turns off RRSP rules that ordinarily apply at the death of an annuitant in respect of property held by the RRSP including subsection 146(8.8) to (8.93), paragraph 146(4)(c) and a portion of subsection 146(20).

Paragraph 146(23)(a) creates exceptions to the rules in subsections 146(8.8) to (8.93) that ordinarily apply on the death of the annuitant. An RRSP held under the direction of an unclaimed property authority will not be required to include the fair market value of the plan property as an income of the annuitant in the year of the annuitant's death. Tax considerations will apply at a later date when an eligible claimant receives the property from the unclaimed property authority.

Paragraph 146(23)(b) provides that paragraph 146(4)(c) will not apply to an RRSP held by an unclaimed property authority. Ordinarily under paragraph (4)(c), an RRSP trust ceases to be tax-exempt after December 31 of the year that follows the year of death of the annuitant. As a result of paragraph (23)(b), an RRSP held under the direction of an unclaimed property authority will not lose tax-exempt status following the death of the annuitant.

Paragraph 146(23)(c) modifies how subsection 146(20) will apply to an RRSP established and managed under the direction of an unclaimed property authority as a depositary RRSP. It specifies that subsection 146(20) is to be read without reference to its paragraph (c). As a result, whether or not the unlocated individual is alive in the year in which an amount is credited or added to the plan, the crediting or adding is deemed not to have been received by any person (and thus is not a taxable amount).

This amendment applies in respect of RRSPs established by an unclaimed property authority after December 31, 2026.

### **Unclaimed property authority RRSP – transfers**

ITA  
146(24)

New subsection 146(24) creates a deeming rule for RRSPs established by an unclaimed property authority in respect of an unlocated individual. It applies when a claimant of the unclaimed RRSP property is:

- the member of the registered pension plan from which the unclaimed property authority received the property that is claimed;
- the annuitant under the RRSP from which the unclaimed property authority received the property that is claimed;
- a surviving spouse or common-law partner of that member or annuitant (as the case may be); or
- a child or grandchild of that member or annuitant (as the case may be), if the child or grandchild was financially dependent on the member or annuitant, by reason of mental or physical infirmity, immediately before the member or annuitant's death.

If one of those individuals is the eligible claimant of RRSP property held under the direction of an unclaimed property authority, that individual will be deemed to be the annuitant of the RRSP for the purposes of subsection 146(16) and will thus be afforded the same tax-deferred portability options that are ordinarily available to an RRSP annuitant.

This amendment applies in respect of RRSPs established by an unclaimed property authority after December 31, 2026.

### **Clause 67**

#### **Trust ceasing to be a TFSA on death of holder**

ITA  
146.2(9)

Subsection 146.2(9) provides several rules that modify the tax treatment of trustee TFSA on the death of the holder.

- Paragraph 146.2(9)(a) deems the trustee arrangement to continue to be a TFSA for specified provisions of the Act and Regulations from the time the holder dies until the end of the following year (the “exempt period”).
- Paragraph 146.2(9)(b) requires a taxpayer to include in income any payment from the trust during the exempt period made in satisfaction of the taxpayer’s beneficial interest in the trust, to the extent it represents income earned on or appreciation in the value of the trust’s property during that period.
- Paragraph 146.2(9)(c) is relevant only if the trust continues to exist after the end of the exempt period. It provides that the trust is required to include in its income for its first taxation year any income or appreciation accrued during the post-death exempt period that was not paid out during the exempt period.

The formula in paragraph 146.2(9)(b), which determines the amount of income to be included in a taxpayer’s income, previously  $A - B$ , is replaced by  $A - B - C$ . Variable A remains the amount of the payment. Former variable B is largely preserved under new variable C while new variable B is the amount of “exempt contribution” (as defined in subsection 207.01(1) – see also the amendment to this definition) derived from the payment. Variable C reflects amounts paid by the trust other than amounts covered by variable B (such amounts remain limited to the fair market value of the TFSA trust prior to death). The amendment to paragraph 146.2(9)(b) would allow amounts paid from a TFSA that become an “exempt contribution” of the surviving spouse to be excluded from the surviving spouse’s income, even the portion arising from income or appreciation accrued during the exempt period.

Paragraph 146.2(9)(c) is also amended to ensure that the amount included in the income of the trust in its first taxation year following the exempt period excludes payments from which exempt contributions are derived. This is achieved by subtracting all exempt-period payments (variable E) and the fair market value of the TFSA trust upon the holder’s death (variable F) from the sum of the fair market value of the TFSA trust upon the end of the exempt-period and all payments made from the trust during the exempt period (variable D).

The resulting tax treatment mirrors the tax treatment of investment income within a TFSA of a successor holder within the exempt period and is intended to provide relief for cases where a spouse has not been or cannot be designated (as is the case under the *Quebec civil code*) as the successor holder of a TFSA. Specifically, provided that post-death investment income is paid to a surviving spouse who then makes an exempt contribution of at least that amount, the full post-death balance of a trustee TFSA could be paid out to the surviving spouse without being included in income. In other words, the amount excluded from a survivor’s income is no longer limited to the fair market value of the TFSA at the holder’s death. However, income or

appreciation accruing after the exempt period would continue to give rise to an income inclusion, as under current practice.

This amendment comes into force on January 1, 2026.

## **Clause 68**

### **Definitions**

ITA  
146.3(1)

Consequential on the introduction of tax rules applicable to RRIFs established at the direction of an unclaimed property authority, several definitions in subsection 146.3(1) are amended.

See the additional commentary for the new definitions “unclaimed property authority” and “unlocated individual” in subsection 248(1), as well as the commentary on new subsections 146.3(1.6), (1.7), (23) and (24).

#### ***“carrier”***

The definition “carrier” refers to the trustee or other person described in the definition of retirement income fund with whom the annuitant has arranged to establish a RRIF. This definition is amended to include an arrangement established at the direction of an unclaimed property authority. In cases where the annuitant is an unlocated individual, an unclaimed property authority (or a delegated agent) may function as a carrier of a RRIF, notwithstanding the ordinary requirement that an annuitant and a carrier enter into a contract.

#### ***“designated benefit”***

A “designated benefit” is relevant in the case of a distribution out of a RRIF to a spouse or child after the death of the RRIF annuitant. The definition is amended such that a payment out of a RRIF held under the direction of unclaimed property authority is not a “designated benefit”. Among other things, the practical effect is to turn off the rollover rules in paragraph 60(1). Survivor beneficiaries who claim and receive RRIF property held by an unclaimed property authority will have a taxable income inclusion under subsection 146.3(5) unless they receive a tax-deferred transfer described in new subsection 146.3(17).

#### ***“retirement income fund”***

The definition of “retirement income fund” describes the types of arrangements that qualify for registration with the Canada Revenue Agency that are relevant to subsection 146.3(2). This definition is amended in two ways. First, the traditional arrangements that constitute a “retirement income fund” will now be paragraph (a). Second, a new paragraph (b) provides that an arrangement established by an “unclaimed property authority” in respect of an “unlocated

individual” is also a retirement income fund, notwithstanding the absence of an annuitant as a contracting party.

These amendments come into force on January 1, 2027.

### **Minimum amount – unclaimed property**

ITA

146.3(1.6) and (1.7)

New subsection 146.3(1.6) provides that a RRIF established by an unclaimed property authority will have a minimum amount of zero (despite the definition “minimum amount” in subsection 146.3(1)) for each taxation year that the plan is held by the unclaimed property authority. Accordingly, such a RRIF will not be required to make minimum payments to the annuitant (until the year of the claim).

New subsection 146.3(1.7) provides two conditions that will apply in the year a claim is made to an unclaimed property authority to receive property from a RRIF held by the authority. Under paragraph (1.7)(a), when an unclaimed property authority directs a transfer of property to a claimant, a catch-up minimum amount shall be payable (and is taxable) in the year of the claim. The “minimum amount” will be equal to the total of minimum amounts that would have been payable in the current year and each preceding taxation year.

For example, Fred Flatstone opened an RRSP in his early twenties that he forgot about. Later he found out that the account was transferred to an unclaimed property authority and was converted into a RRIF when Fred reached age 71. Fred claimed the amount in 2035 at age 75. For illustrative purposes, assume that a \$500 minimum amount would ordinarily have been paid to Fred in each year from age 72 to 75 (i.e., taxation years 2032 to 2035). The minimum amount that the unclaimed property will need to pay to Fred in 2035 (reported as taxable income via a TRIF) is \$2,000.

Furthermore, under paragraph (1.7)(b), an amount not less than the “minimum amount” determined under paragraph (1.7)(a) must be paid to the claimant before a tax-deferred amount (net of the minimum amount paid out) may be transferred to another registered retirement vehicle. Note from the commentary on new subsection 146.3(17) that a limited group of claimants are entitled to tax-deferred transfers.

It is intended that no tax be withheld from the accumulated minimum amount withdrawn from a RRIF, consistent with current practice with respect to withholding on RRIF minimum amounts. See the additional commentary on amendments to Part I of the *Income Tax Regulations* to ensure that withholding does not apply in respect of the accumulated minimum amount.

These amendments come into force on January 1, 2027.

### **Acceptance of fund for registration**

ITA  
146.3(2.1)

Subsection 146.3(2) sets out the conditions that a RRIF must comply with in order to be registered with the Canada Revenue Agency. New subsection 146.3(2.1) of the Act would permit RRIFs established by an unclaimed property authority in respect of an unlocated individual to qualify for registration without satisfying all the standard registration requirements that would ordinarily apply to traditional RRIFs.

This amendment comes into force on January 1, 2027.

**Benefits taxable**

ITA  
146.3(5)

Under subsection 146.3(5) of the Act, amounts received by a taxpayer from a RRIF are generally required to be included in the taxpayer's income (i.e., via T4RIF) subject to certain exceptions.

New paragraph 146.3(5)(e) provides an exception from the income inclusion requirement when property from an unclaimed RRIF is paid or transferred to an “unclaimed property authority”. Tax considerations will apply at a later date when an eligible claimant receives the property from the unclaimed property authority.

This amendment applies in respect of amounts paid or transferred to an unclaimed property authority after December 31, 2026.

**Unclaimed property authority RRIF – post-death treatment**

ITA  
146.3(16)

Subsection 146.3(16) is introduced to modify rules for a RRIF established by an unclaimed property authority in respect of an unlocated individual. This new subsection turns off rules that ordinarily apply at the death of a RRIF annuitant, including subsections 146.3(3.1) and (6.1) to (6.4) and a portion of subsection 146.3(15).

Paragraph 146.3(16)(a) creates exceptions to the rules in subsections 146.3(6.1) to (6.4) that ordinarily apply on the death of the annuitant. A RRIF held under the direction of an unclaimed property authority will not be required to include the fair market value of the plan property as an income of the annuitant in the year of the annuitant's death. Tax considerations will apply at a later date when an eligible claimant receives the property from the unclaimed property authority.

Paragraph (16)(b) provides that subsection 146.3(3.1) will not apply to a RRIF held by an unclaimed property authority. Ordinarily under subsection (3.1), a RRIF trust ceases to be tax-exempt after December 31 of the year that follows the year of death of the annuitant. As a result

of paragraph (16)(b), a RRIF held under the direction of an unclaimed property authority will not lose tax-exempt status following the death of the annuitant.

Paragraph (16)(c) modifies how subsection 146.3(15) will apply to a RRIF established and managed under the direction of an unclaimed property authority as a depositary RRIF. Specifically, 146.3(15) is to be read without reference to its paragraph (c). As a result, whether or not the unlocated individual is alive in the year in which an amount is credited or added to the plan, the crediting or adding is deemed not to have been received by any person (and thus is not a taxable amount).

This amendment applies in respect of RRIFs established by an unclaimed property authority that receive property in respect of an amount paid or transferred to an unclaimed property authority after December 31, 2026.

### **Unclaimed property authority RRIF – transfers**

ITA

146.3(17)

New subsection 146.3(17) creates a deeming rule for RRIFs established by an unclaimed property authority in respect of an unlocated individual. It applies when a claimant of the unclaimed RRIF property is:

- the member of the registered pension plan from which the unclaimed property authority received the property that is claimed;
- the annuitant under the RRSP or RRIF from which the unclaimed property authority received the property that is claimed;
- a surviving spouse or common-law partner of that member or annuitant (as the case may be); or
- a child or grandchild of that member or annuitant (as the case may be), if the child or grandchild was financially dependent on the member or annuitant, by reason of mental or physical infirmity, immediately before the member or annuitant's death.

If one of those individuals is the eligible claimant of the RRIF property, that individual will be deemed to be the annuitant of the RRIF for the purposes of paragraphs 146.3(2)(d) and (e) and subsection 146.3(14.1), thus the claimant will be afforded the same tax-deferred portability options that are ordinarily available to a RRIF annuitant.

This amendment applies in respect of RRIFs established by an unclaimed property authority that receive property in respect of an amount paid or transferred to the unclaimed property authority after December 31, 2026.

### **Clause 69**

#### **Definitions**

ITA  
146.6(1)

***“annual FHSA limit”***

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

The definition is amended to ensure that designated withdrawals made after a qualifying withdrawal do not unintentionally result in disallowance of deductions for contributions made prior to the qualifying withdrawal. In particular, variable C in paragraph (a) of the definition is amended to subtract amounts contributed to an FHSA after the taxpayer's first qualifying withdrawal from the total of all designated amounts described in paragraph (b) of the definition designated amount in subsection 207.01(1) for the year.

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

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

The definition is amended to clarify that the arrangement must be a qualifying arrangement in order to be considered an FHSA. See the definition of “qualifying arrangement”, which sets out the conditions that an arrangement must meet in order to be a qualifying arrangement at any particular time.

These amendments are deemed to have come into force on April 1, 2023.

**Deemed transfer or distribution**

ITA  
146.6(15)

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

Paragraph 146.6(15)(a) allows the legal representative of a deceased holder's estate and the survivor to jointly designate (via a prescribed form) to have the FHSA proceeds that were paid to the estate treated as having been transferred from the FHSA of the deceased holder to an FHSA, RRSP or RRIF of the survivor.

In the same vein as the recently amended subsection 146(8.1), this amendment will permit a joint designation to be filed in cases where a spouse or common-law partner is neither a successor holder nor a beneficiary of the FHSA or the estate of the deceased FHSA holder, but where a payment is made from the estate to a surviving spouse or common-law partner in accordance with a court order or written agreement relating to rights or interests in respect of the property from a marriage or common-law partnership. The payment will be a deemed transfer or distribution to the extent it does not exceed the “survivor’s amount” (i.e., the amount received from the FHSA by the estate that the survivor is entitled to). Furthermore, the words “in full or partial satisfaction of the survivor’s rights” are removed, as they are unnecessary for the interpretation and application of the provision.

This amendment comes into force on April 1, 2023.

## **Clause 70**

### **Commutation of annuity contract**

ITA

147.4(4) and (5)

Where an individual acquires ownership of an annuity in satisfaction of the individual’s entitlement to benefits under a registered pension plan (RPP) and certain other conditions are met, subsection 147.4(1) deems the individual not to have received an amount from the RPP as a result of acquiring the annuity and deems amounts received under the contract to be amounts received under the RPP. As a consequence, there is no immediate taxation on acquisition of the annuity and any payments under the contract are included in the recipient’s income (under subparagraph 56(1)(a)(i), as a superannuation or pension benefit) in the year in which they are received.

The Act currently prohibits the value of the annuity from being transferred to a registered vehicle of the annuitant. Section 147.4 is amended by adding subsections (4) and (5) to allow for a transfer of the commuted value of the annuity in certain circumstances.

Subsection 147.4(4) sets out the situations in which an annuity contract may be commuted and transferred on a tax-deferred basis. First, the conditions set out in paragraphs 147.4(1)(a) to (e) must be satisfied when the annuitant acquired an interest in the annuity contract. Second, the transfer is made because:

- a spouse or common-law partner or former spouse or common-law partner becomes entitled to a portion of the benefits under the contract on the breakdown of marriage or common-law partnership; or
- the *Pension Benefits Standards Act, 1985*, or similar law of a province permits the annuitant to commute or surrender the annuity.

New subsection 147.4(5) effectively deems an amount transferred from an annuity contract to a registered vehicle of the annuitant to be an amount transferred from the RPP (i.e., the original

source of funds that purchased the annuity). Accordingly, it effectively permits a tax-deferred transfer to that other registered vehicle as if section 147.3 applied to a transfer out of an RPP.

Note that if the original annuity purchase was sourced from a defined benefit provision of an RPP, the prescribed limit that applies under paragraph 147.3(4)(c) and section 8517 of the *Income Tax Regulations* to transfers out of a defined benefit provision will also apply to the indirect transfer from the annuity to other registered vehicles.

This amendment is deemed to have come into force on January 1, 2018.

## Clause 71

### Exceptions – trusts

ITA  
150(1.2)

Subsection 150(1) stipulates the tax return requirements and the filing dates for different categories of taxpayers. Subsection 150(1.1) sets out exceptions to subsection 150(1), when the filing of a tax return is not required. Subsection 150(1.2) provides that subsection 150(1.1) does not apply in respect of an express trust, unless it meets one of the exceptions listed in subsection 150(1.2).

In addition, a trust that is required to file a return under subsection 150(1) is not required to provide the additional information set out in section 204.2 of the Regulations if it meets one of the exceptions listed in subsection 150(1.2). As such, trusts that are required to file a return, and that do not meet one of these exceptions, will be required to provide the additional information outlined in section 204.2 of the Regulations.

Several amendments are being made to add or broaden exceptions in subsection 150(1.2).

ITA  
150(1.2)(a)

Paragraph 150(1.2)(a) provides that beneficial reporting does not apply to trusts that have been in existence for less than three months at the end of the year—this is intended to capture two possibilities: trusts that were created less than three months before the end of the year and short-term trusts that existed for a period of less than three months (e.g., a trust created in June that is dissolved in July). Paragraph (a) is amended to clarify that the three-month relieving rule applies to trusts that have been in existence for less than three months.

This amendment applies for taxation years that end after December 30, 2024.

ITA  
150(1.2)(b) and (c)

Paragraph 150(1.2)(b) provides that the beneficial ownership reporting requirement does not apply in respect of a trust if the trust holds assets with a total fair market value that does not exceed \$50,000 throughout the year, where the only assets held by the trust throughout the year are one or more of:

- money,
- certain government debt obligations,
- a share, debt obligation or right listed on a designated stock exchange,
- a share of the capital stock of a mutual fund corporation,
- a unit of a mutual fund trust,
- an interest in a related segregated fund (within the meaning assigned by paragraph 138.1(1)(a), and
- an interest, as a beneficiary under a trust, that is listed on a designated stock exchange.

Paragraph 150(1.2)(b) is amended to remove the requirement that the assets of the trust constitute the specific assets currently prescribed in that paragraph.

New paragraph 150(1.2)(b.1) provides an expanded relieving exception where each beneficiary of the trust is an individual and related to each trustee of the trust. This new exception would apply where:

- each trustee is an individual,
- each beneficiary is an individual and is related to each trustee, and
- the total fair market value of the property of the trust does not exceed \$250,000 throughout the year and the only assets held by the trust throughout the year are one or more of
  - money,
  - a guaranteed investment certificate issued by a Canadian bank, trust company incorporated under the laws of Canada or of a province,
  - a debt obligation described in paragraph (a) of the definition *fully exempt interest* in subsection 212(3),
  - debt obligations issued by
    - a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,
    - a corporation the shares of which are listed on a designated stock exchange outside Canada, or
    - an authorized foreign bank that are payable at a branch in Canada of the bank,
- a share, debt obligation or right listed on a designated stock exchange,
- a share of the capital stock of a mutual fund corporation,
- a unit of a mutual fund trust,
- an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),
- an interest as a beneficiary under a trust, all the units of which are listed on a designated stock exchange,
- personal use property of the trust, or

- a right to receive income or gains on property described above.

Paragraph 150(1.2)(c) provides an exemption to the beneficial ownership reporting requirements for trusts that are required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client or clients (this provides an exception for a professional's general trust account, but not for specific client accounts).

Paragraph 150(1.2)(c) is amended to extend this exception to specific accounts provided the only assets held by the trust throughout the year are money with a value that does not exceed \$250,000.

These amendments apply for taxation years that end after December 30, 2024.

ITA

150(1.2)(b.1)

Paragraph 150(1.2)(b.1) introduced rules that provide the criteria for a relieving exemption that applies for taxation years that end after December 30, 2024. Subparagraph 150(1.2)(b.1)(ii) provides the requirement that each beneficiary is an individual and is related to each trustee. Two amendments are being made to this subparagraph.

- The first amendment provides that the individual beneficiaries of the trust may not themselves be trusts.
- The second amendment provides that a graduated rate estate of an individual may be a beneficiary of the trust provided that individual was a beneficiary of the trust immediately before their death. In order to qualify as a graduated rate estate, a return must be filed for the trust's first taxation year, the trust designates itself as a graduated rate estate in that return and no other trust designates itself as a graduated rate estate for the deceased. This paragraph will provide that the exemption is also available to a trust that would be a graduated rate estate if the trust had properly designated itself as a graduated rate estate.

This amendment applies for taxation years that end after December 30, 2025.

Subparagraph 150(1.2)(b.1)(iii) provides the requirement that, in order to qualify for the relieving rule of paragraph 150(1.2)(b.1), the property in the trust must not exceed a fair market value of \$250,000 and must consist of certain assets, including money and a guaranteed investment certificate issued by a Canadian bank or trust company.

Subparagraph 150(1.2)(b.1)(iii) is amended to provide that qualifying assets include deposits in a Canadian financial institution (as defined in subsection 270(1)) and a guaranteed investment certificate issued by a credit union.

New clause 150(1.2)(b.1)(iii)(L) adds an “exempt policy” (as defined in subsection 12.2(11)) issued by a Canadian life insurer to the list of properties that qualifies under the \$250,000 exemption. An exempt policy is one that is issued primarily for providing protection on death as opposed to a policy that serves as a savings vehicle. For the purposes of the \$250,000 threshold, the policy is valued at its cash surrender value.

These amendments apply for taxation years that end after December 30, 2025.

ITA  
150(1.2)(c)

Subparagraph 150(1.2)(c)(ii) is amended to expand the type of property that may be held in specific client trust accounts to include deposits in a Canadian bank or credit union, a guaranteed investment certificate issued by a Canadian bank, trust company or credit union incorporated under the laws of Canada or of a province.

This amendment applies for taxation years that end after December 30, 2025.

ITA  
150(1.2)(j)

Paragraph 150(1.2)(j) provides an exemption to the beneficial ownership reporting requirements for trusts that are graduated rate estates. In order to qualify as a graduated rate estate, a return must be filed for the trust’s first taxation year, the trust designates itself as a graduated rate estate in that return and no other trust designates itself as a graduated rate estate for the deceased. This paragraph is amended to provide that the exemption is also available to a trust that would be a graduated rate estate if the trust had properly designated itself as a graduated rate estate.

This amendment applies for taxation years that end after December 30, 2024.

ITA  
150(1.2)(n)

Paragraph 150(1.2)(n) provides that the beneficial ownership reporting requirement does not apply in respect of trusts under or governed by registered plans or funds. Paragraph 150(1.2)(n) is amended by adding a new subparagraph (xii) to extend this exception to a subset of retirement compensation arrangements (commonly known as supplemental pension plans) whose primary purpose is to provide annual or more frequent periodic retirement benefits to supplement the retirement benefits provided under one or more specified registered retirement vehicles.

This amendment applies to taxation years that end after December 30, 2025.

ITA  
150(1.2)(q)

Paragraph 150(1.2)(q) provides, for greater certainty, that the limitation in this subsection would not apply to statutorily created trust relationships, such as those of bankruptcy trustees or provincial guardians. This paragraph is intended to provide greater certainty for such trustees by providing that the relevant statute does not need to require that property be held in trust in order for the trust to qualify for the exemption. An amendment to subsection 204.2(2) of the Regulations is intended to provide greater certainty in cases where a public guardian is acting as trustee under a court order.

This amendment applies for taxation years that end after December 30, 2024.

ITA  
150(1.2)(r)

New paragraph 150(1.2)(r) provides an exemption from the beneficial ownership reporting requirements for a trust that is an employee ownership trust.

This amendment applies to taxation years that end after December 30, 2025.

### **Deemed trust**

ITA  
150(1.3)

Subsection 150(1.3) currently provides that, for the purposes of section 150, trusts include an arrangement where a trust can reasonably be considered to act as agent for its beneficiaries with respect to all dealings in all of the trust's property. These arrangements are generally known as "bare trusts". This, along with current subsection 104(1), mean that bare trusts are currently subject to the reporting requirements in this section and section 204.2 of the Regulations. Existing subsection 150(1.3) is repealed. This, along with the amendment to remove the reference to section 150 in subsection 104(1), means that beneficial ownership arrangements that are not otherwise treated as trusts for the purposes of the Act will only be subject to the beneficial ownership reporting requirements if they are express trusts that meet the criteria of new subsection 150(1.3).

The amendment to repeal subsection 150(1.3) applies to taxation years that end after December 30, 2024. This means that "bare trusts" will not be required to file returns for taxation years ending on December 31, 2024 or ending in 2025. As described below, bare trusts could be required to report for taxation years that end on or after December 31, 2026.

Subsection 150(1.3) is replaced with new wording to provide greater certainty and to effectively define what constitutes a "bare trust" for the purposes of the beneficial ownership reporting requirements. This new subsection relies upon the existing trust concept of the division of legal and beneficial ownership and is intended, subject to the exceptions in subsection 150(1.31), to capture those arrangements that would normally constitute bare trusts (provided those bare trusts are also express trusts under applicable law). This change, together with the exceptions in new

subsection 150(1.31), is intended to provide more clarity on the arrangements that are subject to the reporting rules.

New subsection 150(1.3) provides that for the purposes of section 150 and section 204.2 of the Regulations:

- a) an express trust that is otherwise not considered to be trust under the Act, must report its beneficial ownership information if
  - i. one or more persons (the legal owner) have legal ownership of property that is held for the use of, or benefit of, one or more persons or partnerships, and
  - ii. the legal owner can reasonably be considered to act as agent for the persons or partnerships who have the use of, or benefit of, the property;
- b) each person that is a legal owner of an arrangement set out above is deemed to be a trustee of the trust; and
- c) each person or partnership that has the use or benefit of property under an arrangement that is set out above is deemed to be a beneficiary of the trust.

Subsection 150(1.31) provides that subsection 150(1.3) does not apply to an arrangement that meets one of the exceptions listed in paragraphs 150(1.31)(a) to (h).

Subject to the exemptions in subsection 150(1.2), if subsection 150(1.3) applies to a trust in a year, beneficial ownership information of that trust must be reported to the CRA for that year. The amendment to add the new version of subsection 150(1.3) applies to taxation years that end after December 30, 2026. Accordingly, it would first be applicable to taxation years that end on December 31, 2026. This is intended to allow taxpayers and their advisors sufficient time to consider their circumstances in light of new subsections 150(1.3) and (1.31) (discussed below).

### **Deemed trust — exceptions**

ITA  
150(1.31)

New subsection 150(1.31) provides that subsection 150(1.3) does not apply to a trust that meets one of the exceptions listed in paragraphs (a) to (g). Some of the exceptions describe arrangements that may not be express trusts under applicable law (and therefore would not fall within the scope of subsection 150(1.3)). However, they have been included nonetheless to provide additional certainty that those arrangements are not intended to be subject to reporting obligations.

New subsection 150(1.31) provides that subsection 150(1.3) does not apply to a trust for a taxation year if any of the following exceptions are satisfied.

- Each person or partnership that is considered to be a beneficiary under paragraph (1.3)(c) at any time in the year is also a legal owner of the property referred to in that paragraph at that time and there are no legal owners that are not considered to be beneficiaries. This would provide greater certainty that subsection 150(1.3) would not apply in circumstances where individuals hold the property both for their own use and benefit and for that of another person, such as where family members hold a joint bank account.
- The legal owners are individuals that are related persons and the property is real property that would be the principal residence of one or more of the legal owners for the year if those legal owners had designated the property for the year under the definition principal residence in section 54. This would exclude circumstances such as where a parent is on title to allow a child to obtain a mortgage.
- The legal owner is an individual and the property is real property that is held for the use of, or benefit of, the legal owner's spouse or common-law partner during the year and would be the legal owner's principal residence for the year if the legal owner had designated the property for the year under the definition principal residence in section 54. This would exclude circumstances where spouses jointly occupy a family home, but only one spouse is on title.
- Under the trust the property is held throughout the year solely for the use of, or benefit of, a partnership, each legal owner is a partner of the partnership, and a member of the partnership is, or but for subsection 220(2.1) would be, required under section 229 of the Regulations to make an information return for a fiscal period of the partnership that includes December 31 of that year. This would exclude circumstances where a partner holds property for the use or benefit of the partnership.
- The legal owner holds the property pursuant to an order of a court.
- A trust where Canadian resource property is held for the use or benefit of one or more publicly listed companies (or subsidiaries or partnerships of such companies).
- A trust where one or more tax exempt persons described under subsection 149(1) (such as a non-profit organization) holds funds they have received from the federal or provincial governments.
- The trustee is a registered securities dealer acting in that capacity or a trust company regulated under the laws of Canada or a Province acting as an “investment entity” (as defined in subsection 270(1)), if
  - at any time, the only property in the trust is described in clauses (1.2)(b.1)(iii)(A) to (H), and
  - an information return is issued in respect of all of the income and gains of the trust to all of the beneficiaries of the trust.

This amendment applies to taxation years that end after December 30, 2026.

### **Related persons**

ITA  
150(1.32)

New subsection 150(1.32) provides that, for the purposes of section 150:

- a related person includes an aunt, uncle, niece and nephew; and
- a person is related to himself or herself.

This amendment will ensure that the \$250,000 threshold exemption in paragraph 150(1.2)(b.1) will operate as intended and also expands the list of individuals who would be considered to be related for the purposes of the relieving rule.

This amendment applies to taxation years that end after December 30, 2025.

### **Solicitor-client privilege**

ITA  
150(1.4)

Paragraph 150(1.2)(c) provides an exception to the trust reporting requirements for a lawyer's or notary's general trust account, but not for all specific client accounts. Subsection 150(1.4) provides that, for greater certainty, the trust reporting requirements do not require the disclosure of information that is subject to solicitor-client privilege.

Subsection 150(1.4) is amended to update the cross-reference to subsection 150(1.3) consequential on the repeal and subsequent reinstatement of that subsection.

### **Clause 72**

#### **Assessment**

ITA  
152(1)(b)

Section 152 sets out the provisions relating to assessments. Paragraph 152(1)(b) requires the Minister of National Revenue, in assessing tax for a year, to make a determination of the amount of tax that is deemed to have been paid by a taxpayer under certain provisions of the Act. In the absence of such a determination, a taxpayer would not be entitled to object or appeal in respect of such amounts.

Paragraph 152(1)(b) is amended to add references to deemed payments of tax under the following subsections:

- 122.92(3) (the Multigenerational Home Renovation Tax Credit),
- 122.93(2) (the Personal Support Worker Tax Credit),
- 127.42(2) and (3) (the carbon tax refund to farmers),
- 127.421(2) and (3) (the Canada Carbon Rebate for Small Businesses), and
- 127.491(2) (the Clean Electricity Investment Tax Credit).

These amendments come into force on the following dates:

- (a) January 1, 2021 in respect of the added reference to subsections 127.42(2) and (3) (the carbon tax refund to farmers),
- (b) January 1, 2023 in respect of the added reference to subsection 122.92(3) (the Multigenerational Home Renovation Tax Credit),
- (c) April 16, 2024 in respect of the added reference to subsection 127.491(2) (the Clean Electricity Investment Tax Credit);
- (d) June 20, 2024 in respect of the added reference to subsections 127.421(2) and (3) (the Canada Carbon Rebate for Small Businesses), and
- (e) January 1, 2026 in respect of the added reference to subsection 122.93(2) (the Personal Support Worker Tax Credit).

### **Provisions applicable**

ITA  
152(1.2)(d)

Paragraph 152(1.2)(d) is currently relevant for purposes of the GST/HST Credit, the advance payments of the Canada workers benefit and the Climate Action Incentive under sections 122.5, 122.72 and 122.8, respectively. Paragraph 152(1.2)(d) provides that where the Minister determines the amount deemed by subsections 122.5(3) to (3.003), 122.72(1) 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.

Paragraph 152(1.2)(d) is amended to provide that it also applies to a nil determination made to a person under subsections 127.421(2) and (3) which provide the Canada Carbon Rebate for Small Businesses to qualifying corporations.

Paragraph 152(1.2)(d) is also amended to replace the word “individual” with “person”, which includes a corporation.

These amendments are deemed to have come into force on June 20, 2024.

### **Clean electricity – notice of determination**

ITA  
152(3.5)

New subsection 152(3.5) allows the Minister of National Revenue to determine the amount, or determine that there is no such amount, of a clean electricity investment tax credit claimed under subsection 127.491(2) by certain entities and send a notice of determination to the entity. This provision is relevant for entities that are “qualifying corporations” that are described in paragraphs (b) to (i) of that definition in subsection 127.491(1).

This would allow these entities to object to, and appeal from, the Minister's determination of their clean electricity investment tax credit claim.

## Assessment and reassessment

ITA  
152(4)(b.941)

Subsection 152(4) 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. An individual taxpayer's normal reassessment period for a year is generally three years from the date of the initial notice of assessment.

New paragraph 152(4)(b.941) is introduced to support the Minister of National Revenue in verifying and reassessing a taxpayer who does not satisfy the conditions required for the application of the capital gains deduction for qualifying cooperative conversions under new section 110.62.

Specifically, paragraph 152(4)(b.941) provides an additional three year reassessment period after the end of the normal reassessment period for the taxpayer in respect of the year of a disposition for which the taxpayer claimed a deduction under new subsection 110.62(2). Because a disqualifying event (as described in new paragraph 110.62(3)(a)) in respect of the capital gains deduction may occur up to a maximum period of 24 months after the disposition, an extended reassessment period is required to afford the Minister of National Revenue the ability to verify compliance.

For more information, see the commentary to new section 110.62.

This amendment is deemed to have come into force on January 1, 2024.

ITA  
152(4)(b.95)

In general terms, subsection 127.491(24) and (25) require taxpayers and partnerships that could trigger recapture events or transactions described in subsections 127.491(16) and (17), (22) and (23) or (26) to (30), to notify the Minister in prescribed form and manner.

- Notice must be filed by a qualifying entity for an event or transaction that occurred in the year, on or before the entity's filing-due date for the year.
- Notice must be filed by a partnership, for an event or transaction that occurred during its fiscal period, on or before the day when a return is required by section 229 of the Regulations to be filed in respect of the period.

Subsection 152(4) is amended to add new paragraph 152(4)(b.95), which allows the Minister to reassess a taxpayer outside the normal reassessment period when either the qualifying entity, or a partnership of which the entity is a member, has failed to notify the Minister in prescribed form and manner, of a transaction or event described in the subsections mentioned above.

When this new paragraph applies, the Minister may reassess the qualifying entity within four years (in the case of a corporation other than a Canadian-controlled private corporation) or three years (in any other case) from the date the form is filed. The Minister's ability to reassess under this paragraph is limited to reassessments related to the application of the recapture rules of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Extended period of assessment**

ITA  
152(4.01)(b)

Subsection 152(4.01) limits the matters in respect of which the Minister can reassess when a reassessment to which paragraph 152(4)(a), (b), (b.1) or (b.5) to (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year.

Consequential on the addition of paragraph 152(4)(b.95), subparagraph 152(4.01)(b)(xv) is added with a reference to that paragraph. As such, a reassessment for a taxation year, made by the Minister after the normal reassessment period as a result of paragraph 152(4)(b.95), is limited to the recapture of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Reassessment with taxpayer's consent**

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.

Paragraph 152(4.2)(b) is amended to add a reference to subsection 122.92(3) (the multigenerational home renovation tax credit).

This amendment applies as of January 1, 2023.

Consequential on the introduction of the new refundable Personal Support Worker Tax Credit under section 122.93, paragraph 152(4.2)(b) is also amended to add a reference to subsection 122.93(2).

This amendment applies to the 2026 and subsequent taxation years.

## Clause 73

### Withholding

ITA  
153(1)

Subsection 153(1) requires the withholding of income tax from any of the payments described in paragraphs 153(1)(a) to (v).

Under paragraph 153(1)(b), administrators of registered pension plans making a payment of a superannuation or pension benefit are required to withhold tax from the payment and remit any tax withheld to the Receiver General. Consequential on an exclusion from taxable income under new clause 56(1)(a)(i)(H), paragraph 153(1)(b) is amended to exclude from the withholding requirement amounts paid or transferred from a registered pension plan to an “unclaimed property authority”. As a result, administrators of registered pension plans will be permitted to transfer the gross amount of an unclaimed benefit entitlement of an unlocated individual to an unclaimed property authority. Note from an amendment to the definition of “superannuation or pension benefit” in subsection 248(1) that a subsequent payment from the authority to a claimant will be a taxable event under subparagraph 56(1)(a)(i) and will be subject to tax withholding under paragraph 153(1)(b).

See the additional commentary on the new definition of “unclaimed property authority” in subsection 248(1), as well as the commentary on the new definition “unlocated individual”.

Paragraph 153(1)(j) provides that a payment out of or under an RRSP is subject to the income tax withholding requirements imposed under subsection 153(1). Paragraph (j) is amended to provide an exemption from withholding for amounts described in 146(1)(c.2), specifically an amount that is paid or transferred from an RRSP to an unclaimed property authority in respect of an unlocated individual. A subsequent payment from an RRSP held under the direction of the authority to a claimant (other than a tax-deferred transfer) will be a taxable event under subsection 146(8) and will be subject to tax withholding under paragraph 153(1)(j).

See the additional commentary on new subsections 146(23) and (24) that modify how certain tax rules will apply to RRSPs held under the direction of unclaimed property authorities.

Paragraph 153(1)(l) provides that a payment out of or under a RRIF is subject to the income tax withholding requirements imposed under subsection 153(1). Paragraph (l) is amended to exclude from withholding requirements an amount described in paragraph 146.3(5)(e), specifically an amount paid or transferred from a RRIF to an unclaimed property authority. A subsequent payment from a RRIF held under the direction of the authority to a claimant (other than a tax-deferred transfer) will be a taxable event under subsection 146.3(5) and will be subject to tax withholding under paragraph 153(1)(l).

See the additional commentary on new subsections 146.3(1.6), (1.7), (16) and (17) that modify how certain tax rules will apply to RRIFs held under the direction of unclaimed property

authorities. Moreover, see the additional commentary on amendments to Part I of the *Income Tax Regulations* to ensure that withholding does not apply in respect of the accumulated minimum amount in respect of RRIFs held under the direction of an unclaimed property authority.

These amendments apply in respect of amounts paid to an unclaimed property authority after December 31, 2026.

### **Withholding for Non-Resident Service Providers**

ITA  
153(8)

Paragraph 153(1)(g) of the Act, together with subsections 105(1) and (2) of the Regulations, requires a person who pays a non-resident for services provided in Canada to withhold 15 per cent of the payment and remit it to the Canada Revenue Agency (CRA). This acts as a pre-payment of any Canadian tax that the non-resident may ultimately owe.

Non-residents that carry on a business in Canada are generally subject to Canadian tax on the income they earn from the business. However, many non-resident service providers do not ultimately owe Canadian tax either because a treaty exemption applies (e.g. they do not have a permanent establishment in Canada), because they do not carry on a business in Canada or because the service is international shipping or operating an aircraft in international traffic, both of which are generally exempt from Canadian income tax. Although subsection 153(1.1) allows the CRA to waive the withholding requirement in advance if the non-resident can demonstrate that the amount to be withheld would exceed their ultimate Canadian tax liability, these waivers are generally only granted on a transaction-by-transaction basis, which can be inefficient. To improve efficiency, new subsection 153(8) is added. It will allow the CRA to waive the withholding requirement, over a specified period, for payments to a non-resident service provider if any of the following conditions are met (as well as any other conditions that the Minister of National Revenue may specify):

- the payments are income from a treaty-protected business of the non-resident person (meaning that the non-resident would not be subject to Canadian income tax in respect of the payments because of a treaty between its country of residence and Canada);
- the payments are income from a business of the non-resident not carried on in Canada; or
- the income from providing the services is exempt under paragraph 81(1)(c)(i.e., it is income from international shipping or from operating an aircraft in international traffic).

New subsection 153(8) comes into force on royal assent.

### **Class of non-residents**

ITA  
153(9)

New subsection 153(9) is added to ensure that a waiver made under new paragraph 153(8)(a) may apply in respect of a class of non-residents specified by the Minister of National Revenue.

This will allow the CRA to waive the withholding requirement for payments to each non-resident service provider in a class, provided the conditions in paragraph 153(8)(a) are satisfied. New subsection 153(9) comes into force on royal assent.

## **Clause 74**

### **Reduced instalments**

ITA  
157(3)(e)

Section 157 requires a corporation to pay instalments of its total tax payable under Parts I, I.3, VI, VI.1 and XIII.1 of the Act. Paragraph 157(3)(e) allows a corporation to reduce its monthly installments by certain refundable amounts under the Act.

Paragraph 157(3)(e) is amended to add a reference to new subsection 127.491(2), consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

### **Amount of payment — three-month period**

ITA  
157(3.1)(c)

Subsection 157(1.1) allows small Canadian-controlled private corporations that meet certain conditions to pay their annual tax liability by quarterly instalments instead of monthly.

Subsection 157(3.1) allows these corporations to reduce each quarterly instalment by 1/4 of the amount of certain tax refunds. Paragraphs 157(3.1)(b) and (c) list these tax refunds.

Paragraph 157(3.1)(c) is amended to add a reference to new subsection 127.491(2), consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

## **Clause 75**

### **Joint and several, or solidary liability — qualifying cooperative conversion**

ITA  
160(1.7)

New subsection 160(1.7) is added consequential on the introduction of the joint election provided by new paragraph 110.62(1)(e) to satisfy the conditions listed in new subsection

110.62(1) for the application of the capital gains deduction for qualifying cooperative conversions in new subsection 110.62(2).

For new subsection 110.62(2) to apply, paragraph 110.62(1)(e) requires an individual who wishes to claim a deduction under subsection 110.62(2) in respect of a qualifying cooperative conversion to a purchaser corporation to jointly elect, in prescribed form, with the purchaser corporation and any other individuals sharing the capital gains deduction from the qualifying cooperative conversion.

The joint election, and the joint and several liability imposed by this new subsection, recognize that the actions of the purchaser corporation could potentially cause a disqualifying event (as described in subsection 110.62(3)) to occur, causing the denial of the deduction under subsection 110.62(2) to the individual pursuant to paragraph 110.62(4)(a).

Consequently, a purchaser corporation that jointly elects under paragraph 110.62(1)(e) for subsection 110.62(2) to apply is, in the event paragraph 110.62(4)(a) subsequently applies, jointly and severally, or solidarily, liable for tax payable by the individual under Part I of the Act, to the extent that the tax payable by the individual is greater than it would have been had the conditions for the application of subsection 110.62(2) been satisfied. Any other individual who is a party to the joint election to share the capital gains deduction under 110.62(2) would not be joint and severally, or solidarily, liable for the additional tax payable by the taxpayer due to the application of paragraph 110.62(4)(a).

For more information, see the commentary on new paragraph 110.62(1)(e), new subsections 110.62(2) to (4) and new paragraph 152(4)(b.941).

This amendment is deemed to have come into force on January 1, 2024.

## **Clause 76**

### **Where excess refunded**

ITA  
160.1(1)(b)

Subsection 160.1(1) 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, the partial delivery of the Canada workers benefit (CWB) through advance payments under section 122.72 or the climate action incentive (CAI) under section 122.8.

Paragraph (b) is amended to include a reference to the Canada Carbon Rebate for Small Businesses (CCRSB) under section 127.421. Consistent with treatment of the GSTC, CCB, CWB 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 CCRSB paid to a taxpayer under section 127.421.

This amendment is deemed to have come into force on June 20, 2024.

### **Assessment**

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, CWB or CAI.

Consistent with treatment of the GSTC, CCB, CWB and CAI, subsection (3) is amended by adding a reference to section 127.421, so that no interest is payable to the extent that the excess refund is attributable to the overpayment of the CCRSB received under section 127.421.

This amendment is deemed to have come into force on June 20, 2024.

### **Clause 77**

#### **Rules applicable**

ITA  
160.2(4)

Subsection 160.2(4) of the Act ensures that, where there are joint and severally liable taxpayers, a payment by one taxpayer will generally reduce the liability of the other.

Subsection 160.2(4) is amended, consequential on the repeal (in Bill C-59, Fall Economic Statement Implementation Act, 2023) of subsection 160.2(2.3), to remove references to subsection (2.3) (and to a “holder”).

This amendment comes into force on April 1, 2023.

### **Clause 78**

#### **False statements or omissions**

ITA  
163(2)

Subsection 163(2) imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the Act. The penalty is determined by reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax.

This subsection is amended to add new paragraph 163(2)(c.7), consequential on the introduction of the Personal Support Worker Tax Credit under new section 122.93. Paragraph (c.7) is intended to ensure that the penalty is imposed in the case where a false statement or omission is made in respect of the Personal Support Worker Tax Credit in section 122.93. This amendment applies to the 2026 and subsequent taxation years.

Paragraph 163(2)(d.1) is amended to apply where false information is provided in respect of an amount claimed under new subsection 127.491(2) (the clean electricity investment tax credit).

This amendment applies on or after April 16, 2024.

### **False statement or omission**

ITA  
163(5)(a)

Subsections 150(1.2) and (1.3) of the Act and section 204.2 of the *Income Tax Regulations* provide reporting requirements for certain trusts to file a return of income and to provide additional information. Subparagraph 163(5)(a)(ii) provides for a penalty under certain circumstances for a failure to file a tax return in respect of a trust that is not subject to one of the exceptions set out in subparagraph 163(5)(a)(i) (these are the exceptions listed in paragraphs 150(1.2)(a) to (o)).

Consequential on the introduction of new subparagraphs 150(1.2)(p) to (r), subparagraph 163(5)(a)(i) is amended to refer to paragraphs 150(1.2)(a) to (r).

This amendment applies to taxation years that end after December 30, 2025.

### **Clause 79**

#### **Disposition by legal representative of deceased**

ITA  
164(6)

Subsection 164(6) allows a deceased taxpayer's legal representative to elect to treat certain capital losses and terminal losses of the taxpayer's graduated rate estate for its first taxation year as losses of the taxpayer for the taxpayer's last taxation year.

Subsection 164(6) is amended in two ways.

First, the period for which the election can be made is extended to allow the taxpayer's legal representative to treat capital losses and terminal losses realized by the graduated rate estate in its first three taxation years as losses of the taxpayer for the taxpayer's last taxation year. This amendment is intended to align the treatment of capital losses and terminal losses realized by a graduated rate estate with the treatment of net capital losses and non-capital losses realized by other taxpayers (which can generally be carried back three years).

Second, the requirement to file an amended return of income for the taxpayer's last taxation year is modified to a requirement to file a prescribed form amending the return of income of the deceased taxpayer for the taxpayer's last taxation year. This amendment is intended to simplify the election process while still ensuring that the Minister of National Revenue obtains the information required to give effect to the election, including the effect the claimed losses have upon deductions claimed (such as the lifetime capital gains exemption) in computing the taxable income for the individual's last taxation year.

This amendment applies to taxation years of individuals who die on or after August 12, 2024 and of graduated rate estates of individuals who die on or after August 12, 2024.

### **Realization of deceased employees' options**

ITA  
164(6.1)

Subsection 164(6.1) applies to certain employee stock options in respect of which a benefit has been included in a deceased taxpayer's income by reason of paragraph 7(1)(e). If the employee stock option is exercised, or disposed of, by the deceased taxpayer's legal representative in the first taxation year of the estate (in the course of administering the deceased taxpayer's estate), the legal representative can elect to carry back certain amounts determined under the subsection to be deducted in computing the deceased taxpayer's income for the deceased's final taxation year.

Subsection 164(6.1) is amended in two ways.

First, the period for which the election can be made by the taxpayer's legal representative to treat an amount determined under the subsection as a loss of the deceased from employment for the deceased's last taxation year is extended to the first three taxation years of the graduated rate estate. This amendment is intended to harmonize the treatment of these amounts with the treatment of non-capital losses realized by other taxpayers – which can generally be carried back three years.

Second, the requirement to file an amended return of income for the taxpayer's last taxation year is modified to a requirement to file a prescribed form amending the return of income of the deceased taxpayer for the taxpayer's last taxation year. This amendment is intended to simplify the election process while still ensuring that the Minister of National Revenue obtains the information required to give effect to the election, including the effect the claimed losses have upon deductions claimed (such as the lifetime capital gains exemption) in computing the taxable income for the individual's last taxation year.

This amendment applies to taxation years of individuals who die on or after August 12, 2024 and of graduated rate estates of individuals who die on or after August 12, 2024.

## Clause 80

### Where s. 110.6(8) does not apply

ITA  
183.1(7)

Subsection 183.1(7) ensures that subsection 110.6(8) will not apply to deny the capital gains exemption with respect to a capital gain realized on a share where section 183.1 has applied to a portion of the proceeds of disposition that were used in calculating the capital gain.

Subsection 110.61(8) and new subsection 110.62(8) provide a similar rule to that provided under subsection 110.6(8). Consequential on the introduction of sections 110.61 and 110.62, which provide for capital gain exemptions available on the dispositions of shares pursuant to a qualifying business transfer or qualifying cooperative conversion, respectively, subsection 183.1(7) is amended to include references to subsections 110.61(8) and 110.62(8).

This amendment is deemed to have come into force on January 1, 2024.

## Clause 81

### Definitions

ITA  
183.3(1)

#### *“qualifying issuance”*

The portion of an issuance of equity that is a “qualifying issuance” reduces (or eliminates) the amount of Part II.2 tax payable for the year pursuant to variable C of the netting rule in subsection 183.3(2). The types of issuances that are considered a “qualifying issuance” are listed in this definition.

Subparagraph (a)(ii) of the definition describes a conversion of a convertible security into equity of the covered entity, where the security was issued by the covered entity solely for cash consideration. This subparagraph is amended to include a convertible security that was issued for property used in the covered entity’s active business (or in the active business of a specified affiliate of the covered entity).

Paragraph (c) of the definition describes an issuance of equity to an arm’s length and non-affiliated person or partnership in exchange for property used in an active business of the

covered entity. This paragraph is amended to include property used in the active business of a specified affiliate of the covered entity.

These amendments are deemed to come into force on January 1, 2024.

***“reorganization transaction”***

A redemption, acquisition or cancellation (together referred to as a “redemption”) of equity that is made upon a “reorganization transaction” is generally excluded from the netting rule in subsection 183.3(2), which calculates the amount of Part II.2 tax payable. The types of redemption that qualify as a “reorganization transaction” are listed in the definition.

Subparagraph (a)(ii) of the definition describes an exchange of a covered entity’s equity for consideration that includes equity of another entity that is related to the covered entity immediately before the exchange and is a covered entity immediately after the exchange. This exchange might occur, for instance, under a section 86 spin-off. Subparagraph (a)(ii) is amended to align its wording with the “covered entity” definition since an entity that satisfies the criteria in that definition is a covered entity for its entire taxation year.

Paragraph (c) of the definition describes a winding-up of a covered entity during which all or substantially all of the property owned by the covered entity is distributed to the equity holders. This paragraph is reorganized into two new subparagraphs:

- a) subparagraph (i) describes the existing type of winding-up in paragraph (c), and
- b) subparagraph (ii) describes a winding-up to which subsection 88(1) applies. This might occur, for instance, in the course of an internal reorganization to eliminate cross-shareholdings (i.e., corporate incest).

Lastly, to accommodate certain exchange-traded funds that are obligated under securities laws to redeem their units, new subparagraph (g.1) is added to the definition to include a redemption of equity by a covered entity where

- a. the redemption is at the demand of a holder in accordance with the conditions included in the issued units of the trust,
- b. the redemption amount does not exceed the portion of the net asset value (as defined in subsection 132(4)) of the trust attributable to that equity, and
- c. the covered entity is a trust that has one or more classes of units in continuous distribution.

These amendments are deemed to come into force on January 1, 2024.

**Tax payable**

ITA  
183.3(2)

Subsection 183.3(2) contains the “netting rule” to determine the Part II.2 tax liability for a taxation year of a covered entity.

Variable B of the netting rule is relevant when non-equity consideration is received by a holder of the covered entity’s equity pursuant to a “reorganization transaction” described in paragraph (a) or (b) of that definition in subsection 183.3(1). The wording in paragraph (a) of variable B is amended to clarify that it applies only in cases where a covered entity has redeemed, acquired or cancelled its own equity, similar to the application of variable A.

This amendment is deemed to come into force on January 1, 2024.

### **Similar Transactions**

ITA  
183.3(5)

Subsection 183.3(5) is an anti-avoidance rule that applies to deem, for purposes of subsection 183.3(2), a covered entity to acquire its own equity if a specified affiliate of the covered entity acquires equity of the covered entity.

Subsection 183.3(5) is amended, for greater certainty, to also apply for purposes of the definitions in subsection 183.3(1) so that, for instance, the acquisition of equity might satisfy the “reorganization transaction” definition, that is excluded from the formula in subsection 183.3(2).

This amendment is deemed to come into force on January 1, 2024.

### **Clause 82**

#### **Return**

ITA  
183.4(1)(c)

Where a covered entity is a partnership that redeems, acquires or cancels equity in a taxation year, it is required to file a return for the year under Part II.2.

Paragraph 183.4(1)(c) is amended to instead require every person who was a member of that partnership in that year to file this return. However, if a member of the partnership who has authority to act for the partnership files the required return, new subsection 183.4(1.1) provides that only that return needs to be filed.

The filing deadline in this paragraph is also amended to be on or before the deadline for which the partnership information return is required to be filed for the year under section 229 of the *Income Tax Regulations* if the partnership were a SIFT partnership (as defined under subsection 197(1)).

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This amendment is deemed to come into force on January 1, 2024.

### **Authority to file return for partnership**

ITA  
183.4(1.1)

If a partnership is required to file a return for the year under Part II.2, new subsection 183.4(1.1) provides that a member of the partnership, who has authority to act for the partnership, can file the required return on behalf of the members of the partnership. For more information, see the commentary to paragraph 183.4(1)(c).

This amendment is deemed to come into force on January 1, 2024.

### **Clause 83**

#### **Definitions**

ITA  
207.01(1)

Subsection 207.01(1) contains definitions that apply in Part XI.01 of the Act and in Part XLIX of the Regulations.

In general terms, an “exempt contribution” is a TFSA contribution made by an individual (the survivor) with proceeds received from an arrangement that was the TFSA of the survivor's deceased spouse.

Paragraph (d) requires that the amount of the contribution not exceed the least of three amounts. One of these amounts (subparagraph (ii)) is the excess of the proceeds of disposition referred to in paragraphs 146.2(8)(a), (10)(a) or (11)(a) in connection with the arrangement (from which the survivor payment is made) over the total of all other exempt contributions made by the survivor in relation to that arrangement. The proceeds of disposition referred to in those three paragraphs (trusts, annuity contracts, and deposits) is the total the fair market value of the trust's properties, the contract, or the deposit, as the case may be, immediately before the individual's death.

In conjunction with the amendment to subsection 146.2(9), paragraph (d) is amended to repeal subparagraph (ii). Therefore, the amount of contributions that the survivor is permitted to designate in respect of survivor payments is no longer limited to the fair market value of TFSA property immediately before the death of the survivor's spouse. This means that appreciation in the value of the property following the death can be contributed by the survivor as an exempt contribution. Subparagraph (i) is amended to eliminate its two clauses so as to present as a single sentence and subparagraph (iii) is renumbered to become new subparagraph (ii).

This amendment comes into force on January 1, 2026.

## Clause 84

### **Both prohibited and non-qualified investment**

ITA  
207.04(3)

Subsection 207.04(3) applies if a property would otherwise be, at the same time, both a non-qualified investment and a prohibited investment. In those circumstances, the property is deemed not to be a non-qualified investment such that the property is a prohibited investment for the purposes of the taxing provision in Part XI.01.

Subsection 207.04(3) is amended to expand its application to properties held by FHSAs, by adding a reference to subsections 146.6(3). As a result of this amendment, Part XI.01 tax (i.e., a 100% tax on “advantages”) will apply to income earned by a “prohibited investment” held by an FHSA, rather than the Part I tax that would otherwise apply to income earned by a non-qualified investment.

This amendment comes into force on April 1, 2023.

### **Securities Lending Arrangements**

ITA  
207.04(7)

New subsection 207.04(7) ensures that rights to property received as consideration under certain securities lending arrangements (notably, the right to receive a lending fee) are deemed not to be non-qualified investments for the purposes of taxes under Part I and Part XI.01 of the Act that apply in respect of non-qualified investments.

Paragraph (a) requires that the lent property under the securities lending arrangement is a security listed on a designated stock exchange. This requirement would generally be expected to be a more restrictive subset of the 'qualified security' definition in subsection 260(1), which applies in respect of securities lending arrangements.

Paragraph (b) requires the lender under the securities lending arrangement to be the registered plan trust.

Paragraphs (c) and (d) are conditions that relate to the borrower of the lent property. Paragraph (c) requires the borrower of the security under the securities lending arrangement to be a registered securities dealer resident in Canada. Under paragraph (d), it must be reasonable to conclude that the controlling individual of the registered plan (i.e., holder of a TFSA, FHSA, or RDSP; annuitant of an RRSP or RRIF; or the subscriber of a RESP) neither knew nor ought to have known that the lent security would be received by a non-arm's length person. In general, it would be reasonable to conclude this to be the case where the registered securities dealer

transacts in the lent security in the ordinary course of a business of trading in such securities (i.e., where transactions are executed in a manner that does not direct specific securities to particular borrowers).

Paragraphs (e) through (g) ensure the lender is afforded certain safeguards against incremental economic and legal risks under the securities lending arrangement. Paragraph (e) requires that lender has a right to recall the security at any time under the terms of the securities lending arrangement. Paragraph (f) requires that equivalent collateral to the lent security is held in trust for the lender in the form of cash or government bonds. Specifically, the collateral is intended to be of at least equivalent value to the lent security for the duration it is lent (without limiting the ability to provide such collateral in excess of the value of the lent security). Moreover, temporary fluctuations in value are not intended to prevent this condition from being met, provided that the collateral is maintained on a reasonable and continuous basis (for instance, if collateral is settled daily on a mark-to-market basis). Finally, paragraph (g) requires that the controlling individual of the registered plan provides informed consent to the details of the securities lending arrangement. Such consent could, for example, be provided under a master agreement to participate in such arrangements.

This amendment is deemed to have come into force on January 1, 2023.

## **Clause 85**

### **Refurbishment property disposition**

ITA  
211.92(10)

Subsection 211.92(10) applies to recapture all or a portion of the CCUS refurbishment tax credit under certain circumstances. In particular, recapture may apply if the taxpayer disposes of a property, or exports it from Canada, during a particular taxation year, and the expenditure incurred for the property resulted in the determination of a CCUS refurbishment tax credit for the taxpayer for a previous taxation year.

The English version of subsection 211.92(10) is amended to add the missing “CCUS” in “total CCUS project review period” to correct the reference to the defined term.

This amendment applies on or after January 1, 2022.

## **Partnerships**

ITA  
211.92(12)

When a member of a partnership has claimed CCUS investment tax credits in respect of a project allocated to it by the partnership applying subsection 127.44(11), subsection 211.92(12) provides, in general terms, that amounts under Part XII.7 are to be determined in respect of the

partnership as if it were a taxable Canadian corporation (with a taxation year rather than a fiscal period) and as if the deemed corporation had claimed all the CCUS investment tax credits that were claimed by any member of the partnership. Subsection (12) is amended, for greater certainty, to clarify that it applies if a current or former member of the partnership has ever claimed a CCUS investment tax credit.

This amendment applies on or after January 1, 2022.

### **Joint, several and solidary liability**

ITA  
211.92(15) and (16)

Subsection 211.92(15) creates joint and several liability (common law concept) and solidary liability (civil law concept) for partnership members for any tax determined because of subsection 211.92(12) in respect of the partnership, except to the extent that the tax has been paid by a taxable Canadian corporation that elected under subsection 211.92(14), or has been allocated to a member of the partnership and added to their tax payable under subsection 211.92(13). Subsection 211.92(15) is amended to refer to both current and former members of the partnership.

New subsection 211.92(16) limits any liability of a former partner to the former's partner's total CCUS investment tax credit determined because of their membership in the partnership.

This amendment applies on or after January 1, 2022.

### **Clause 86**

#### **Shared filing**

ITA  
211.93(3)

Subsection 211.93(3) is a relieving rule where a report filed by one person with full and accurate disclosure in respect of a CCUS knowledge sharing project is deemed to have been filed by each person to whom subsection 211.93(1) applies in respect of the report.

This subsection is amended to clarify that it applies only when more than one person is required by subsection 211.93(1) to submit a knowledge sharing report in respect of the same CCUS knowledge sharing project, for example, when the project is owned by a partnership.

This amendment applies on or after January 1, 2022.

### **Clause 87**

#### **Restrictive covenant amount**

ITA  
212(1)(i)

Paragraph 212(1)(i) imposes withholding tax on amounts received or receivable by a non-resident in respect of a restrictive covenant (subsection 56.4(2)) or bad debt recovery (paragraph 56(1)(m)). Paragraph 212(1)(i) is amended to clarify that amounts that are deemed by subsection 214(15) to be payments of interest are not covered by paragraph 212(1)(i). This prevents the application of withholding tax to a payment of deemed interest which meets the conditions to be exempt from withholding tax under paragraph 212(1)(b) and might otherwise be considered a payment in respect of a restrictive covenant or bad debt recovery. Further details can be found in the commentary on the amendments to subsection 214(15).

This amendment is deemed to come into force on August 12, 2024.

## **Clause 88**

### **Trusts and partnerships look-through rule**

ITA  
212.1(6)(b)

Subsection 212.1(6) of the Act contains certain “look-through” rules for trusts and partnerships, which are referred to for these purposes as “conduits”. These rules are generally intended to ensure that the cross-border anti-surplus stripping rules in section 212.1 work as intended when transactions involve conduits. Under paragraph 212.1(6)(b), if a conduit disposes of shares of a corporation resident in Canada, the disposition is treated as a disposition of the shares by the conduit’s beneficiaries or members.

Paragraph 212.1(6)(b) is amended so that it does not apply to certain dispositions by certain graduated rate estates (GREs). A “graduated rate estate” is defined in subsection 248(1) to generally mean the estate that arises on the death of an individual. GRE status applies for the first three years of the estate’s existence.

More specifically, this new exclusion applies in respect of the disposition of shares of a corporation resident in Canada by a trust resident in Canada that is, at the time of the disposition, a GRE of an individual if the GRE had acquired the shares on and as a consequence of the death of the individual and the individual was, immediately before their death, resident in Canada. This exclusion is intended to ensure that subsection 212.1(1.1) will not deem a dividend to be received by a non-resident beneficiary (or reduce paid-up capital) in these circumstances. However, there could be tax consequences for the GRE itself, depending on the facts, under rules outside of Part XIII of the Act, including section 84.1.

This amendment applies in respect of dispositions that occur after February 26, 2018.

If a taxpayer has paid an amount to the Receiver General under Part XIII in respect of a disposition that occurred after February 26, 2018, and the person is not liable to pay that amount as a result of this amendment, a written application for a refund may be made under subsection 227(6) of the Act. Such an application is deemed to be filed on time if it is filed within 180 days after the day on which this amendment receives royal assent.

## **Clause 89**

### **Standby charges and guarantee fees**

ITA  
214(15)

Subsection 214(15) deems certain payments in respect of debt obligations (including standby charges and guarantee fees) to be interest for the purposes of Part XIII withholding tax. This subsection is amended in two ways.

First, paragraph 214(15)(b) is amended to remove language that limits the circumstances in which standby charges and commitment fees will be deemed to be interest (that is, only if any interest on the underlying debt obligation would be subject to withholding tax). This change would clarify the treatment of fees for credit support arrangements (e.g. keepwell agreements) where the agreement may not contain terms pertaining to the issuance of a specific underlying debt obligation.

Second, new paragraph 214(15)(c) is added. This new paragraph deems certain payments related to the rescheduling or restructuring of a debt obligation to be interest for the purposes of Part XIII withholding tax, provided that the payments are made pursuant to an agreement that provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation. This could include consent fees.

These amendments would ensure that a standby charge, commitment fee, a fee for another type of credit support arrangement or a fee for rescheduling or restructuring a debt obligation is deemed to be interest. Consequently, given concurrent amendments to paragraph 212(1)(i), paragraph 212(1)(b) will apply to these amounts and amended 212(1)(i) will not apply (for more information, see the commentary to paragraph 212(1)(i)).

These amendments are deemed to come into force on August 12, 2024.

## **Clause 90**

### **Exception — residential tenants**

ITA  
215(1.2)

Part XIII of the Act imposes an income tax (commonly referred to as “withholding tax”) on certain amounts paid to a non-resident. Under paragraph 212(1)(d), amounts paid to a non-resident as rent for the right to use property in Canada, including rent for the use of residential real estate, are generally subject to withholding tax. Subsection 215(1) of the Act requires the payor to deduct and withhold this tax from the rent and remit it to the Receiver General on behalf of the non-resident landlord, along with a statement in prescribed form.

New subsection 215(1.2) is added to provide an exception from the requirement to withhold and remit withholding tax on rent paid by an individual (including a graduated rate estate) for a residential property that is an individual’s residence (whether or not that individual is the one paying the rent). An exception is also provided for rent paid for a residential property that was the residence of a deceased individual, provided that the payment is made within 36 months of the individual’s death. Concurrently, new subsection 215(1.3) is added (for more information, see the commentary to new subsection 215(1.3)).

For these purposes, “residential property” has the same meaning as in subsection 67.7(1), and means all or any part of a house, apartment, condominium unit, cottage, mobile home, trailer, houseboat or other property, located in Canada, the use of which is permitted for residential purposes under applicable law.

If rent is paid by any entity other than an individual, or in respect of property that is not being used as an individual’s residence, withholding tax must still be withheld and remitted to the Receiver General on behalf of the non-resident landlord, along with a statement in prescribed form.

New subsection 215(1.2) is deemed to come into force on August 12, 2024.

### **Payment — residential tenants**

ITA  
215(1.3)

Consequential to the addition of new subsection 215(1.2), new subsection 215(1.3) is added to shift the responsibility that would otherwise apply to a payer under subsection (1) for remitting Part XIII withholding tax on residential rent paid or credited to a non-resident landlord, and submitting a statement in prescribed form, to the non-resident landlord. If an individual paying residential rent is excepted from withholding and remitting tax on behalf of a non-resident landlord because of subsection (1.2), and the landlord does not have an agent collecting rent on its behalf, under new subsection (1.3) the landlord must remit the appropriate income tax payable under Part XIII and submit with that remittance a statement in prescribed form.

New subsection 215(1.3) is deemed to come into force on August 12, 2024.

### **Clause 91**

#### **Exception**

ITA  
220(2.2)

Subsection 220(2.2) provides that the Minister’s discretion to waive a requirement to file a prescribed form, receipt or other document, or to provide prescribed information, does not extend to such items filed on or after the day specified for the purposes of subsection 37(11), paragraph (m) of the definition “investment tax credit” in subsection 127(9), or subsection 127.44(17), 127.45(3), 127.48(4) or 127.49(3).

Subsection 220(2.2) is amended to extend the restriction on Ministerial discretion to waive filing requirements by adding a reference to new subsection 127.491(6), consequential on the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

## **Clause 92**

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

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

Subparagraph 241(4)(d)(vi.1) permits the communication of taxpayer information to the Department of Natural Resources solely for the purpose of determining whether property is prescribed energy conservation property or whether an outlay or expense is a Canadian renewable and conservation expense.

Subparagraph 241(4)(d)(vi.1) is amended to allow the communication of taxpayer information solely for the purposes of determining whether a property is a “clean electricity property” or a “qualified natural gas energy equipment”, or whether a system is a “qualified natural gas energy system”, as those expressions are defined in subsection 127.491(1).

The sharing of this information, and the technical advice of the Department of Natural Resources, will assist the Minister of National Revenue in administering the above-noted benefit programs.

This amendment applies on or after April 16, 2024.

ITA  
241(4)(d)(vi.2)

Paragraph 241(4)(d) authorizes the communication of information obtained under the Act to specific persons for specific purposes.

Subparagraph 241(4)(d)(vi.2) permits the communication of taxpayer information to a person employed or engaged in the service of an office or agency of the Government of Canada (e.g., Canada Revenue Agency, Natural Resources Canada and Environment and Climate Change Canada) solely for the purpose of administering or enforcing the clean economy tax credits or the evaluation or formulation of related policies or guidelines.

This subparagraph is amended to add a reference to new section 127.491, consequential to the introduction of the clean electricity investment tax credit.

This amendment applies on or after April 16, 2024.

ITA

241(4)(d)(x.2)

Subsection 241(4) authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes.

New subparagraph 241(4)(d)(x.2) is added to authorize the Minister of National Revenue to communicate taxpayer information to an official of Employment and Social Development Canada solely for the purpose of administering and enforcing the Canada Labour Code as it relates to the misclassification of employees.

This amendment comes into force on royal assent.

### Clause 93

ITA

247

Canada's transfer pricing rules are contained in section 247. For tax purposes, transfer pricing rules are used to allocate profit among the various entities of a Multinational Enterprise (MNE) group. The accepted international standard is the arm's length principle set out in Article 9 (Associated Enterprises) of the *Model Tax Convention on Income and Capital* adopted by the Organization for Economic Co-Operation and Development (OECD) and hereinafter referred to as the "*OECD Model Tax Convention*".

A set of domestic transfer pricing rules is required for several reasons. The arm's length principle is a bare statement of principle; it does not provide sufficient detail to be operative in the domestic income tax context. Transfer pricing rules may come into play with entities resident in jurisdictions with which Canada does not have a tax treaty. While a tax treaty involves two countries, domestic income tax establishes and protects the domestic tax base. Accordingly, the domestic transfer pricing rules pursue two objectives: establishing detailed rules that make the arm's length principle operative in all circumstances; and ensuring that the income recognised for Canadian tax purposes properly reflects the respective contributions of taxpayers and participating non-arm's length persons in cross-border transactions.

Because the arm's length principle applies to a wide variety and large number of intra-group arrangements, additional guidance is required to aid its application. Recognising the importance of a common approach to, and the need for guidance on, the application of the arm's length principle to minimize the possibility of disputes between taxpayers and tax administrations and between different tax administrations, the OECD developed and periodically updates guidance for the application of the arm's length principle. As stated in paragraph 1 of the Commentary to Article 9 of the *OECD Model Tax Convention*, the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* represent internationally-agreed principles and provide guidelines for the application of the arm's length principle. The most recent version of these guidelines is the 2022 edition, as adopted by the Committee on Fiscal Affairs of the OECD on January 7, 2022 (that specific version is referred herein as the "*OECD Transfer Pricing Guidelines*"). These notes refer to certain of the basic elements involved in applying the arm's length principle as set out in the *OECD Transfer Pricing Guidelines* and implemented in domestic legislation by section 247.

The purpose of the *OECD Transfer Pricing Guidelines* is to provide a common analytic framework whose consistent application by taxpayers, tax administrations and judicial decision makers will result in common approaches to the analysis of intra-group transactions, thereby reducing uncertainty for taxpayers and tax administrations. An interpretive rule at new subsection 247(2.03) ensures that Canada's transfer pricing rules are applied in a manner consistent with the analytic framework set out by the *OECD Transfer Pricing Guidelines*. Recognising that MNE groups may establish conditions in their intra-group relations that differ from those that would be established between independent enterprises and that such differences may result in distortions in the profits accrued by associated enterprises, the arm's length principle requires that the profits accrued by associated enterprises be in accord with the profits that would have accrued had the conditions been those that would have been made between independent enterprises.

The arm's length principle is implemented through a transfer pricing adjustment rule in subsection 247(2.02) that applies without regard to whether there was a tax avoidance motivation. All in-scope transactions are subject to the analytical question: what conditions would have applied in respect of the transaction or series had the participants been dealing at arm's length in comparable circumstances?

Generally, the *OECD Model Tax Convention* pursues the goal of taxing business profits where they originate economically. In the associated enterprises context, this policy goal finds expression in the arm's length principle, which pursues the goal of tax parity between associated and independent enterprises.

These amendments to the transfer pricing rules in section 247 are intended to bring Canada's transfer pricing rules in line with the international consensus on the application of the arm's length principle.

These amendments apply to taxation years and fiscal periods that begin after November 4, 2025.

## **Definitions**

ITA  
247(1)

***“actual conditions”***

Subsection (1) is amended to add the definition “actual conditions”, which are the conditions that actually apply between the participants to the transaction or series. Those conditions are determined not only by the contractual terms of the transaction, but also by other “economically relevant characteristics” defined in subsection (1), including the conduct of the participants. Formal conditions recognised in contracts are clarified and supplemented by the analysis of the conduct of the participants and the other economically relevant characteristics of the transaction or series. Where some of the contractual terms are inconsistent with the actual conduct of the participants, then the actual transaction will be analysed and determined by considering the other economically relevant characteristics, including the actual conduct of the participants, and including any contractual terms that are not inconsistent with the actual conduct of the participants. For example, the actual conditions relating to risk will be examined taking into account control over the risk and the financial capacity to assume the risk and consequently, risks formally assumed under the contractual terms may be allocated in accordance with the conduct of the participants and the other facts on the basis of steps 4 and 5 of the process for analysing risk in a controlled transaction as reflected in Chapter 1, sections D.1.2.1.4 and D.1.2.1.5 of the *OECD Transfer Pricing Guidelines*.

***“arm’s length allocation”***

The definition “arm’s length allocation” is repealed as it is now included in the interpretation of “arm’s length conditions”, pursuant to subsection (1.2).

***“arm’s length conditions”***

Subsection (1) introduces the definition “arm’s length conditions”. Arm’s length conditions are the conditions that would have applied had the participants been dealing at arm’s length in comparable circumstances. Once the transaction or series is analyzed and determined pursuant to new subsection (1.1), new paragraph (2)(b) requires that its actual conditions be compared with arm’s length conditions. The interpretation rule at new subsection (2.03) (described below) provides that arm’s length conditions are to be identified in a way that best achieves consistency with the Transfer Pricing Guidelines (as this term is defined at subsection (1)).

The definition of “arm’s length conditions” establishes that the hypothetical comparator to be used in carrying out the comparison in new paragraph (2)(b) is a situation where the participants to the transaction or series would have been dealing at arm’s length in comparable circumstances. That is, the comparison should posit what the actual participants to the transaction or series would have done if they had been dealing at arm’s length, and not what other, theoretical parties dealing at arm’s length, might have done.

Where it is concluded that, had the participants been dealing at arm's length in comparable circumstances, they would not have entered into a transaction or series substantially similar to the transaction or series as analyzed and determined, then the arm's length conditions to be identified should reflect that absence of transaction.

Where it is concluded that at arm's length, the participants in comparable circumstances would have entered into a different transaction or series, then the arm's length conditions are those of the different transaction or series.

The conclusion that the participants in comparable circumstances would have entered into a different transaction or series, or no transaction or series, should only be considered in the exceptional circumstances described in the *OECD Transfer Pricing Guidelines* in Chapter 1, paragraphs 1.142 to 1.145.

### ***“arm's length transfer price”***

The definition “arm's length transfer price” is repealed. Given the introduction of the definition of “arm's length conditions” and the interpretation rule in subsection 247(1.2), the previous reference to “arm's length transfer price” in subsection (3) has been deleted and is replaced with a reference to “arm's length conditions”.

### ***“economically relevant characteristics”***

To ensure that the comparability analysis, which is at the heart of the arm's length principle, is appropriately carried out in a Canadian legal context, subsection (1) introduces the definition “economically relevant characteristics”. The economically relevant characteristics are also referred to as “comparability factors”. Each comparability factor is set out in a paragraph of the definition, which are described further below.

The *OECD Transfer Pricing Guidelines* describe the comparability analysis in two main steps:

- identification of the commercial and financial relations between the associated enterprises and the conditions and economically relevant circumstances attaching to those relations in order to accurately delineate the controlled transaction (Step 1); and
- comparison of the conditions and economically relevant circumstances of the controlled transaction (as delineated) to the conditions and economically relevant circumstances of comparable transactions between independent enterprises (Step 2).

The *OECD Transfer Pricing Guidelines* provide that the economically relevant characteristics consist of the conditions of the transaction and its economically relevant circumstances. The economically relevant characteristics are used at both steps: to establish the object to be compared by accurately delineating the controlled transaction, at Step 1; and to establish the comparator by determining whether a potential comparable uncontrolled transaction is in fact comparable to the controlled transaction and what adjustments, if any, are necessary to achieve comparability, at Step 2.

Following the guidance in the *OECD Transfer Pricing Guidelines*, the relevance of any given economically relevant characteristic to a particular transaction or series that is in the scope of paragraph (2)(a) (“in-scope transaction or series”) is determined on a case-by-case basis according to the extent to which it would have been taken into account by the participants to the transaction or series had they been dealing at arm’s length in comparable circumstances. “Economically relevant characteristics” in respect of an in-scope transaction or series is defined to include the five comparability factors described in paragraphs (a) to (e). The description of the factors is flexible to enable the required fact-specific analysis on a case-by-case basis. In addition, for this reason, the list is not meant to be exhaustive.

Paragraph (a) describes the “contractual terms” comparability factor. This comparability factor is discussed in the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.1. This paragraph establishes the relevance of the contractual terms supporting the in-scope transaction or series. The reference to “actual conduct” ensures that the intra-group contractual terms alone do not set the boundaries of what is considered in assessing the actual conditions of the in-scope transaction or series. Rather, where the conduct of the participants to the in-scope transaction or series is not, or is not over time, consistent with the contractual terms, then the relationships revealed by the actual conduct, as opposed to those revealed by intra-group contractual terms, provide the relevant information for the purposes of delineating the in-scope transaction or series and determining its actual conditions.

As stated above, the economically relevant characteristics are considered regarding an in-scope transaction or series on a fact-sensitive basis. In the case of the “contractual terms” comparability factor, other contractual terms that support intra-group transactions that have a direct impact on the in-scope transaction or series are relevant. For example, it is necessary to arrive at an understanding of the arrangements supporting the generation of value by the MNE group, and therefore contractual terms of other intra-group transactions may be relevant for that exercise. See also *Canada v. GlaxoSmithKline Inc.*, 2012 SCC 52, where the Supreme Court of Canada, in its analysis of the price of the controlled transaction, considered another transaction that the taxpayer had with another entity of the group.

Paragraph (b) describes the “functional profile” comparability factor. This comparability factor is discussed in the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.2.

This paragraph establishes the relevance of the functions performed by the participants in the transaction or series revealed by their actual conduct. Four additional factors are identified as relevant to take into account when considering the functions performed by the relevant participants, namely:

- i. assets used and risks assumed,
- ii. how those functions relate to the wider generation of value by the multinational enterprise group to which the participants belong,
- iii. circumstances surrounding the transaction or series, and
- iv. industry practices.

The reference to “actual conduct” establishes the relevance of the actual conduct of the participants, as opposed to relying solely on the functional profiles described in intra-group contracts or other documentation. Although sham may be one example of a situation where the contractual terms will not prevail, other situations would also require looking at the actual conduct of the participants to determine the actual conditions of a transaction or series. For example, the fact that a written agreement nominally assigns certain functions, assets and risks to a participant is not sufficient on its own to conclude that in fact that participant actually performs those functions, uses those assets and assumes those risks, if the actual conduct of the participant does not reflect that purported assignment.

When analyzing the “functional profile” comparability factor, the functions are of predominant importance before the assets and risks.

Regarding subparagraph (b)(ii), it is important to understand how value is generated by the MNE group as a whole. Therefore, functions performed by other members of the MNE group may be relevant to the analysis of the in-scope transaction or series as they inform on the interdependencies of the functions performed by the participants with the rest of the group, and the contribution that the participants make to that value creation. While one party may perform a large number of functions relative to those of the other party to the transaction, it is the economic significance of those functions in terms of their frequency, nature and value to the respective participants to the transactions that is important.

The circumstances surrounding the transaction or series (subparagraph (b)(iii)), as well as specific industry practices (subparagraph (b)(iv)), will also be relevant in analyzing the actual conduct of the participants to the transaction or series.

Paragraph (c) describes the “object of the transaction” (i.e., characteristics of the property or service) comparability factor. This comparability factor is discussed in the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.3.

Differences in the specific characteristics of property or services often account, at least in part, for differences in their value in the open market. Characteristics that may be important include the following: in the case of transfers of tangible property, the physical features of the property, its quality and reliability and the availability and volume of supply; in the case of the provision of services, the nature and extent of the services; and in the case of intangible property, the form of transaction (e.g. licensing or sale), the type of property (e.g. patent, trademark, or know-how), the duration and degree of protection and the anticipated benefits from the use of the property. More details on specific features of intangibles that may prove important in a comparability analysis are discussed in the *OECD Transfer Pricing Guidelines* in Chapter VI, section D.2.1. Paragraph (d) describes the “economic and market context” comparability factor. This comparability factor is discussed in the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.4. Arm’s length prices may vary across different markets. Economic circumstances that may be relevant to determining market comparability include: the size of the markets; the extent of competition in the markets and the relative competitive positions of the buyers and sellers; the availability (risk thereof) of substitute goods and services; the levels of supply and demand in the market as a whole and in particular regions; consumer purchasing power; the nature and extent

of government regulation of the market; costs of production, including the costs of land, labour, and capital; transport costs; the level of the market (e.g. retail or wholesale); the date and time of transactions; and so forth. The facts and circumstances of the particular case will determine whether differences in economic circumstances have a material effect on price and whether reasonably accurate adjustments can be made to eliminate the effects of such differences. Other economic circumstances that should be identified include the geographic market and the existence of a cycle (e.g. economic, business or product cycle).

Paragraph (e) describes the “business strategies” comparability factor. This comparability factor is discussed in the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.5. Business strategies would take into account many aspects of a business such as innovation and new product development, degree of diversification, risk evaluation, assessment of political changes, input of existing and planned labour laws, duration of arrangements and other factors bearing on the daily conduct of business. Arm’s length parties will generally want to maximize their profits. However, the *OECD Transfer Pricing Guidelines* in Chapter I, section D.1.5 describe some situations where it may be acceptable for arm’s length parties to decrease their profits temporarily in anticipation of increased future profits, for example in the case of market penetration strategies. When evaluating whether a participant to a controlled transaction or series was following a business strategy that temporarily decreased profits in return for higher long-term profits, the conduct of the participants will need to be consistent with the purported business strategy. There must also be a plausible expectation that following the business strategy will produce a sufficient return to justify its costs within a period of time that would be acceptable in an arm’s length arrangement.

Before undertaking a transaction or series, each participant would be expected to assess the impact of the transaction or series on their future profits and compare it with the other options realistically available to them. These analyses are a relevant component of the business strategies that are pursued by a taxpayer or a partnership. Arm’s length parties would be expected to act in a manner that maximizes their overall profitability, in accordance with the aforementioned assessment. For example, where an arm’s length party to a transaction expects, based on their analyses, that the price of a specific commodity will rise over time, they would be expected to negotiate conditions that make the transactions more profitable to them as the commodity’s price increases and mitigate the risk of year-over-year negative operating margins.

**“multinational enterprise group”**

Subsection (1) is amended to add the definition “multinational enterprise group”. A multinational enterprise group means the group made up of the taxpayer or the partnership, or member of the partnership, and the non-resident person (or a partnership of which the non-resident person is a member) who are participants in a transaction or series of transactions referred to in subsection (2), as well as any other person that does not deal at arm’s length with at least one of the participants.

**“tax benefit”**

The definition “tax benefit” is repealed as the term is no longer used in the section.

***“transfer price”***

The definition “transfer price” is repealed as the term is no longer used in the section and “price” is now specifically included in the interpretation of “conditions”, pursuant to subsection (1.2).

***“transfer pricing capital adjustment”***

The definition “transfer pricing capital adjustment” is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

***“Transfer Pricing Guidelines”***

A definition of “Transfer Pricing Guidelines” is introduced for the purposes of section 247. If no text is prescribed by the Income Tax Regulations, as is the current situation, Transfer Pricing Guidelines is defined to mean the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, as adopted by the Committee on Fiscal Affairs on January 7, 2022. Text may be prescribed in the future by the Income Tax Regulations, as considered appropriate.

***“transfer pricing income adjustment”***

The definition “transfer pricing income adjustment” is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

***“transfer pricing income setoff adjustment”***

The definition “transfer pricing income setoff adjustment” is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

**Delineation of transaction or series**

ITA  
247(1.1)

New subsection (1.1) requires any transaction or series of transactions to be analyzed and determined with reference to the “economically relevant characteristics” of the transaction or series of transactions. The expression “economically relevant characteristics” is defined in subsection (1). Subsection (1.1) reflects the requirement to consider the economically relevant characteristics to conduct Step 1 and Step 2 that are discussed in the notes under the definition of “economically relevant characteristics”.

The requirement to analyse and determine a transaction or series with reference to its economically relevant characteristics is consistent with the guidance in Chapter I, section D of the *OECD Transfer Pricing Guidelines* (commonly referred to as delineation or delineating a transaction or series). This discussion in the Guidelines supports and guides the delineation exercise required by subsection (1.1) and the interpretation rule at subsection (2.03) provides that the analysis and determination of a transaction or series of transactions are to be made in a way that best achieves consistency with the Transfer Pricing Guidelines (as this term is defined at subsection (1)).

As a general rule in Canadian tax law, absent a specific provision of the Act to the contrary or a finding that they are a sham, the legal relationships created by the taxpayer or partnership must be respected (*Shell Canada Ltd. v Canada* [1999] 3 SCR 622). In the transfer pricing context, this could lead to an analysis of a transaction or series that focuses on the evidence of the legal form of the transaction or series such as the written terms of intra-group contracts and other formal documentation provided by the taxpayer or partnership without reference to other relevant facts of the transaction or series.

However, in performing a transfer pricing analysis of a controlled transaction or series, it is not sufficient to consider only the legal relationships formalized by the taxpayer or partnership and other members of the MNE group. By virtue of the community of interests within the MNE group, the terms of intra-group contracts may be incomplete, unenforced or non-existent or otherwise be out of step with the actual conduct of the participants and the other facts of the transaction or series. Beyond this, because the arm's length principle requires the formation of a complex hypothesis - the conditions that would have applied between independent enterprises dealing with one another in comparable circumstances - it is necessary to consider more than formal legal relationships and instead also understand the factual circumstances in which the transaction or series occurs. The main factors required for a transfer pricing analysis are set out in the description of "economically relevant characteristics".

Subsection (1.1), supported by the definition of "economically relevant characteristics" at subsection (1), clarifies that all relevant facts are to be considered in delineating the transaction or series. It ensures that the analysis and determination of the transaction or series for transfer pricing purposes will begin by considering the formal legal relationships created by the taxpayer or partnership and other members of the MNE group (that are not inconsistent with their actual conduct), and will be augmented by the additional consideration of the other economically relevant characteristics of the transaction or series.

The exercise of delineating a transaction or series does not, in and of itself, result in disregarding or substituting a transaction as set out in the exceptional circumstances described in Chapter I, section D.2 of the *OECD Transfer Pricing Guidelines*. However, where the conditions described in paragraphs 1.142-1.145 of Chapter I, section D.2 of the *OECD Transfer Pricing Guidelines* are met regarding an in-scope transaction or series, then for the purposes of applying paragraph (2)(b) and subsection (2.02), it would be considered that the participants, had they been dealing at arm's length in comparable circumstances would have entered into a different transaction or series, or that they would not have entered into any transaction or series at all, as the case may

be; this will be reflected in the determination of what arm's length conditions would be, as provided for by the definition of that expression.

For example, if pursuant to the contractual terms, ForCo (a non-arm's length, non-resident corporation) bears the risk in a given transaction with CanCo, but that following the analysis described under Chapter I, section D.1.2.1 of the *OECD Transfer Pricing Guidelines*, it is determined that ForCo does not have control over the risk and/or the financial capacity to assume the risk assigned to it pursuant to the transaction, this conclusion does not automatically result in disregarding the transaction or in substituting it with another one. The contractual assignment of risk needs to be compared with the actual conduct of the participants. The formal contractual terms that are inconsistent with the conduct of the participants will be ignored; the rest of the formal contractual terms will be considered, along with the rest of the economically relevant characteristics, which include the actual conduct of the participants.

Following this determination, different conclusions are possible depending on the facts. Had the participants been dealing at arm's length in comparable circumstances, given that ForCo had no control over the risk and/or financial capacity to control the risk, they could 1- have maintained the transaction but agreed to a lesser compensation of ForCo; 2- agreed to a different transaction; or 3- not entered at all into any transaction if it is impossible to find a point where the participants' objectives can meet. Only conclusions 2- and 3- illustrate the potential application of the conditions described under paragraphs 1.142-1.145 of Chapter I section D.2 of the *OECD Transfer Pricing Guidelines*.

### **Interpretation of conditions**

ITA  
247(1.2)

The term “conditions” is not defined in section 247. It is analogous to “conditions” which is used in Article 9 of the *OECD Model Tax Convention*. Neither Article 9 nor the *OECD Transfer Pricing Guidelines* provide a definition of “conditions”. New subsection (1.2) introduces an interpretation rule with respect to the word “conditions” in the context of the definition of “actual conditions” and “arm's length conditions”. “[A]ctual conditions” and “arm's length conditions” are to be interpreted broadly, and include, but are not limited to, price, rate, gross margin, net margin, the division of profit, contributions to costs and any commercial or financial information relevant to the determination of the quantum or nature of initial amounts or adjusted amounts, as the case may be.

### **Transfer pricing adjustment — application**

ITA  
247(2)

The previous version of subsection (2) is divided into new subsection (2) – the transfer pricing adjustment application rule, and new subsection (2.02) – the transfer pricing adjustment rule. The transfer pricing adjustment application rule in subsection (2) has two conditions.

The first application condition, in paragraph (2)(a), is met if a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or series of transactions.

The second application condition, in paragraph (2)(b), is met if the transaction or series of transactions that is in the scope of paragraph (2)(a), as analyzed and determined in accordance with subsection (1.1), includes actual conditions different from arm's length conditions. It requires the determination of the hypothesis: what conditions would have been included in respect of the delineated transaction or series had the participants been dealing at arm's length in comparable circumstances, taking into account the options realistically available to them at the time of entering into the transaction or series?

Generally, the use of hindsight to assess whether actual conditions differ from arm's length conditions is not appropriate, except for the specific instances referred to in the *OECD Transfer Pricing Guidelines*.

### **Transfer pricing adjustment — deeming rule**

ITA  
247(2.01)

New subsection (2.01) provides that the condition in paragraph (2)(b) is met where a condition does not exist as an actual condition, but would have existed had the participants to the transaction or series in the scope of paragraph (2)(a) been dealing at arm's length in comparable circumstances. This rule ensures that omission of an arm's length condition altogether will not result in the non-application of the transfer pricing adjustment rule.

### **Transfer pricing adjustment**

ITA  
247(2.02)

New subsection (2.02), the transfer pricing adjustment rule, provides that where the conditions of the transfer pricing application rule at subsection (2) are met, then any amounts (referred to as the "initial amounts") that would be determined for the purposes of applying the provisions of the Act (if the Act were read without reference to section 247 and section 245) in respect of the taxpayer's taxation year or the partnership's fiscal period are to be adjusted (referred to as an "adjustment") to the quantum or nature of the amounts (referred to as the "adjusted amounts") that would have been determined if arm's length conditions in respect of the transaction or series had applied.

Where the conclusion is that, in comparable circumstances, had the participants been dealing at arm's length, they would not have entered into a transaction or series at all, then the arm's length conditions should reflect the absence of any transaction, and the adjustment under subsection (2.02) should also reflect this absence of transaction.

Where the conclusion is that, in comparable circumstances, had the participants been dealing at arm's length, they would have entered into a different transaction or series, then the arm's length conditions should reflect the conditions of that different transaction or series, and the adjustment under subsection (2.02) should also reflect the conditions of that different transaction or series. A transaction or series accurately analyzed and determined should be replaced with an alternative transaction or series, or no transaction or series at all, only in exceptional circumstances as explained in Chapter 1, section D.2 of the *OECD Transfer Pricing Guidelines*. The interpretation rule at subsection (2.03) provides that the determination of amounts are to be made in a way that best achieves consistency with the Transfer Pricing Guidelines (as this term is defined at subsection (1)).

### **Transfer Pricing Guidelines**

ITA  
247(2.03)

New subsection (2.03) introduces an interpretation rule establishing the Transfer Pricing Guidelines as a source of guidance in analyzing and determining a transaction or series at subsection (1.1), in identifying arm's length conditions at paragraph (2)(b) and in determining amounts at subsection (2.02). Application of those provisions should be done so as to best achieve consistency with the Transfer Pricing Guidelines (as this term is defined at subsection (1)).

The interpretation rule applies regardless of whether the country of residence of the counterparty to the transaction or series is a state with which Canada has a tax treaty.

### **Most appropriate method**

ITA  
247(2.04)

New subsection (2.04) provides that the determination of whether a transaction or series of transactions includes actual conditions that differ from arm's length conditions should be done through an analysis where the most appropriate method is selected and applied in accordance with the Transfer Pricing Guidelines (as this term is defined at subsection (1)).

This rule enshrines a principle established in Chapter II of the *OECD Transfer Pricing Guidelines*, which further provides that the most appropriate method or methods is to be determined having regard to all relevant factors including:

1. the respective strengths and weaknesses of the method or methods;
2. the appropriateness of the method or methods considered in view of the nature of the in-scope transaction or series (as analyzed and determined pursuant to subsection (1.1)) with particular reference to the functional analysis;
3. the availability of reliable information needed to apply a method or methods; and

4. the degree of comparability between the economically relevant characteristics of the in-scope transaction or series (as analyzed and determined pursuant to subsection (1.1)) and the economically relevant characteristics of a potentially comparable transaction or of potentially comparable data used to apply a transactional profit method, including the reliability of any modifications made to eliminate the effect of material differences between them.

### **Ordering**

ITA  
247(2.1)

Subsection 247(2.1) is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

### **Penalty**

ITA  
247(3)

This subsection is amended to replace the formulation of “arm’s length transfer price” and “arm’s length allocation” with “amounts that are based on arm’s length conditions”, which is consequential to the introduction of the definitions “arm’s length conditions” and “actual conditions” in subsection (1), and the interpretation rule in subsection (1.2). These amendments are not intended to modify the application of the penalty, but rather to harmonize it with the new definitions.

Subparagraph (b)(i) is also amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

Subparagraph (b)(ii) is also amended to increase the threshold amount from \$5,000,000 to \$10,000,000; the initial \$5,000,000 amount had not been updated since 1997.

### **Contemporaneous documentation**

ITA  
247(4)

This subsection is amended to be harmonized with the newly introduced definition of “economically relevant characteristics” and its particular focus on the actual conduct of the participants, as well as making the subsection consistent with the concept of arm’s length conditions.

Subsection (4) provides that a taxpayer or partnership is deemed not to have made reasonable efforts to determine and use amounts that are based on arm's length conditions in respect of a transaction or series nor to have participated in a transaction or series that is a qualifying cost contribution arrangement unless the taxpayer or partnership makes or obtains records or documents, by its documentation-due date, that completely and accurately provide a description in all material aspects of the enumerated factors set out in paragraph 247(4)(a) and provides them to the Minister within 30 days of a written request (see new paragraph 247(4)(c)).

Subparagraph 247(4)(a)(ii) provides that the contractual terms of the transaction or series and their relationship, if any, to the contractual terms of each other transaction or series involving at least one of the participants to the transaction or series, or any other member of the multinational enterprise group, that is relevant to the transaction or series, must be completely and accurately described.

Subparagraph 247(4)(a)(iv) is amended to reflect the factor found in paragraph (b) of the newly introduced definition "economically relevant characteristics" in subsection (1). Clause 247(4)(a)(iv)(B) provides that a complete and accurate description must be provided of how the functions relate to the wider generation of value by the multinational enterprise group to which the participants belong. This relates to the concept of value creation where the functions undertaken by the participants to the transaction or series must be put in perspective with the functions undertaken by other entities of the MNE group which are relevant to the transaction or series. Pursuant to this clause, it is important to completely and accurately describe how value is generated by the group as a whole, the interdependencies of the functions performed by the participants with the rest of the group and the contribution that the participants make to that value creation.

Subparagraph 247(4)(a)(v) is amended to reflect the newly introduced definition "arm's length conditions" in subsection (1), as well as the requirement of selecting and applying the most appropriate method. The analysis leading to the selection of the method, and the analysis performed using the most appropriate method must be completely and accurately described. Consistent with the *OECD Transfer Pricing Guidelines*, taxpayers and partnerships are expected to review internal comparables in the comparability analysis and selection of the most appropriate method, and are therefore expected to provide an analysis of the internal agreements that were reviewed as potential comparables in the selection of the most appropriate method, whether or not they were ultimately selected as comparables.

Subparagraph 247(4)(a)(vi) is amended to reflect the newly introduced definition of "economically relevant characteristics" in subsection (1) by adding a reference to the notion of economic circumstances and business strategies. For example, taxpayers and partnerships are expected to completely and accurately describe their financial analyses made contemporaneously to entering into a transaction or series, including those on profitability impact. The business strategies must also be completely and accurately described, especially if the abovementioned financial analyses suggested a possible decrease in profitability for the taxpayer or partnership.

Paragraph 247(4)(c) is amended to provide that the records or documents described in paragraphs 247(4)(a) and 247(4)(b) must be provided to the Minister within 30 days of a

written request. This change only concerns the time period to provide the records or documents to the Minister; the requirement for taxpayers and partnerships to make or obtain the appropriate records or documentation by their documentation-due date for any given year or period remains unchanged.

### **Contemporaneous documentation simplification measures**

ITA  
247(4.1)

New subsection 247(4.1) provides that subsection 247(4) will not apply to a taxpayer or partnership for a particular year or fiscal period in respect of a transaction or series, if the taxpayer or partnership meets conditions prescribed by the Income Tax Regulations and makes, obtains and provides documentation prescribed by the regulations in a manner prescribed by the regulations.

### **Exclusion — loans to certain controlled foreign affiliates**

ITA  
247(7)

Subsection 247(7) is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

### **Exclusion — certain guarantees**

ITA  
247(7.1)

Subsection 247(7.1) is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

### **No adjustment unless appropriate**

ITA  
247(10)

Subsection 247(10) is amended to replace the reference to subsection 247(2) by a reference to newly introduced subsection 247(2.02), which contains the new main operative provision of the transfer pricing adjustment rules.

### **Deemed dividends to non-residents**

ITA

247(12)

Subparagraph 247(12)(b)(i) of the Act is amended by adding a clause (C) that modifies the definition of “transfer pricing income adjustment”, for the purposes of determining the “amount” referred to in the subparagraph.

Subparagraph 247(12)(b)(ii) of the Act is amended by adding clauses (C) and (D), that modify the definitions of “transfer pricing income adjustment” and “transfer pricing income setoff adjustment”, for the purposes of determining the “amount” referred to in the subparagraph.

Those changes are meant to ensure that a deemed dividend applies on the full capital gain and not only its taxable portion.

Clauses 247(12)(b)(i)(B) and 247(12)(b)(ii)(B) are amended to remove outdated references to “3/4 of”.

These amendments apply to taxation years and fiscal periods that begin after November 4, 2025.

## **Clause 94**

### **Definitions**

ITA  
248(1)

Subsection 248(1) defines various terms that apply for the purposes of the Act. Subsection 248(1) is amended to remove the exception to the synthetic equity arrangement rules where no tax-indifferent investor has all or substantially all the economic exposure in respect of the share and the associated exception where the synthetic equity arrangement is traded on a recognized derivatives exchange. Specifically, the definitions “derivative forward agreement”, “dividend rental arrangement” and “synthetic equity arrangement” are amended and the definitions “recognized derivative exchange”, “specified mutual fund trust”, “specified synthetic equity arrangement”, “synthetic equity arrangement chain”, and “tax-indifferent investor” are repealed.

These amendments come into force on January 1, 2025.

#### ***“derivative forward agreement”***

A derivative forward agreement essentially combines a derivative financial instrument with the purchase or sale of a capital property. Income from a derivative financial investment is generally fully taxable as ordinary income. Derivative forward agreements are typically used in an attempt to convert this fully taxable derivative income to a capital gain, only half of which is included in income. A derivative forward agreement therefore involves the purchase or sale of a capital property.

Paragraph (b) of the definition deals with agreements to purchase a capital property. In order for a purchase agreement to be a derivative forward agreement, the economic return on the agreement (*i.e.*, the difference between the price paid for the property and the fair market value of the property when delivered) must have a derivative component. For the purposes of determining whether the return has a derivative component, the return must be attributable, in whole or in part, to an underlying interest other than an interest described in subparagraphs (b)(i) to (iii).

Subparagraph (b)(i) of the definition essentially provides that, where the return on the purchase is based on the economic performance of the property being purchased, the purchase agreement will not be a derivative forward agreement. This exception is intended to exclude certain commercial transactions from the scope of the derivative forward agreement rules.

Clauses (b)(i)(A) to (C) of the definition contain conditions under which the exception is not available. Clause (b)(i)(B) contains the conditions that the purchase agreement is an agreement to acquire property from a tax-indifferent investor or a financial institution, as defined in subsection 142.2(1).

Subclause (b)(i)(B)(I) of the definition is amended, consequential on the repeal of the definition “tax-indifferent investor” in subsection 248(1), to replace the reference to the definition “tax-indifferent investor” with a “tax-indifferent” as defined in subsection 18.2(1).

For more information, see the commentary on the definitions “tax-indifferent” in subsection 18.2(1) and “tax-indifferent investor” in subsection 248(1).

### ***“dividend rental arrangement”***

A dividend rental arrangement is an arrangement under which one person receives a dividend on a share that has been borrowed from another person who retains the risk of loss or opportunity for gain from fluctuations in the share value. Paragraph (d) of the definition is an anti-avoidance rule intended to prevent parties that otherwise deal at arm’s length with each other from colluding with one another to circumvent the definition “synthetic equity arrangement” in subsection 248(1).

Paragraph (d) is repealed consequential to the amendment to subparagraph (a)(ii) of the definition “synthetic equity arrangement”. Paragraph (d) is no longer relevant as an agreement or arrangement described in this paragraph would be captured by the expanded “synthetic equity arrangement” definition.

### ***“employee ownership trust”***

Paragraph (j) of the definition “employee ownership trust” requires that all or substantially all the fair market value of the property of the trust is attributable to shares of the capital stock of one or more qualifying businesses that the trust controls. This condition is intended to ensure that the tax benefits provided under the Act for the creation and continuation of employee ownership

trusts (EOTs) are targeted at facilitating employee ownership of active businesses (and not other assets).

Paragraph (j) is amended to replace the term “attributable to” with “derived, directly or indirectly, from”. Paragraph (j) is also amended to allow all or substantially all the fair market value of the property of the trust to be derived from both shares and indebtedness of a qualifying business that the trust controls. Lastly, paragraph (j) is amended to add that the qualifying business that the trust controls carry on an active business.

These amendments are intended to clarify, for greater certainty, that paragraph (j) may be satisfied on a “look-through” basis, such as where the sole property of an EOT is shares of a wholly-owned holding corporation whose sole asset is the shares of a wholly-owned subsidiary corporation that is a qualifying business that carries on an active business. These amendments also permit indebtedness owed by such a qualifying business to satisfy the fair market value test under paragraph (j). The “look-through” approach under paragraph (j) is not intended to apply beyond the shares or indebtedness of a qualifying business that carries on an active business; for example, if such a qualifying business owns shares of a foreign subsidiary corporation this would not be relevant for purposes of new paragraph (j).

The French version of sub-paragraph (b)(iv) of this definition is also amended to better align the French and the English.

These amendments are deemed to have come into force on January 1, 2024.

#### ***“qualifying business”***

Paragraph (c) of the definition “qualifying business” requires that the corporation deals at arm’s length and is not affiliated with any person or partnership that owned 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation immediately before the time that a trust shareholder of the corporation acquired control of the corporation.

Paragraph (c) is amended to clarify that the non-arm’s length or affiliated person described in the definition does not include a subject corporation referred to in paragraph (a) of the definition “qualifying business transfer” that controlled and wholly-owned the corporation immediately before the time the trust acquired control of the corporation. This amendment is intended to accommodate qualifying business transfers, under which the trust acquires the shares of a holding corporation that wholly-owns a subsidiary corporation, the employees of which are the intended beneficiaries of the trust.

This amendment is deemed to have come into force on January 1, 2024.

#### ***“qualifying business transfer”***

Paragraph (a) of the definition “qualifying business transfer” is amended to replace the term “attributable to” with “derived, directly or indirectly, from”. This amendment is intended to clarify, for greater certainty, that the determination of whether all or substantially all the fair

market value of the assets (other than an interest in a partnership) that are used principally in an active business carried on by the subject corporation or a wholly-owned subsidiary of the subject corporation may be satisfied where all of the assets of the subject corporation consists of all of the shares of a wholly-owned subsidiary all of the assets of which are used principally in carrying on its active business. For example, the fair market value requirement provided in this paragraph could be met where a subject corporation is a holding corporation, the sole property of which is all of the shares of a wholly-owned subsidiary corporation all of whose assets are used principally in an active business carried on by the subsidiary.

This amendment is deemed to have come into force on January 1, 2024.

### ***“qualifying cooperative business”***

The new definition “qualifying cooperative business” in subsection 248(1) is relevant for the definitions “qualifying cooperative worker” and “worker cooperative” in subsection 248(1). A qualifying cooperative business is defined as a corporation controlled by a WC that satisfies the conditions in paragraphs (a) to (c).

#### *Canadian-controlled Private Corporation*

Paragraph (a) requires that the corporation be a Canadian-controlled private corporation (note that a cooperative corporation described under section 136 is a private corporation for purposes of the definition of qualifying cooperative business).

#### *Governance and Board Representation*

Paragraph (b) provides a restriction on the governance of the qualifying cooperative business. Specifically, not more than 40% of the directors of the qualifying cooperative business can be individuals that, immediately before the time that the WC acquired control of the corporation, owned, directly or indirectly in any manner whatever, together with any person or partnership that is related to or affiliated with the director, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation.

Paragraph (c) requires that the qualifying cooperative business deals at arm’s length and is not affiliated with any person (other than a subject corporation referred to in paragraph (a) of the definition “qualifying cooperative conversion” that controlled and wholly-owned the corporation immediately before the time the trust acquired control of the corporation) or partnership that owned 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation immediately before the time the WC acquired control of the corporation. The exception to the affiliated person condition in this definition is intended to accommodate qualifying cooperative conversions, under which the WC acquires the shares of a holding corporation that wholly-owns a subsidiary corporation, the employees of which are the intended qualifying cooperative workers of the WC.

This amendment is deemed to come into force on January 1, 2024.

***“qualifying cooperative conversion”***

The new definition “qualifying cooperative conversion” in subsection 248(1) is relevant to apply the new capital gain deduction under subsection 110.62(2) and the new 10-year capital gain reserve under subparagraph 40(1)(a)(iii) and subsection 40(1.4). The requirements of this new definition are intended to ensure that only genuine business transfers to worker cooperatives (WCs) on arm’s length terms can benefit from these new tax benefits. A “qualifying cooperative conversion” means a disposition by a taxpayer of shares of the capital stock of a corporation (“subject corporation”) to another corporation (“purchaser corporation”) provided that certain conditions are met. These conditions are provided in paragraphs (a) through (c).

Paragraph (a) provides requirements for the subject corporation being disposed of. Specifically, immediately before the disposition, all or substantially all the fair market value of the assets of the subject corporation must be derived, directly or indirectly, from assets (other than an interest in a partnership) that are used principally in an active business carried on by the subject corporation or by a corporation that is controlled and wholly-owned by the subject corporation. For example, the fair market value requirement provided in this paragraph could be met where a subject corporation is a holding corporation, the sole property of which is all of the shares of a wholly-owned subsidiary corporation all of whose assets are used principally in an active business carried on by the subsidiary.

Paragraph (b) provides requirements applicable to the time of the disposition of the shares of the subject corporation described in paragraph (a). Specifically, at the time of the disposition, the taxpayer must deal at arm’s length with the purchaser corporation, the purchaser corporation must acquire control of the subject corporation, and the purchaser corporation must be a WC.

Paragraph (c) provides requirements following the disposition described in paragraph (b). First, at all times after the disposition, the taxpayer must deal at arm’s length with the purchaser corporation and subject corporation. Second, at all times after the disposition, the taxpayer must not retain any right or influence that, if exercised, would allow the taxpayer (whether alone or together with any person or partnership that is related to or affiliated with the taxpayer) to control, directly or indirectly in any manner whatever, the purchaser corporation or subject corporation. Relevant facts in determining arm’s length dealing could include, for example, that the WC conducted its own due diligence with respect to the acquisition and obtained independent legal, tax and financial advice, including an independent valuation from a qualified professional.

This amendment is deemed to come into force on January 1, 2024.

***“qualifying cooperative worker”***

The new definition “qualifying cooperative worker” in subsection 248(1) is relevant for purposes of the definition “worker cooperative” in subsection 248(1). It means an individual that meets the conditions provided in paragraphs (a) through (e).

Paragraph (a) requires that the individual is a member of a cooperative corporation, which has been established or continued under the provisions of a law, of Canada or of a province, that

provide for the establishment of the corporation as a cooperative corporation or that provide for the establishment of cooperative corporations.

Paragraph (b) requires that the individual is an employee of the cooperative or a qualifying cooperative business (as defined under subsection 248(1)) controlled by the cooperative.

Paragraphs (c) through (e) provide the instances in which an individual would be excluded from the definition “qualifying cooperative worker”.

More specifically, paragraph (c) excludes as “qualifying cooperative workers” individuals that represent together with any person or partnership that is related or affiliated with the individual, more than 50% of the members of the worker cooperative.

Paragraph (d) excludes as “qualifying cooperative workers” individuals who immediately before the time of a qualifying cooperative conversion to the cooperative, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of the capital stock or indebtedness of the cooperative or a qualifying cooperative business controlled by the cooperative, the value of which is equal to or greater than 50% of the fair market value of the shares of the capital stock and indebtedness of the cooperative or the qualifying cooperative business controlled by the corporation.

Paragraph (e) excludes as “qualifying cooperative workers” individuals who claimed, or are related to an individual who claimed, a deduction under subsection 110.62(2) in respect of a disposition of shares of the cooperative or a qualifying cooperative business controlled by the cooperative.

This definition is relevant to making a determination of whether a corporation is a “worker cooperative” (as defined under subsection 248(1)) and is referenced in various conditions in that definition. For more information, see the commentary to the definition “worker cooperative” in subsection 248(1).

This amendment is deemed to come into force on January 1, 2024.

### ***“recognized derivatives exchange”***

The definition “recognized derivatives exchange” in subsection 248(1), which is relevant for the purposes of subparagraph (b)(i) of the definition “synthetic equity arrangement” in the same subsection, is repealed consequential on the repeal of that subparagraph.

For more information, see the commentary on the repeal of subparagraph (b)(i) of the definition of “synthetic equity arrangement” in subsection 248(1).

### ***“specified mutual fund trust”***

The definition “specified mutual fund trust” in subsection 248(1), which is relevant for the purposes of the definition “tax-indifferent investor” in the same subsection, is repealed consequential on the repeal of the “tax-indifferent investor” definition.

For more information, see the commentary on the repeal of the definition “tax-indifferent investor” in subsection 248(1).

### ***“specified synthetic equity arrangement”***

The definition “specified synthetic equity arrangement” in subsection 248(1), which is relevant for the purposes of subsection 112(2.32) and the definitions “synthetic equity arrangement chain” and “tax-indifferent investor”, is repealed consequential on the repeal of that subsection and those definitions.

For more information, see the commentary on the repeal of subsections 112(2.31) to (2.34).

### ***“superannuation or pension benefit”***

The definition of superannuation or pension benefit includes amounts received out of or under a superannuation or pension fund or plan. The definition is amended, consequential on the introduction of rules that apply to unclaimed retirement property that is paid to an unclaimed property authority.

The previous paragraphs (a), (b), and (c) now appear as subparagraphs (a)(i) to (iii). The new paragraph (b) applies in the case where property from a registered pension plan, an RRSP or a RRIF is paid to an unclaimed property authority and held by the authority as a non-registered cash account. When that non-registered property is subsequently paid by the authority to a claimant, that payment will be a “superannuation or pension benefit” and will be included in the claimant’s taxable income under subparagraph 56(1)(a)(i) (and reported to the CRA via a T4A).

If unclaimed property from a registered pension plan, RRSP or RRIF is transferred to an unclaimed property authority to be held by the authority (or a delegated entity) as an RRSP or RRIF, a subsequent payment of that property from the RRSP or RRIF to a claimant will not be a “superannuation or pension benefit”. See the commentary on the amendments to sections 146 and 146.3 that will apply to RRSPs and RRIFs established under the direction of an unclaimed property authority.

This amendment applies in respect of amounts paid to an individual by an unclaimed property authority if an amount in respect of the payment was paid to the unclaimed property authority after December 31, 2026.

### ***“synthetic equity arrangement”***

A synthetic equity arrangement in respect of a DRA share of a person or partnership (the “particular person”) means one or more agreements or other arrangements that satisfy the criteria in paragraph (a) of the definition but does not include any agreements or arrangements described

in any of the subparagraphs (b)(i), (ii) or (iii) of the definition. Synthetic equity arrangements include agreements that provide all or substantially all the risk of loss and opportunity for gain or profit in respect of the share to another person. Under subsection 112(2.3), the dividend received deduction may be denied for a dividend received by a person on a share in respect of which there is a synthetic equity arrangement. This is to prevent the tax loss that would result if the person could claim a tax deduction for both the dividend received in respect of the share and for the amount paid to compensate the counterparty who has been provided the risk under the synthetic equity arrangement.

The “synthetic equity arrangement” definition is amended as part of the removal of the exception where no tax-indifferent investor has all or substantially all the economic exposure in respect of the share (in subsection 112(2.31)) and the removal of the associated exception for derivatives traded on a recognized derivatives exchange.

Subparagraph (a)(i) of the definition provides that a synthetic equity arrangement must be entered into by the particular person or by a person or partnership that does not deal at arm’s length with the particular person. Subparagraph (a)(i) is amended to remove the reference to a “counterparty” and “an affiliate counterparty” in subsection 112(2.32), consequential on the repeal of that subsection.

Subparagraph (a)(ii) of the definition provides that a synthetic equity arrangement must have the effect of providing all or substantially all of both the risk of loss and opportunity for gain or profit in respect of the share of the particular person to a counterparty or a group of counterparties.

Subparagraph (a)(ii) is amended to replace the reference to “providing all or substantially all of the risk” with “eliminating all or substantially all of the risk”. This recognizes that the risk status of a counterparty to the synthetic equity arrangement (i.e., determining whether all or substantially all of the risk of loss and opportunity for gain or profit in respect of a share has been “provided” to a tax-indifferent investor) is no longer relevant. Instead, this amended subparagraph would apply where the agreements or arrangements in respect of a share of a particular person have the effect of eliminating all or substantially all of the risk of loss or opportunity for gain or profit in the share of that particular person.

Subparagraph (b)(i) of the definition excludes from the “synthetic equity arrangement” definition certain agreements that are traded on a recognized derivatives exchange. Subparagraph (b)(i) is repealed to remove this exception.

For more information, see the commentary on the repeals of subsections 112(2.31) to (2.34) and the definition “tax-indifferent investor” in subsection 248(1).

### ***“synthetic equity arrangement chain”***

The definition “synthetic equity arrangement chain” in subsection 248(1), which is relevant for the purposes of subsection 112(2.32), is repealed, consequential on the repeal of that subsection.

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For more information, see the commentary on the repeal of subsections 112(2.31) to (2.34).

***“tax-indifferent investor”***

A tax-indifferent investor is generally defined in subsection 248(1) as meaning a person or partnership that is:

- a person exempt from tax under section 149;
- a non-resident person, other than a person to which all amounts paid or credited under a synthetic equity arrangement or a specified synthetic equity arrangement may be attributed to the business carried on by the person in Canada through a permanent establishment;
- a trust resident in Canada (other than a specified mutual fund trust) if any of the interests as a beneficiary under the trust is not a fixed interest in the trust; or
- in certain cases, a trust or partnership of which persons in the first three bullets are, directly or indirectly, beneficiaries or members.

Under subsection 112(2.31), the notion of a tax-indifferent investor essentially limits the application of subsection 112(2.3) to dividends received on DRA shares for which there is a synthetic equity arrangement entered into with certain counterparties that do not pay any Canadian income tax.

This definition is repealed as part of the removal of the exception that applies under subsection 112(2.31) when the counterparty to the synthetic equity arrangement is not a tax-indifferent investor.

***“unclaimed property authority”***

The new definition of unclaimed property authority describes three entities that are authorized under three statutes (one federal, two provincial) to hold assets of unlocated individuals. Furthermore, paragraph (d) allows additional entities (by reference to their authorizing legislation) to be prescribed by regulation or designated by the Minister of Finance. The definition is added to the Act consequential on amendments to subsections 56(1) and 153(1) and sections 146 and 146.3 of the Act that will modify how tax rules apply to property paid or transferred from registered pension plans, RRSPs and RRIFs to be held under the direction of the authorized entities.

This amendment comes into force on January 1, 2027.

***“unlocated individual”***

Consequential on the introduction of modified tax rules that will apply to unclaimed retirement property that is paid or transferred to unclaimed property authorities, a new definition of “unlocated individual” is added to subsection 248(1) of the Act. An “unlocated individual” is an individual on whose behalf property from an RPP, RRIF, or RRSP can be paid or transferred to

an unclaimed property authority in accordance with applicable law. See the additional commentary on the new definition “unclaimed property authority”.

This amendment comes into force on January 1, 2027.

### ***“worker cooperative”***

The new definition “worker cooperative” (WC) in subsection 248(1) is relevant to apply the new capital gain deduction under subsection 110.62(2) and the new 10-year capital gain reserve under subparagraph 40(1)(a)(iii) and subsection 40(1.4) for qualifying cooperative conversions (also defined in subsection 248(1)). A WC is a corporation, which at all relevant times, satisfies all of the conditions provided under paragraphs (a) through (i) of the definition.

#### *Residence*

New paragraph (a) requires that the corporation is resident in Canada.

#### *Incorporation or continuance under a law governing cooperative corporations*

New paragraph (b) requires that the corporation was incorporated or continued by or under the provisions of a law, of Canada or of a province, that provide for the establishment of the corporation as a cooperative corporation or that provide for the establishment of cooperative corporations.

#### *Purpose of the cooperative*

New paragraph (c) requires that the corporation is established for the purpose of providing employment to its members.

#### *Control by worker members*

New paragraph (d) requires that if the membership of all qualifying cooperative workers (as defined in subsection 248(1)) of the corporation were notionally attributed to one hypothetical person, that person would control the corporation. Paragraph (d) is intended to ensure that control of the cooperative rests with its qualifying cooperative worker members that are employed by the cooperative or a qualifying cooperative business controlled by the cooperative.

The hypothetical person test in paragraph (d) addresses the concern that a corporation, the voting shares (in the case of a cooperative corporation, the membership shares) of which are distributed among a large number of persons, is usually not considered to be controlled by any group of its shareholders (or members), provided the shareholders (or members) do not act together to exercise control. As a result, it could be argued that a cooperative that is owned by a number of members (including non-worker members, if the cooperative is a multi-stakeholder cooperative) is not controlled by its qualifying cooperative workers. New paragraph (d) clarifies that this is not considered to be the case for purposes of the definition of “worker cooperative”.

For more information, see the commentary to the definition “qualifying cooperative worker” in subsection 248(1).

*At least 75% of employees are members of the cooperative*

New paragraph (e) provides that at least 75% of the of all individuals employed by the corporation and all qualifying cooperative businesses controlled by the corporation (other than an employee who has not completed an applicable probationary period, which may not exceed 12 months) are members of the cooperative. This requirement originates from the worker cooperative requirements provided under the *Canada Cooperatives Act*.

*Membership*

New paragraph (f) requires that each initial membership share provided to an employee of the corporation and any qualifying cooperative business controlled by the corporation is issued in exchange for a payment of a nominal amount determined in the same manner for all members described under the definition “qualifying cooperative worker” (as defined in subsection 248(1)), and offered to each employee following their completion of an applicable probationary period, which may not exceed 12 months. This requirement is intended to ensure membership in the WC is accessible to employees that meet the requirements provided under definition “qualifying cooperative worker”.

*Governance*

New paragraphs (g) and (h) provide conditions for the governance of the WC, including the composition of the directors of the WC. These conditions are intended to balance the interests of the selling shareholders of a subject corporation with the interests of the purchasing cooperative and its members, to ensure that a qualifying cooperative conversion occurs on arm’s length terms, and to ensure that the qualifying cooperative members (as an aggregated group) acquire control of the subject corporation upon the qualifying cooperative conversion.

Paragraph (g) provides at least one-third of the directors of the corporation are “qualifying cooperative workers” (as defined under subsection 248(1)) of the cooperative.

Paragraph (h) prohibits more than 40% of the directors of the cooperative from consisting of individuals each of whom, immediately before the time of a qualifying cooperative conversion that involved the cooperative, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the director, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the cooperative or a qualifying cooperative business (as defined under subsection 248(1)) controlled by the cooperative.

*Distribution of surplus earnings*

New paragraph (i) requires that the by-laws of the cooperative provide a procedure for allocating, crediting or distributing any surplus earnings of the corporation, including that not less than 50% of those earnings must be paid on the basis of the remuneration earned by the

qualifying cooperative workers from the corporation or the labour contributed by those members to the cooperative.

For more information, see the commentary to the definitions “qualifying cooperative business” and “qualifying cooperative worker” in subsection 248(1).

This amendment is deemed to have come into force on January 1, 2024.

### ***“zero-emission vehicle”***

The definition “zero-emission vehicle” in subsection 248(1) describes a class of assets that are eligible for a temporary first-year enhanced capital cost allowance (CCA), subject to certain conditions. Zero-emission vehicles are included in either Class 54 or Class 55 of Schedule II to the Regulations.

Paragraph (b) of the definition requires the property to have been acquired, and become available for use, after March 18, 2019 and before 2028. This paragraph is amended to extend this period to include property that is acquired, and becomes available for use, before 2034.

Paragraph (d) requires the property to be “accelerated investment incentive property” in subsection 1104(4) of the Regulations. A vehicle may satisfy this condition even where the vehicle was subject to a prior CCA or terminal loss claim provided that the vehicle was neither acquired by the taxpayer on a tax-deferred “rollover” basis nor was it previously owned or acquired by the taxpayer or a non-arm's length person or partnership. This paragraph is amended to also permit property that is “reaccelerated investment incentive property” (as defined in new subsection 1104(4.01) of the Regulations) to satisfy this criterion.

These amendments are deemed to have come into force on January 1, 2025.

### **Synthetic equity arrangements — disaggregation**

ITA  
248(42)

Subsection 248(42) provides that an arrangement that reflects the fair market value of more than one type of identical share is considered to be a separate arrangement in respect of each type of identical share the value of which the arrangement reflects. Subsection 248(42) is relevant for the purposes of the definition “synthetic equity arrangement” in subsection 248(1), paragraphs (c) and (d) of the definition “dividend rental arrangement” in that subsection and subsections 112(2.31), (2.32) and (10). Consequential on the repeals of subsections 112(2.31) and (2.32) and paragraph (d) of the definition “dividend rental arrangement” in subsection 248(1), subsection 248(42) is amended to remove the references to those provisions.

### **Clause 95**

#### **Arm's length**

ITA  
251(1)(b)

Subject to certain exceptions, paragraph 251(1)(b) generally provides that a trust and a taxpayer do not deal at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV).

Paragraph 251(1)(b) is amended to include a reference to paragraph (h) of the definition "trust" in subsection 108(1), which refers to employee ownership trusts (EOT) as an exception to the general rule in this paragraph. This amendment is intended to ensure that where a minority shareholder of a corporation that is sold to a trust pursuant to a qualifying business transfer (as defined in subsection 248(1)) and a beneficiary of the new employee ownership trust are related, the selling minority shareholder will not be deemed not to deal at arm's length with the EOT solely due to that relationship. Consequently, the selling minority shareholder could satisfy the requirement to deal with the EOT at arm's length at all times from the disposition time and onwards (as provided under subparagraphs (b)(i) and (c)(i) of the definition "qualifying business transfer" (QBT) in subsection 248(1)).

**Example**

An EOT acquired 100% of the shares of an operating corporation (Opco) from Mr. X and Mr. Z under a QBT. Immediately prior to the disposition of the shares under the QBT, Mr. X owned 20% of the shares of Opco and Mr. Z owned the remaining 80% of the shares. Opco has no debt.

Opco has 30 employees that would become beneficiaries of the EOT following the QBT. Two of the employees (Employee 1 and Employee 2) are related to Mr. X.

Subparagraph (b)(iv) of the definition "employee ownership trust" in subsection 248(1) requires that immediately before the time of a QBT to the trust, the beneficiary did not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of the capital stock or indebtedness of the qualifying business, the value of which is equal to or greater than 50% of the fair market value of the shares of the capital stock and indebtedness of the qualifying business. Employee 1 and Employee 2 meet this requirement because, although they are related to Mr. X, Mr. X only owned a total of 20% of the shares of Opco immediately before the disposition time. On this basis, Employee 1 and Employee 2 can be beneficiaries of EOT.

In order for a seller to claim the deduction available under subsection 110.61(2) for a disposition of shares under a QBT, the seller must deal at arm's length with the EOT at the disposition time and at all times after the disposition. This requirement is provided under subparagraphs (b)(i) and (c)(i) of the definition "QBT" in subsection 248(1).

Paragraph 251(1)(b) generally provides that a trust and a taxpayer do not deal at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially

interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV). As a result of the amendment to paragraph 251(1)(b), employee ownership trusts are excluded from this deeming rule.

Because of the amendment to paragraph 251(1)(b), the deeming rule does not apply in respect of Employee 1 and Employee 2. Thus, absent other relevant facts, Mr. X would not be deemed by paragraph 251(1)(b) not to deal with the EOT at arm's length due to the beneficial interests of his relatives, Employee 1 and Employee 2, in the EOT. Thus, absent other relevant facts, Mr. X would be able to satisfy the requirements under subparagraphs (b)(i) and (c)(i) of the QBT definition to deal with the EOT at arm's length at the disposition time and at all times after the disposition. Thus, Mr. X may be eligible to claim a deduction under subsection 110.61(2).

This amendment is deemed to have come into force on January 1, 2024.

## **Clause 96**

### **Definitions**

ITA  
256.1(1)

Section 256.1 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. subsection 256.1(1) provides definitions that apply for the purposes of section 256.1.

The definition “specified provision” is relevant in applying the anti-avoidance rules in subsections 256.1(3) and (6), which deem an acquisition of control to occur in certain circumstances.

The definition of “specified provision” in subsection 256.1(1) is amended to correct a cross-reference that was inadvertently changed in Bill C-59. This amendment is deemed to have come into force on August 9, 2022, consistent with the application of the corresponding amendment in Bill C-47.

## **Excise Tax Act**

### **Clause 97**

#### **Disclosure of confidential information**

ETA  
295(5)(d)(v.2)

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

New subparagraph 295(5)(d)(v.2) is added so that confidential information may be provided to an official of Employment and Social Development Canada solely for the purpose of administering and enforcing the *Canada Labour Code* as it relates to the misclassification of employees.

This amendment comes into force on royal assent.

## **Income Tax Regulations**

### **Clause 98**

#### **Interpretation**

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

Part I of the Regulations provides rules for deductions at source that must be withheld on specified amounts of “remuneration”. Paragraph (j.1) of the definition of “remuneration” in subsection 100(1) includes payments made from a RRIF during the lifetime of an annuitant, but excludes such payments to the extent that they are in respect of the minimum amount.

Paragraph (j.1) is amended to ensure that the minimum amount for this purpose is determined taking into account new subsections 146.3(1.6) and (1.7) of the *Income Tax Act*. See the additional commentary on these new subsections of the Act.

This amendment comes into force on January 1, 2027.

### **Clause 99**

#### **Non-Periodic Payments**

ITR  
103(6)

Subsection 103(6) of the Regulations defines a “lump sum payment” for the purposes of subsection 103(4), which sets out the amount of tax that is required to be withheld from such payments. Paragraph (d.1) ensures that a lump sum payment includes payments made from a RRIF during the lifetime of an annuitant, but excludes such payments to the extent that they are in respect of the minimum amount.

Paragraph (d.1) is amended to ensure that the minimum amount for this purpose is determined taking into account new subsections 146.3(1.6) and (1.7) of the *Income Tax Act*. See the additional commentary on these new subsections of the Act.

This amendment comes into force on January 1, 2027.

## Clause 100

### Additional Reporting – Trusts

ITR  
204.2(1)

Subsection 204.2(1) requires all trusts that are required to file a return of income to provide additional information, except for those trusts specifically listed in paragraphs 150(1.2)(a) to (p) of the Act. This additional information includes the name, address, date of birth (in the case of an individual other than a trust), jurisdiction of residence and taxpayer identification number (or TIN, as defined in subsection 270(1) of the Act) for each person who, in the year,

- is a trustee, beneficiary or settlor (as defined in subsection 17(15) of the Act) of the trust; or
- has the ability (through the terms of the trust or a related agreement) to exert influence over trustee decisions regarding the appointment of income or capital of the trust. This would include, for example, a protector of the trust.

Consequential on the introduction of new subparagraphs 150(1.2)(q) and (r) of the Act, subsection 204.2(1) is amended to provide that the reporting exemption applies to trusts listed in paragraphs 150(1.2)(a) to (r) of the Act. The addition of paragraph 150(1.2)(q) will apply for taxation years that end after December 30, 2024. The addition of paragraph 150(1.2)(r) will apply for taxation years that end after December 30, 2025.

Subsection 204.2(1) is also amended to clarify that every trust, other than a trust specifically listed in subsection 150(1.2) of the Act, that is required to file a return of income is also required to provide the prescribed beneficial ownership information of the trust. This subsection is also amended to include the requirement to provide the prescribed information of a partnership that is a beneficiary of a trust. This amendment applies to taxation years that end after December 30, 2024.

Consequential on the introduction of new subsection 204.2(3) of the Regulations, paragraph 204.2(1)(a) of the Regulations is amended to remove the reference to a settlor being defined in subsection 17(15) of the Act. This amendment applies to taxation years that end after December 30, 2024.

ITR  
204.2(2)(b.1)

New paragraph 204.2(2)(b.1) is added for greater certainty to ensure that beneficial ownership information of a trust does not need to be provided where the trustee of the trust is a public guardian and trustee authorized under a law of Canada or a Province who, as trustee, is acting in

their capacity as public guardian and trustee, including acting as trustee of a trust pursuant to an order of a court.

ITR

204.2(2)(e)

Subsection 204.2(2) provides that for the purposes of subsection (1), the requirement to provide information in respect of the beneficiaries of a trust is met if

- the required information is provided in respect of each beneficiary of the trust whose identity is known or ascertainable with reasonable effort by the person making the return at the time of filing the return;
- in respect of a trust, the beneficiaries of which are all of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, or an identifiable class of the members of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, the person making the return provides a sufficiently detailed description of the class of beneficiaries to determine with certainty whether any particular person is a member of that class of beneficiaries;
- in respect of a trust where some but not all of the units of which are listed on a designated stock exchange, the person making the return provides the required information regarding the beneficiaries of those unlisted classes of units; and
- for beneficiaries whose identity is not known or ascertainable with reasonable effort by the person making the return, the person making the return provides sufficiently detailed information to determine with certainty whether any particular person is a beneficiary of the trust.

For example, the beneficiary of a trust may not be known where the trust provides for a class of beneficiaries that includes the settlor's current children and grandchildren and any children or grandchildren that the settlor may have in the future. In these circumstances, the reporting requirement will be met if the relevant information in respect of all of the settlor's current children and grandchildren are included as well as the details of the terms of the trust that extend the class of beneficiaries to any of the settlor's future children or grandchildren.

New paragraph 204.2(2)(e) provides that the reporting requirements for a trust that is an alter ego trust or a joint spousal or common-law partner trust, are met if the person making the return provides the required information regarding the beneficiaries of the trust, other than those beneficiaries who are beneficiaries under the trust solely because of a right of the person to receive any of the trust's income or capital, if under that right the person may so receive that income or capital only on or after the death after that time of an individual. This exemption is provided in light of the fact that such trusts may essentially function as will substitutes and the contingent beneficiaries of the trust may not know that they are beneficiaries.

This amendment applies to taxation years that end after December 30, 2025.

### **Definition of settlor**

ITR  
204.2(3)

New subsection 204.2(3) defines a settlor for the purposes of subsection 204.2(1) of the Regulations. This subsection provides that a settlor is any person or partnership that has directly or indirectly, in any manner whatever, transferred property to the trust at or before that time, other than a transfer made by the person or partnership to the trust for fair market value consideration or pursuant to a legal obligation to make the transfer.

This amendment applies to taxation years that end after December 30, 2024.

## **Clause 101**

### **Elections**

ITR  
600

Section 600 prescribes certain provisions of the Act for the purposes of subsection 220(3.2) of the Act, under which the Minister of National Revenue may allow for the late filing, amendment or revocation of certain elections.

Paragraph 600(b) is amended to add a reference to subsections 93.4(2) to (5) of the Act. This amendment applies to taxation years that begin after 2025 and applies to preceding taxation years if an election is filed under subsection 93.4(4) or (5) of the Act.

Paragraph 600(c) is amended to add references to the following paragraphs:

- (e) of the definition “excluded interest” and paragraph (b) of the definition “specified pre-regime loss” in subsection 18.2(1) (i.e., in respect of the election required for excluded interest and specified pre-regime loss, respectively),
- 84.1(2.31)(h) and (2.32)(i) (i.e., in respect of the election required for immediate and gradual intergenerational business transfers, respectively), and 110.61(1)(e) and 110.62(1)(e) (i.e., in respect of the election for a qualifying business transfer and a qualifying cooperative conversion, respectively).

These amendments are deemed to have come into force on the following dates:

- October 1, 2023 in respect of the added references to paragraphs (e) of the definition “excluded interest” and paragraph (b) of the definition “specified pre-regime loss” in subsection 18.2(1), and
- January 1, 2024 in respect of the added references to paragraphs 84.1(2.31)(h), 84.1(2.32)(i), 110.61(1)(e) and 110.62(1)(e).

Paragraph 600(c.1) is also introduced to add a reference to clause 95(2)(f.11)(ii)(E) in respect of the election to forgo a foreign accrual property loss. This amendment is deemed to have come into force on October 1, 2023.

## **Clause 102**

### **Property Dispositions**

ITR  
1000

Section 1000 of the *Income Tax Regulations* provides the prescribed manner of filing an election under subsection 164(6) of the Act for a legal representative of a deceased individual to carryback certain losses realized by the estate to the final taxation year of the deceased individual.

Section 1000 is repealed further to changes to subsection 164(6) which simplify the election process and requirements.

For more information, see the commentary on subsection 164(6).

This amendment applies to taxation years of individuals who die on or after August 12, 2024.

### **Realization of options**

ITR  
1000.1

Section 1000.1 of the *Income Tax Regulations* provides the prescribed manner of filing an election under subsection 164(6.1) of the Act for a legal representative of a deceased individual to carry back certain amounts related to rights to acquire securities held by a taxpayer immediately before their death (as determined under subsection 164(6.1)) to be deducted in computing the deceased taxpayer's income for the taxpayer's last taxation year.

Section 1000.1 is repealed further to changes to subsection 164(6.1) which simplify the election process and requirements.

For more information, see the commentary on subsection 164(6.1).

This amendment applies to taxation years of individuals who die on or after August 12, 2024.

## **Clause 103**

ITR  
1100(1)(a.4)

Subsection 1100(1) of the Regulations sets out the capital cost allowance rates that taxpayers may claim with respect to specified classes of depreciable property.

New paragraph 1100(1)(a.4) provides a 6% additional allowance for property that is a “new purpose-built residential rental” (as defined in subsection 1104(2) of the Regulations) throughout the year. As such, the total capital cost allowance rate for buildings that are new purpose-built residential rentals will be 10%

This amendment applies as of April 16, 2024.

### **Class 13**

ITR

1100(1)(b)(i)

Subparagraph 1100(1)(b)(i) provides for a deduction in respect of the capital cost of property, incurred in a taxation year after November 12, 1981, that is a leasehold interest and included in Class 13 of Schedule II. Schedule III of the Regulations provides for the determination of the amount that may be deducted in respect of the leasehold interest of a taxpayer each year. The following amendments are made as a consequence of the introduction of the “reaccelerated investment incentive property” definition in new subsection 1104(4.01). For more information, see the commentary on subsection 1104(4.01).

Clause 1100(1)(b)(i)(A) provides an enhanced first-year CCA in respect of accelerated investment incentive property of a taxpayer that is included in Class 13. This clause is amended to extend the enhanced first-year CCA in respect of reaccelerated investment incentive property, the cost of which is incurred before 2030.

If the capital cost of the property incurred is not described in clause 1100(1)(b)(i)(A), clause (B) specifies that the amount calculated in accordance with Schedule III applies. This clause is amended to also include a reference to properties that are not reaccelerated investment incentive property.

These amendments are deemed to have come into force on January 1, 2025.

### **Class 14**

ITR

1100(1)(c)

Paragraph 1100(1)(c) provides for a deduction in respect of the capital cost of property that is included in Class 14 of Schedule II. This category includes certain patents, franchises, concessions and licences for a limited period.

The deduction under paragraph 1100(1)(c) in respect of a property of Class 14 is calculated as the lesser of the subparagraph (c)(i) and (ii) amounts. The amount under subparagraph (c)(i) is

determined by apportioning the capital cost of the property over the life of the property remaining at the time the cost was incurred (clause (A)). For accelerated investment incentive properties, clause (B) provides an additional amount for the enhanced first-year CCA deductions with respect to property included in the class.

This subparagraph is amended to add new clause (C), which provides a similar additional amount for the enhanced first-year CCA deductions in respect of reaccelerated investment incentive properties included in the class, which is:

- 50%, for “reaccelerated investment incentive property”, as defined in new subsection 1104(4.01), that becomes available for use before 2030; and
- 25%, for reaccelerated investment incentive property that becomes available for use after 2029.

For more information on reaccelerated investment incentive property, see the commentary on new subsection 1104(4.01).

This amendment is deemed to have come into force on January 1, 2025.

## **Canadian Vessels**

ITR  
1100(1)(v)(iv)

Paragraph 1100(1)(v) provides for a deduction in respect of the capital cost of certain vessels.

In general, the annual CCA rate applicable to such vessels is 33 1/3% of the capital cost of the vessel, subject to a reduced rate of 16 2/3% for the year in which the vessel first becomes available for use by the taxpayer. These rates are set out in clauses 1100(1)(v)(iv)(B) and (C). However, for accelerated investment incentive properties acquired in the year and before 2024, clause (A) provides an enhanced first-year CCA deduction, at a rate of 50%.

Clause (A) is amended to also apply the enhanced first-year CCA deduction for property that is “reaccelerated investment incentive property”, as defined in new subsection 1104(4.01), acquired before 2030. For this purpose, property is deemed to be acquired when it becomes available for use to the taxpayer. In subsequent years, the taxpayer may deduct 33 1/3% of the capital cost of the property to the taxpayer, up to the undepreciated capital cost of property of the class.

Subclause (B)(I) is also amended to include a reference to properties that are not reaccelerated investment incentive property.

For more information on reaccelerated investment incentive property, see the commentary on new subsection 1104(4.01).

These amendments are deemed to have come into force on January 1, 2025.

## Property Acquired in the Year

ITR  
1100(2)

Subsection 1100(2) provides rules for computing the capital cost allowance (CCA) deduction in respect of a property for the year in which the property first becomes available for use.

Subsection 1100(2) currently has two main parts. The first part, as expressed by elements A and B, relates to the enhanced first-year CCA in respect of “accelerated investment incentive property” (AIIP) of a taxpayer, as defined in subsection 1104(4), and property included in Classes 54 to 56. The second part, as expressed by element C, is the “half-year rule”, which applies to any other depreciable property and limits a taxpayer’s CCA claim to one-half of the otherwise applicable amount, for the year in which the property first becomes available for use.

### *Element A*

Element A provides the relevant factors for determining the first-year accelerated CCA for a class of AIIP.

Paragraph (a) of element A is first amended to correct an inadvertent deletion of subparagraphs (a)(i) and (ii), effective January 1, 2022.

Element A is also amended to introduce immediate expensing (as an additional enhanced first-year allowance at an effective CCA rate of 100%) for AIIP included in Class 44 (patents or the rights to use patented information for a limited or unlimited period), Class 46 (data network infrastructure equipment and related systems software) and Class 50 (general-purpose electronic data-processing equipment and systems software).

Subparagraph (a)(ii) of element A is amended so that the factor of nil that would have applied to property in Classes 44, 46 or 50 that becomes available for use after 2023 does not apply to property referred to in new paragraphs (c.1) to (c.3).

New paragraphs (c.1) to (c.3) of element A provide the following factors for AIIP that is acquired and becomes available for use after April 15, 2024:

- 3, in respect of property in Class 44,
- 2 1/3, in respect of property in Class 46, and
- 9/11, in respect of property in Class 50.

The applicable factors revert to nil for AIIP in Classes 44, 46 and 50 that become available for use after 2026.

These amendments apply to AIIP that is acquired and becomes available for use after April 15, 2024.

As a consequence of the introduction of the concept “reaccelerated investment incentive property” (RIIP), as defined in new subsection 1104(4.01), the enhanced first-year CCA for AIIP is phased out for property acquired after 2024 (property acquired after 2024 that would have qualified as AIIP would now qualify as RIIP). Elements A and D are amended to reflect this change.

This subsection is also amended to include new elements A.1 and B.1, which provide an enhanced first-year CCA in respect of RIIP of a taxpayer.

#### *Element A.1*

Element A.1 provides the relevant factors for determining the first-year accelerated CCA for a class.

Paragraph (a) of element A.1 provides the factor for the enhanced first-year CCA for RIIP currently included in most classes in Schedule II. The factor is

- 50%, in respect of property that becomes available for use before 2030; and
- 0%, in respect of property that becomes available for use after 2029.

Because the half-year rule (see element C) does not apply in respect of RIIP, the 0% rate applicable in the post-2029 period generally provides a doubling of the otherwise claimable CCA in respect of these properties.

Classes 12, 13, 14, 15, 43.1, 44, 46, 50, 53, 54, 55, 56, and 59 or Class 43, in certain circumstances, are excluded from paragraph (a). “Canadian vessels”, which are addressed in paragraph 1100(1)(v), are also excluded. Additional allowances are provided elsewhere in respect of Canadian vessels and property in these classes, except in the case of Class 12, which is already eligible for a 100% CCA rate.

Paragraph (b) of element A.1 provides the following factors for RIIP included in Class 43.1:

- $2\frac{1}{3}$ , in respect of property that becomes available for use before 2030 (which effectively results in a 100% CCA rate),
- $1\frac{1}{2}$ , in respect of property than becomes available for use in 2030 or 2031, and
- $\frac{5}{6}$ , in respect of property that becomes available for use after 2031.

Paragraphs (c) to (e), which apply for Classes 44, 46 and 50, respectively, parallel paragraphs (c.1) to (c.3) of element A for RIIP purposes. The relevant factors become nil with respect to property that becomes available for use after 2026.

Paragraphs (f) to (h), which apply for Classes 53 (and, after 2025, Class 43), 54 and 56, and 55, respectively, are structured similarly to paragraph (b) and mainly differ in that the base rates for the classes require different factors to achieve the desired CCA claim (which is 100% for the pre-2030 period).

#### *Element B.1*

Element B.1 is common to all RIIP and zero-emission vehicle properties acquired after 2024 and, in general terms, computes the net capital cost additions to the relevant class, expressed as the formula  $D.1 - E.1$ .

Element D.1 is generally the amount added to the undepreciated capital cost of the relevant class in respect of RIIP or zero-emission vehicle properties that become available for use in the year.

Element E.1 is computed as the amount by which the amount determined for G exceeds the amount determined for F. It, together with the formula  $F - G$  in the description of element C (*i.e.*, the half-year rule), generally provides that where the undepreciated capital cost of a class is increased in a year by both the cost of RIIP and non-RIIP and an amount (*e.g.*, a disposition) reduces the undepreciated capital cost of the class, the reduction first offsets non-RIIP before reducing the amount available for the enhanced CCA deduction. In the case of Classes 54 and 55 in respect of zero-emission vehicles, the amount determined for F will always be nil as those properties are never subject to the half-year rule.

### *Element C*

The multiplication of element C by 0.5 represents the half-year rule.

RIIP is excluded from the half-year rule because of the new parenthetical exclusion in subparagraph (a)(i) of the description of F. Zero-emission vehicles included in Class 54 or 55 are excluded because they are added to the list of excluded classes in subparagraph (b)(ii) of the description of F. It should be noted that the definitions of both RIIP and zero-emission vehicles contain an end date of 2033. Thus, what would otherwise be RIIP that becomes available for use after 2033 will revert to the usual half-year rule treatment. In the case of zero-emission vehicles, that definition and Classes 54 and 55 will not be relevant in respect of any property that is acquired or becomes available for use after 2033.

### *Example 1:*

*If a taxpayer incurs \$100 in respect of RIIP included in Class 10 (30% CCA rate) in 2025 and it becomes available for use in that year (assume no reductions in the class for the year), the taxpayer may deduct \$45 instead of the \$15 that would normally be available in the first year because of the half-year rule, as calculated below:*

<i>Undepreciated capital cost at the end of the year</i>	<i>\$100</i>
<i>A.1(B.1) addition (0.5(\$100))</i>	<i>\$50</i>
<i>Adjusted undepreciated capital cost</i>	<i>\$150</i>
<i>CCA rate</i>	<i>30%</i>
<i>Enhanced first year CCA deduction (\$150 × 30%)</i>	<i>\$45</i>
<i>Undepreciated capital cost after CCA deduction</i>	<i>\$55</i>

*In the following year, assuming there are no new acquisitions, the taxpayer may deduct 30% of the \$55 UCC and no additional amount for RIIP.*

*Example 2:*

*If a taxpayer incurs \$100 in respect of RIIP included in Class 43.1 in 2025 and it becomes available for use in that year (assume no reductions in the class), the taxpayer may deduct:*

<i>Undepreciated capital cost at the end of the year</i>	<i>\$100</i>
<i>A.1(B.1) addition (2 1/3(\$100))</i>	<i>\$233</i>
<i>Adjusted undepreciated capital cost</i>	<i>\$333</i>
<i>CCA rate</i>	<i>30%</i>
<i>Enhanced first year CCA deduction (\$333 × 30%)</i>	<i>\$100</i>
<i>Undepreciated capital cost after CCA deduction</i>	<i>\$ 0</i>

*The result is the taxpayer is entitled to fully deduct the capital cost of eligible Class 43.1 property in the first year.*

These amendments are deemed to have come into force on January 1, 2025.

### **Straddle years — reaccelerated investment incentive property**

ITR  
1100(2.011)

New subsection 1100(2.011) provides a special rule for determining the factor in element A.1 of subsection 1100(2) applicable to “reaccelerated investment incentive property” and “zero-emission vehicles” for certain non-calendar taxation years.

The rule contemplates three potential straddle periods: taxation years with days in the 2029 and 2030 calendar years and taxation years with days in 2031 and 2032 for most relevant property and taxation years with days in the 2026 and 2027 calendar years for property included in Class 44, 46 or 50. In these straddle situations, the formulas in paragraphs (a), (b) and (c) establish the factor to be used for element A.1 in subsection (2) as a blended factor weighted based on the relative amount of eligible property acquisitions in each calendar year that is included in the relevant taxation year.

These amendments are deemed to have come into force on January 1, 2025.

### **Expenditures excluded from element D.1**

ITR  
1100(2.021)

New subsection 1100(2.021) reclassifies expenditures incurred before 2025 that would otherwise be treated as being in respect of reaccelerated investment incentive property solely as a result of the application of subparagraph 1104(4.01)(b)(i). In general terms, that subparagraph allows certain unused property acquired from a non-arm's length person to qualify as reaccelerated

investment incentive property. Subsection 1100(2.021) ensures that any such transfers cannot give rise to an inappropriate amount of enhanced CCA deductions and aligns the CCA treatment of expenditures made before the effective date of the reaccelerated investment incentive amendments to the rules that existed when the expenditures were incurred. It does so by removing expenditures incurred before 2025 from element D.1 of subsection 1100(2) and by adding them to element F. However, the addition of such amounts to element F will occur only where that property would otherwise be subject to the half-year rule.

Furthermore, paragraph 1100(2.021)(a) also applies to certain expenditures incurred after 2024 to which new paragraph 1104(4.11)(b) applies. For more information, see the commentary on subsection 1104(4.11).

New subparagraph (a)(i) provides an exception from this reclassification rule for certain inventory purchases. For example, this exception addresses situations where a corporation sells inventory to an arm's length retailer and then a corporation related to the taxpayer buys the inventory from the retailer for the purposes of leasing the property to a customer of the retailer.

This amendment is deemed to have come into force on January 1, 2025.

#### **Clause 104**

ITR  
1101(1ac.1)

Section 1101 provides separate classes in respect of certain properties described in Schedule II to the Regulations and used to earn income. New subsection 1101(1ac.1) provides that each property of a taxpayer that is a new purpose-built residential rental is prescribed to be a separate class of property.

This amendment applies as of April 16, 2024.

#### **International Shipping Vessel**

ITR  
1101(2d)

Section 1101 provides separate classes in respect of certain properties described in Schedule II to the Regulations.

Proposed new subsection 1101(2d) of the Regulations provides that each vessel of a taxpayer described in Class 7 in Schedule II, including the furniture, fittings, radiocommunication equipment and other equipment attached to the vessel, that has been used by the taxpayer to earn income that would not be included in computing the income of the taxpayer because of paragraph 81(1)(c.1) of the Act – i.e., that has been used by taxpayer to earn exempt international shipping income – is prescribed to be a separate class of property.

This amendment is deemed to have come into force on December 31, 2023.

## **Clause 105**

### **Property not included**

ITR  
1102(1)(l)

Subsection 1102(1) provides that the classes of property in Part XI of the Regulations and in Schedule II to the Regulations are deemed not to include certain property.

New paragraph 1102(1)(l) of the Regulations provides that property referred to in new paragraph 81(1)(c.3) of the Act (that is, personal or movable property pertaining solely to the operation of vessels used to earn exempt international shipping income) is deemed not to be included in any class of property in Part XI of the Regulations and in Schedule II to the Regulations.

This amendment is deemed to have come into force on December 31, 2023.

ITR  
1102(20.1)

Subsection 1102(20.1) deems a taxpayer not to be dealing at arm's length with another person or partnership in certain circumstances and is intended to prevent taxpayers from contriving arm's length relationships in order to obtain the more favourable treatment that is available for “accelerated investment incentive property” per subsection 1104(4) in respect of arm's length transfers.

Subsection 1102(20.1) is amended to include references to the new “reaccelerated investment incentive property” regime.

This amendment is deemed to have come into force on January 1, 2025.

## **Clause 106**

ITR  
1104(2)

Section 1104 sets out various definitions and interpretation rules that apply for the purpose of determining the capital cost allowance for a taxation year in respect of a depreciable property of a taxpayer.

Subsection 1104(2) is amended by adding the definitions “purpose-built residential rental”, “new purpose-built residential rental” and “residential rental unit”. These definitions are relevant for the 6% additional allowance provided for in new paragraph 1100(1)(a.4) for new purpose-built residential rentals.

A “purpose-built residential rental” is a building situated in Canada, or a part of a building situated in Canada, that meets both the conditions in paragraphs (a) and (b) of this definition.

Paragraph (a) provides that the property contains at least four “residential rental units” or 10 private rooms or suites. A residential rental unit means a housing unit used or intended for use as a rented residential premises that is not provided to the travelling or vacationing public.

Paragraph (b) provides that all or substantially all of the residential rental units of the property are rented, or offered for rent, for continuous periods of not less than 28 consecutive days.

A “new purpose-built residential rental” is a “purpose-built residential rental”, that meets either of the following conditions:

- It was built for use as a purpose-built residential rental if construction began after April 15, 2024 and before 2031.
- It was previously a building, or part of a building, used as a commercial property that was substantially renovated for use as a purpose-built residential rental if the renovations began after April 15, 2024 and before 2031.

In addition, the property must become available for use before 2036.

This amendment applies as of April 16, 2024.

ITR

1104(4)(a)

Subsection 1104(4) defines accelerated investment incentive property for the purposes of Part XI and Schedules II to VI of the Regulations. This definition is one of the main provisions that implements the enhanced CCA rules that were first announced in November 2018.

As a consequence of the introduction of the “reaccelerated investment incentive property” regime, as defined in new subsection 1104(4.01), the enhanced first-year CCA for accelerated investment incentive property is phased-out for properties acquired after 2024. Expenses incurred after 2024 that would have qualified as accelerated investment incentive property before this amendment would now qualify as reaccelerated investment incentive property.

This amendment is deemed to have come into force on January 1, 2025.

### **Reaccelerated investment incentive property**

ITR

1104(4.01)

New subsection 1104(4.01) defines “reaccelerated investment incentive property” (RIIP) for the purposes of Part XI and Schedules II to VI of the Regulations. This definition and amended

subsection 1100(2) are the main provisions that implement the temporary enhanced CCA rules announced as part of the *2024 Fall Economic Statement*. The enhanced CCA rules in respect of zero-emission vehicles are subject to separate definitions, in subsection 248(1) of the Act, and are excluded from the RIIP definition by virtue of the carve-outs for Class 54, 55 and 56 property.

To qualify as RIIP, a property must be acquired by a taxpayer after 2024, become available for use before 2034 and satisfy one of the two conditions set out in paragraph 1104(4.01)(b).

Subparagraph 1104(4.01)(b)(i) allows property to be RIIP if no person or partnership, including the taxpayer, has claimed CCA (or a terminal loss) in respect of the property in a taxation year ending prior to the acquisition. This rule makes no distinction between the arm's length or non-arm's length status of the vendor of the property. However, if the property is RIIP solely because of this subparagraph (i.e., it does not also qualify under subparagraph 1104(4.01)(b)(ii)), certain amounts in respect of the property could be disqualified from the enhanced CCA rules as a result of the application of subsection 1100(2.021).

Subparagraph 1104(4.01)(b)(ii) allows property to be RIIP if the property was not subject to a “rollover” and it was not previously owned or acquired by the taxpayer or a non-arm's length person or partnership.

In respect of rollovers, this includes property acquired in circumstances where the taxpayer was deemed to have been allowed or deducted an amount under paragraph 20(1)(a) of the Act when computing income for previous taxation years (e.g., where the property is acquired in a transaction to which section 85 applies). It also includes property acquired in circumstances where the undepreciated capital cost of depreciable property of a prescribed class of the taxpayer was reduced by an amount determined by reference to the amount by which the capital cost of the property to the taxpayer exceeds its cost amount (e.g., where the property is acquired in a transaction to which section 87 applies).

In respect of the arm's length condition, the “or acquired” criterion is intended to be relevant in circumstances where there is an acquisition of property in circumstances where the property is not yet owned, such as in paragraph 16.1(1)(b) of the Act.

This amendment is deemed to have come into force on January 1, 2025.

### **Deemed separate properties**

ITR  
1104(4.11)

New subsection 1104(4.11) is added for the purposes of the reaccelerated investment incentive property (RIIP) definition in subsection 1104(4.01) in order to ensure appropriate results in the event that certain property constructed over multiple taxation years is transferred between non-arm's length parties before it is put in use. As such, it is only relevant for property that does not qualify as RIIP under subparagraph 1104(4.01)(b)(ii).

Subparagraph 1104(4.01)(b)(i) allows property of a taxpayer that is acquired from a non-arm's length party to qualify as RIIP where no prior CCA claims have been made in respect of the property. The capital cost of a single property can include several expenditures incurred over multiple taxation years. Under special rules in subsections 13(27) and (29) of the Act, some of these expenditures can be eligible for CCA claims before the property is completed and ready to be used. Where a taxpayer avails itself of these claims, whether in respect of expenditures incurred before 2025 or after 2024, this could preclude any expenditures in respect of the property from qualifying as RIIP in the event of a subsequent transfer of the property to a non-arm's length person.

New subsection 1104(4.11) is introduced in order to ensure that any portions of a single property for which CCA claims are made do not taint any expenditures for which CCA claims are not made. This rule deems any such portions of the single property to be separate properties so that the “other” expenditures can satisfy the condition in subparagraph 1104(4.01)(b)(i) and be eligible for the enhanced CCA available for RIIP. However, in order to preclude two or more taxpayers in a non-arm's length group from benefitting from the RIIP more than once in respect of the same expenditures, new subsection 1100(2.021) ensures that any amounts deemed to be separate properties under subsection 1104(4.11) are not eligible to be included in determining the enhanced CCA under variable D.1 of the formula in subsection 1100(2).

This amendment is deemed to have come into force on January 1, 2025.

### **Classes 43.1 and 43.2 — Energy Conservation Property**

ITR

1104(13)

#### **“transmission equipment”, “eligible transmission equipment” and “eligible electrical generation equipment”**

The term “transmission equipment” is currently defined in subsection 1104(13) of the Regulations and describes equipment used to transmit more than 75 per cent of the annual electrical energy generated by electrical generating equipment; transmission equipment does not include a building. A cross-referencing definition is also contained in subsection 248(1) of the Act.

The “transmission equipment” definition in subsection 1104(13) is amended to refer to any equipment that is used to transmit electrical energy. This term is then used in various provisions of Class 43.1.

In addition, two new definitions — “eligible transmission equipment” and “eligible electrical generation equipment” — are added to subsection 1104(13). These new terms are relevant for purposes of various provisions of Class 43.1 due to corresponding amendments to Schedule II of the Regulations.

“Eligible transmission equipment” is intended to describe property (other than a building) that is transmission equipment of a taxpayer where:

- the transmission equipment is used in connection with “eligible electrical generation equipment” of the same taxpayer; and
- on an annual basis, more than 75 percent of the electrical energy generated by the eligible electrical generation equipment is transmitted by the transmission equipment, and more than 75 per cent of the electrical energy transmitted by the transmission equipment is generated by the eligible electrical generation equipment.

“Eligible electrical generation equipment” then refers to property that is electrical generating equipment described in various provisions of Class 43.1, as well as certain types of “clean electricity property” as defined in subsection 127.491(1) of the Act.

These amendments are introduced to clarify these terms and come into force on November 17, 2025.

## **Clause 107**

### **Non-Life Insurance Business**

ITR  
1400(3)

Section 1400 sets out the rules for determining the amount an insurer may deduct under paragraph 20(7)(c) of the Act, or must include under paragraph 12(1)(e.1) of the Act, in respect of insurance policies other than life policies.

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

The formula in subsection 1400(3) is amended in order to include a deduction to the formula equal to “0.05 x J”. Subsection 1400(3) is also amended to add the description of “J” which equals the reinsurance contract held amount in respect of a group of reinsurance contracts included in the description of H of the formula that is also in respect of a liability for incurred claims in respect of a group of insurance contracts that is included in the description of C of the formula.

These amendments apply to taxation years that begin after 2022.

## **Clause 108**

### **Prescribed Expenditures**

ITR

## 2902(b)

Paragraph 2902(b) of the Regulations provides that certain expenditures are prescribed expenditures for the purposes of the definition “qualified expenditure” in subsection 127(9) of the Act. Prescribed expenditures do not qualify for investment tax credits (ITCs).

Consequential on the addition of paragraphs 37(1)(b) of the Act and amendment to the definition “qualified expenditure” in subsection 127(9) of the Act, paragraph 2902(b) of the Regulations is amended to ensure that certain expenditures of a capital nature qualify for ITCs. Those expenditures include expenditures incurred for first term shared-use-equipment or second term shared-use-equipment. Those expenditures also include expenditures incurred for the provision of premises, facilities or equipment if, at the time of the acquisition of the property, it was intended that the property would be used during all or substantially all of its operating time in its expected useful life for the prosecution of SR&ED in Canada, or that all or substantially all of its value would be consumed in the prosecution of SR&ED in Canada.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

## Clause 109

### Special-Purpose Buildings

ITR  
2903

Expenditures in respect of the capital cost of a building are generally not deductible under section 37 of the Act except in the case of a prescribed special-purpose building.

Consequential on the addition of paragraphs 37(1)(b) and 37(8)(e) of the Act, section 2903 of the Regulations is added to describe a prescribed special-purpose building for the purposes of paragraph 37(8)(e) of the Act.

This amendment applies in respect of property acquired on or after December 16, 2024 and, in the case of lease costs, to amounts that first become payable on or after December 16, 2024.

## Clause 110

### Prescribed benefits

ITR  
3100(1)(b)(i)

Subparagraph 3100(1)(b)(i) lists certain forms of assistance from a government, municipality or other public authority that may constitute “prescribed benefits” for the purpose of paragraph (b) of the definition “tax shelter” in subsection 237.1(1) of the Act.

Subparagraph 3100(1)(b)(i) is amended to provide that an “excluded loan” (as defined in subsection 12(11) of the Act) will not be treated as government assistance for these purposes.

This amendment comes into force on January 1, 2022.

### **Prescribed benefits**

ITR  
3100(3)

For the purpose of paragraph (b) of the definition “tax shelter” in subsection 237.1(1) of the Act, subsection 3100(3) provides that a “prescribed benefit” in respect of an interest in a property may include an amount that is a limited-recourse amount because of subsection 143.2(1), (7) or (13) of the Act. Certain exceptions to this rule are then set out in paragraphs 3100(3)(a), (b) and (c).

Subsection 3100(3) is amended to add a new exception in paragraph (d). Paragraph 3100(3)(d) provides that an amount will not be considered a specified limited-recourse amount where the amount is an “excluded loan” as defined in subsection 12(11) of the Act.

This amendment comes into force on January 1, 2022.

### **Clause 111**

#### **Medical expense tax credit**

ITR  
5700

Section 5700 provides a list of medical devices and equipment the cost of which are eligible for inclusion in the calculation of the medical expense tax credit under paragraph 118.2(1)(m) of the Act.

Section 5700 is amended to add a navigation device for low vision for an individual who has a vision impairment to the list of medical devices the cost of which is eligible for the credit.

This change applies to the 2024 and subsequent taxation years.

### **Clause 112**

#### **Interpretation**

ITR  
5907(1)

Subsection 5907(1) provides definitions for the purposes of Part LIX of the Regulations.

Consequential on the amendments to paragraph (b) of the description of A and paragraph (a) of the description of H in the definition “foreign accrual property income” (FAPI) in subsection 95(1), the definitions “exempt surplus”, “hybrid surplus”, “hybrid underlying tax”, “taxable surplus” and “underlying foreign tax” are also being amended to provide that a dividend received by a foreign affiliate from another foreign affiliate is included in the relevant surplus account of the recipient affiliate where it is excluded from FAPI because the recipient affiliate is resident in the same country as the payor affiliate or the dividend does not result in a deduction/non-inclusion mismatch (and the other conditions for including the dividend in the relevant surplus account are met).

The amendments to the definitions “exempt surplus”, “hybrid surplus” and “taxable surplus” apply in respect of dividends received on or after July 1, 2024.

### ***“exempt surplus”***

The definition “exempt surplus” is primarily relevant for the purpose of determining the deductibility of dividends received from a foreign affiliate, pursuant to paragraph 113(1)(a) of the Act.

Consequential on the amendments to the FAPI definition in subsection 95(1), clause (iii)(C) of the description of A in the definition “exempt surplus” is amended to ensure that a dividend that is received by a foreign affiliate (referred to as the “subject affiliate”) from another foreign affiliate is included in the subject affiliate’s exempt surplus only to the extent it is excluded from the subject affiliate’s FAPI because:

- the subject affiliate is resident in the same country as the payor affiliate; or
- the dividend does not give rise to a deduction/non-inclusion mismatch.

### ***“hybrid surplus”***

The definition “hybrid surplus” is primarily relevant for the purpose of determining the deductibility of dividends received from a foreign affiliate, pursuant to paragraph 113(1)(a.1) of the Act.

Clause (iv)(C) of the description of A in this definition is amended on a similar basis to the amendment to clause (iii)(C) of the description of A in the definition “exempt surplus”. For more information, see the commentary on the definition “exempt surplus”.

### ***“hybrid underlying tax”***

The definition “hybrid underlying tax” is relevant in accounting for income or profits taxes paid in respect of hybrid surplus. It is similar to the concept of underlying foreign tax, which applies in the context of taxable surplus.

Subparagraph (iii) of the description of A in this definition is amended on a similar basis to the amendments made to the definitions “exempt surplus”, “hybrid surplus” and “taxable surplus”, which generally limit the increases to the surplus pools of a foreign affiliate where the affiliate receives an inter-affiliate dividend that is included in FAPI. Where a foreign affiliate received a dividend from another foreign affiliate and some or all of the dividend is included in the recipient affiliate’s FAPI, the recipient affiliate’s hybrid underlying tax is only increased to the extent of the proportion of the foreign tax applicable, to the portion (referred to as the “relevant portion”) of the dividend prescribed to have been paid out of the payor affiliate’s hybrid surplus, that the amount included in respect of the dividend in the recipient affiliate’s hybrid surplus is of the relevant portion. For more information, see the commentary on the definition “exempt surplus”.

### ***“taxable surplus”***

The definition “taxable surplus” is primarily relevant for the purpose of determining the deductibility of dividends received from a foreign affiliate, pursuant to paragraph 113(1)(b) of the Act.

Clause (iii)(C) of the description of A in this definition is amended on a similar basis to the amendment to subparagraph (iii) of the description of A in the definition “exempt surplus”. For more information, see the commentary on the definition “exempt surplus”.

### ***“underlying foreign tax”***

The definition “underlying foreign tax” is primarily relevant for the purposes of determining the deductibility of dividends received from a foreign affiliate of a corporation, pursuant to subsection 5900(1) of the Regulations and subsection 113(1) of the Act.

Subparagraph (iv) of the description of A in this definition is amended on a similar basis to the amendments made to the definition “hybrid underlying tax”. For more information, see the commentary on the definition “hybrid underlying tax”.

## **Clause 113**

### **Definitions**

ITR  
8201

Section 8201 of the Regulations provides a definition of the term “permanent establishment” for the purposes of various provisions in the Act. The section is amended to remove the reference to “tax-indifferent investor” in subsection 248(1) of the Act consequential on the repeal of that subsection. It is also amended to remove an outdated reference to the definition “qualified Canadian transit organization”.

This amendment comes into force on January 1, 2025.

## Clause 114

### **Transfer – defined benefit to money purchase**

ITR  
8517(8)

Subsection 147.3(4) of the Act permits the tax-free transfer on behalf of an individual of a single amount from a defined benefit provision of a registered pension plan (RPP) to an RRSP, RRIF or money purchase provision of an RPP. Paragraph 147.3(4)(c) requires that the amount not exceed a prescribed amount. Section 8517 contains rules for determining the prescribed amount for this purpose.

Consequential on the introduction of subsections 147.4(4) and (5) of the Act, new subsection 8517(8) is added to the Regulations. In the case where subsections 147.4(4) and (5) apply to a commuted annuity contract, subsection 8517(8) will work in conjunction with paragraph 147.3(4)(c) of the Act. Together, they will ensure that the transfer limit in section 8517 will apply as if the commuted amount was transferred from the original defined benefit provision of the RPP (and not from the annuity) to a registered plan of the annuitant.

This amendment is deemed to have come into force on January 1, 2018.

## Clause 115

### **Prescribed Property not Mark-to-Market Property**

ITR  
9002(4) and (5)

Section 9002 of the Regulations prescribes various properties for exclusions from mark-to-market property status (as determined under subsection 142.2(1) of the Act). Specifically, property prescribed pursuant to this regulation is “excluded property” (as defined in subsection 142.2(1) of the Act) under paragraph (e) of that definition and is, therefore, not “mark-to-market property” (as defined in subsection 142.2(1) of the Act).

Section 9002 is amended to add new subsections 9002(4) and (5) to provide deeming rules for the purpose of subsection 9002(3).

Subsection 9002(3) of the Regulations provides the conditions for when certain shares held by credit unions are prescribed property for purposes of paragraph (e) of the “excluded property” definition in subsection 142.2(1) of the Act (and are therefore excluded from mark-to-market status). Subsection 9002(3) treats a share of the capital stock of a particular corporation held by the credit union as a credit union's prescribed property for a taxation year if, throughout the year,

- the particular corporation is a credit union (pursuant to paragraph 9002(3)(a)), or

- credit unions hold shares of the capital stock of the particular corporation that give those credit unions at least 50% of the votes and value of all the issued shares of the particular corporation; no person other than a credit union controls, directly or indirectly in any manner whatever, the particular corporation; and the particular corporation would not be controlled by any person that is not a credit union if each share of the capital stock of the particular corporation that is not owned at any time in the holding period by a credit union were owned, at that time, by that person (pursuant to paragraph 9002(3)(b)).

Subsection 9002(3), including paragraphs (a) and (b) of that subsection, requires credit unions to hold shares directly in order that those shares be prescribed property of the credit union. New subsections 9002(4) and (5) introduce deeming rules that provide specific exceptions to the condition under subsection 9002(3) that the shares must be held by the credit unions directly.

Subsection 9002(4) of the Regulations is added to provide a look-through rule so that subsection 9002(3) is not precluded from applying where shares are held indirectly by credit unions through a partnership. Subsection 9002(4) requires a partnership to own or hold at least 50% of the fair market value of all the issued shares of a particular corporation at a particular time. If this requirement is met, paragraph 9002(4)(a) deems the partnership to not exist at that time and paragraph 9002(4)(b) deems each member of the partnership to instead hold shares of the corporation directly. The number of shares deemed to be held by a partner is proportionate to the fair market value of their interest in the partnership at that time.

New subsection 9002(5) provides that, for the purposes of paragraph 9002(3)(b), a subsidiary wholly-owned corporation (as defined in subsection 248(1) of the Act) of a credit union is deemed to be a credit union.

Subsections 9002(4) and (5) apply to taxation years that begin on or after January 1, 2024.

## **Clause 116**

### **Class 43.1**

ITR

Schedule II

Several provisions of Class 43.1 are amended to replace the reference to “transmission equipment” with a reference to the new defined term “eligible transmission equipment”.

In addition, subparagraph (d)(vii) of Class 43.1 (which generally describes equipment that is used primarily for the purpose of generating electrical or heat energy solely from geothermal energy) is amended to include “eligible transmission equipment”. See the explanatory notes to the definition of “eligible transmission equipment” in subsection 1104(13) of the Regulations for more information.

Finally, subparagraph (d)(xviii) of Class 43.1 is amended to replace the reference to “batteries used in motor vehicles” with a reference “batteries used in vehicles or other automotive

equipment”. The amendment also adds “property used to charge vehicles or other automotive equipment”. The purpose of these amendments is to clarify the intent for such property to be ineligible under this subparagraph.

These amendments apply to property that is acquired and becomes available for use on or after November 17, 2025.

Several provisions of Class 43.1 are also amended to clarify that pollution abatement equipment is excluded from the property listed therein.

In addition, subparagraph (d)(xiv) in Class 43.1 is amended to clarify that it describes fixed location property.

The amendments relating to pollution abatement equipment and fixed location property come into force on Royal Assent.

## **Clause 117**

### **Class 56**

ITR  
Schedule II

Class 56 provides a temporary first-year enhanced CCA deduction for certain property that is acquired, and becomes available for use, by the taxpayer after March 1, 2020 and before 2028. While generally subject to a 30% CCA rate, Class 56 property is eligible for a first-year accelerated CCA rate because of subsection 1100(2). Class 56 is amended to extend this period to include property acquisitions, that become available for use, before 2034.

Furthermore, paragraph (b) contains a restriction in that property can qualify for Class 56 treatment only if such property would otherwise be considered “accelerated investment incentive property” under subsection 1104(4), if it were read without the exclusions for property included in Class 56.

Paragraph (b) is amended to include property that would be “reaccelerated investment incentive property” under subsection 1104(4.01), if it were read without the exclusions for property included in Class 56. Essentially, this condition is meant to exclude from Class 56 property in respect of which CCA has previously been claimed by another person or partnership where the equipment was acquired by the taxpayer on a tax-deferred “rollover” basis or it was previously owned or acquired by the taxpayer or a non-arm's length person or partnership. In this regard, all rules relating to the “reaccelerated investment incentive property” definition must be taken into account, such as the anti-avoidance rule in subsection 1102(20.1).

This amendment is deemed to have come into force on January 1, 2025.

**Clause 118****Class 57**

ITR  
Schedule II

Class 57 in Schedule II describes certain property that is part of a CCUS project. Generally, such property includes equipment that is to be used for capturing carbon dioxide, to prepare or compress captured carbon for transportation, for transporting captured carbon or for storage of captured carbon in a geological formation. Certain property is also expressly excluded from Class 57.

Paragraph (a) of Class 57 is amended to improve readability and clarify the intent of the rule by replacing the references to certain ineligible equipment with the new definition “excluded CCUS equipment”. The new definition clarifies that the scope of ineligible hydrogen-production equipment is limited to hydrogen production equipment required to produce hydrogen even if no CCUS process was applied by the taxpayer to produce the hydrogen. This clarification is intended to limit the risk that certain CCUS equipment that may provide ancillary benefits to the hydrogen-production process may be excluded from Class 57 and will not be eligible for the CCUS tax credit. For instance, carbon dioxide capture equipment may indirectly support the hydrogen production process by reducing the burden on downstream hydrogen purification equipment. However, this capture equipment would not be considered “excluded CCUS equipment”, since it would not be required to produce hydrogen if no CCUS process was applied by the taxpayer to produce the hydrogen.

Paragraph (g) of Class 57 is also amended to clarify that the property to be included in Class 57 is the property being incorporated into another property and the incorporation causes the other property to satisfy the description in any of paragraphs (a) to (f) (as opposed to the tools used to perform the conversion).

These amendments apply on or after January 1, 2022.

**Clause 119****Class 58**

ITR  
Schedule II

Class 58 in Schedule II to the Regulations describes certain property that is part of a CCUS project and is used solely for using captured carbon dioxide in industrial production.

Paragraph (e) of Class 58 is amended to clarify that the property to be included in Class 58 is the property being incorporated into another property and the incorporation causes the other property

to satisfy the description in any of paragraphs (a) to (d) (as opposed to the tools used to perform the conversion).

This amendment applies on or after January 1, 2022.

## **Clause 120**

### **Capital Cost Allowances, Class 15**

ITR  
Schedule IV  
Section 1

Schedule IV provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(f) in respect of property in Class 15 of Schedule II. Class 15 generally includes property (other than a timber resource property) that is acquired for the purpose of cutting and removing mercantile timber from a timber limit.

Section 1 of Schedule IV provides an additional deduction in respect of a taxpayer's accelerated investment incentive property included in Class 15. This section is amended to provide a similar additional deduction for reaccelerated investment incentive property. For more information, see the commentary on the new definition "reaccelerated investment incentive property" in subsection 1104(4.01).

New subparagraph (a)(i.1) in section 1 provides the following additional deductions in respect of reaccelerated investment incentive property included in Class 15:

- 50%, for reaccelerated investment incentive property acquired before 2030; and
- 25%, for reaccelerated investment incentive property acquired after 2029.

These amendments are deemed to have come into force on January 1, 2025.

## **Clause 121**

### **Capital Cost Allowances, Industrial Mineral Mines**

ITR  
Schedule V  
Section 2

Schedule V provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(g) in respect of capital cost of a property that is an industrial mineral mine or a right to remove industrial minerals from an industrial mine.

Section 2 of Schedule V provides an additional deduction in respect of a taxpayer's accelerated investment incentive property included in paragraph 1100(1)(g). More particularly, paragraph (a)

provides an additional 50% deduction for accelerated investment incentive property acquired before 2024, and paragraph (b) provides an additional 25% deduction for accelerated investment incentive property acquired after 2023.

Paragraphs (a) and (b) are amended to similarly provide an additional 50% deduction for reaccelerated investment incentive property acquired before 2030, and a 25% deduction for reaccelerated investment incentive property acquired after 2029. For more information, see the commentary on the new definition “reaccelerated investment incentive property” in subsection 1104(4.01).

This amendment is deemed to have come into force on January 1, 2025.

## **Clause 122**

### **Capital Cost Allowances, Timber Limits and Cutting Rights**

ITR  
Schedule VI  
Section 2

Schedule VI provides for the calculation of the amount that may be deducted for the purposes of paragraph 1100(1)(e) in respect of the capital cost of a property (other than a timber resource property) that is a timber limit or a right to cut timber from a limit.

Section 2 of Schedule VI provides for an additional deduction in respect of a taxpayer's accelerated investment incentive property included in paragraph 1100(1)(e). More particularly, paragraph (a) provides an additional 50% deduction for accelerated investment incentive property acquired before 2024, and paragraph (b) provides an additional 25% deduction for accelerated investment incentive property acquired after 2023.

Paragraphs (a) and (b) are amended to similarly provide an additional 50% deduction for reaccelerated investment incentive property acquired before 2030, and 25% deduction for reaccelerated investment incentive property acquired after 2029. For more information, see the commentary on the new definition “reaccelerated investment incentive property” in subsection 1104(4.01).

This amendment is deemed to have come into force on January 1, 2025.

## **Clause 123**

ITR  
1100

Section 1100 of the Regulations provides rules relating to the deduction of capital cost allowance under paragraph 20(1)(a) of the Act.

As a consequence of the introduction of the formula D.1 – E.1 in subsection 1100(2), the formula F – G becomes the fourth formula in that subsection. Accordingly, the French versions of subparagraph 1100(1)(ta)(v), subclause 1100(1)(v)(iv)(B)(II), paragraphs 1100(2.02)(b) and (2.2)(h), and subsection 1100(2.3) are amended to update references to element F or G, which are currently described as being in the “troisième” (third) formula in subsection 1100(2), to refer to “quatrième” (fourth) instead.

This amendment is deemed to have come into force on January 1, 2025.

## **Payment out of Consolidated Revenue Fund**

### **Clause 124**

Consequential on the introduction of the clean electricity investment tax credit, this clause specifies that any amount payable by the Minister of National Revenue is to be paid out of the Consolidated Revenue Fund.

## **Coordinating Amendments**

### **Clause 125**

#### **Top-up tax credit**

ITA  
118(11)

New subsection 118(11) introduces a non-refundable top-up tax credit for certain individuals for their 2025 to 2030 taxation years. This credit would be relevant for individuals in rare cases where their non-refundable credits claimed in a taxation year exceed the first income tax bracket threshold.

This top-up tax credit is being introduced consequential on the reduction of the lowest marginal tax rate (from 15% to 14.5% for 2025 and to 14% for the 2026 and subsequent taxation years). Non-refundable tax credits are generally computed at the lowest marginal tax rate. As such, for an individual whose non-refundable tax credit amount exceeds the first income tax bracket threshold in a year, the decrease in the value of their non-refundable tax credits may exceed their tax savings from the rate reduction. For 2025, this would impact individuals who claim non-refundable tax credits in excess of \$8,319.38. Deducting federal tax credits of \$8,319.38 in 2025 would fully offset any federal taxes payable on income up to the upper threshold for the lowest tax rate (\$57,375 in 2025).

The top-up tax credit is computed by first determining the amount by which an individual’s non-refundable tax credits claimed in a year exceed the upper threshold dollar amount for the lowest tax rate when that amount is multiplied by the lowest tax rate for the taxation year. This excess amount is multiplied by 3.45% in the 2025 taxation year and 7.14% in the 2026 to 2030 taxation

years. These percentages represent the additional amount on the excess that would increase the deduction rate for the excess amount to 15%.

The top-up tax credit is determined by the formula  $(A - B \times C) \times D$ .

A is the total amount of tax credits deducted by an individual in the taxation year under the following provisions:

- Subsection 118(1), the basic personal amount, the married or common-law partner amount, the dependent person amount and the caregiver amount;
- Subsection 118(2), the age credit;
- Subsection 118(3), the pension credit;
- Subsection 118(10), the Canada employment credit;
- Section 118.01, the adoption expense tax credit;
- Section 118.041, the home accessibility tax credit;
- Section 118.05, the first-time homebuyers' tax credit;
- Section 118.06, the volunteer firefighter tax credit;
- Section 118.07, the search and rescue volunteer tax credit;
- Section 118.1, the charitable donation tax credit (to a maximum \$200 multiplied by the lowest marginal tax rate for the year);
- Section 118.2, the medical expense tax credit;
- Section 118.3, the disability tax credit;
- Section 118.5, the tuition tax credit;
- Section 118.61, the unused tuition, textbook and education tax credits;
- Section 118.62, the credit for interest on student loan;
- Section 118.7, the credit for EI and QPIP premiums and CPP contributions;
- Section 118.8, the transfer of unused credits to a spouse or common-law partner; and
- Section 118.9, the credit for the transfer of tuition from a child or grandchild.

B is the lowest marginal tax rate for the taxation year (14.5% in 2025 and 14% in 2026 and subsequent years).

C is the upper boundary dollar amount that separates the lowest marginal tax rate from the second marginal tax rate (\$57,375 in 2025).

D is the gross-up factor (3.45% in 2025 and 7.14% in 2026 and later).

### *Example*

An individual deducts \$10,000 in non-refundable tax credits for the 2025 taxation year. This \$10,000 effectively represents a deduction against \$68,965 of income ( $\$10,000/0.145 = \$68,965.52$ ). Effectively, the individual had \$11,590.52 of income ( $\$68,965.52 - \$57,375$ ) at which the individual was subject to tax at a rate above the lowest tax rate of 14.5%, but for which the individual could claim a non-refundable credit at the lowest marginal rate of 14.5% (or \$1,680.62 of tax credits claimed against income above \$57,375).

The individual's top-up tax credit for 2025 would be:

$$\begin{aligned}
 &(\$10,000 - \$57,375 \times 14.5\%) \times 3.45\% \\
 &= (\$10,000 - \$8,318.38) \times 3.45\% \\
 &= \$1,680.62 \times 3.45\% \\
 &= \$57.98
 \end{aligned}$$

The individual's top-up tax credit for 2025 would be \$57.98. This results in total non-refundable tax credits for the individual for the year of \$10,057.98.

For the individual's \$11,590.52 of income in excess of \$57,375, the individual may now claim \$1,738.60 of non-refundable credits (\$1680.62 + \$57.98). This represents an effective tax credit rate of 15% (\$1,738.60/\$11,590.52).

This amendment comes into force on January 1, 2025.

### **Unused tuition, textbook and education tax credits**

ITA  
118.61(1)

Subsection 118.61(1) provides a formula for the calculation of a student's unused tuition, education and textbook tax credits that may be carried forward to future years. Consequential on the introduction of the top-up tax credit in new subsection 118(11), which uses the amount claimed under section 118.61 in the computation of this new credit, the description of C in the formula in subsection 118.61(1) is amended to reference subsections 118(1) to (10) to prevent circularity in the application of subsection 118(11) and section 118.61.

This amendment comes into force on January 1, 2025.

### **Deduction of carryforward**

ITA  
118.61(2)(b)

Subsection 118.61(2) determines the amount of the carryforward of unused tuition and education tax credits that can be claimed in the current taxation year.

Consequential on the introduction of the top-up tax credit in new subsection 118(11), which uses the amount claimed under section 118.61 in the computation of this new credit, paragraph 118.61(2)(b) is amended to reference subsections 118(1) to (10) to prevent circularity in the application of subsection 118(11) and section 118.61.

This amendment comes into force on January 1, 2025.