Explanatory Notes relating to the Income Tax Act, the Excise Act, the Excise Act, 2001, the Customs Tariff, the Excise Tax Act and other Acts

Published by
The Honourable James M. Flaherty, P.C., M.P.
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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act* (as well as certain administrative provisions of the *Canada Pension Plan* and the *Employment Insurance Act*), the *Excise Act*, the *Excise Act, 2001*, the *Customs Tariff* and the *Excise Tax Act*, which were included in the *Budget Implementation Act, 2008* that was tabled in the House of Commons on March 14, 2008. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These explanatory notes are provided to assist in an understanding of the relevant amendments. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions that they describe.

Clause 1

Short title

Clause 1 provides that this enactment may be cited as the *Budget Implementation Act, 2008*. In the notes that follow, references to “the Act” are, unless otherwise indicated, references to the particular act that a given measure is amending (for example, the *Income Tax Act*).

Part 1

Amendments related to Income Tax

Income Tax Act

Clause 2

Prohibited Deductions

ITA
18

Section 18 of the *Income Tax Act* prohibits the deduction of certain outlays and expenses in computing a taxpayer’s income from a business or property.

Deductions – Limitations – Fees – Individual Savings Plans

ITA
18(1)(u)

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

Paragraph 18(1)(*u*) is amended to extend the prohibition on the deductibility of fees so that it applies to the payment of fees in respect of a tax-free savings account (TFSA) of which the taxpayer is the holder. For more information on TFSAs, refer to the commentary on section 146.2 of the Act.

This amendment applies to the 2009 and subsequent taxation years.

Deductions – Limitations – Interest

ITA
18(11)

Subsection 18(11) of the Act prohibits the deduction of interest on money borrowed to make a contribution to a registered retirement savings plan (RRSP) or certain other registered plans.

Subsection 18(11) is amended to extend the prohibition on interest deductibility so that it applies to money borrowed to make a contribution to a TFSA.

This amendment applies to the 2009 and subsequent taxation years.

Clause 3

Scientific Research and Experimental Development

ITA
37

Section 37 of the Act sets out the rules for the deductibility of expenditures made by a taxpayer for Scientific Research and Experimental Development (SR&ED) both inside and outside Canada.

Salary or wages for SR&ED outside Canada

ITA
37(1.4)

New subsection 37(1.4) of the Act provides that certain SR&ED expenditures made outside Canada will be treated as having been made in Canada. New subsection 37(1.5), discussed below, sets out the rules for determining which SR&ED expenditures made outside Canada will be considered to have been made in Canada.

New subsection 37(1.4) applies to taxation years that end on or after February 26, 2008.

Salary or wages outside Canada – limit determined

ITA
37(1.5)

New subsection 37(1.5) of the Act provides for the determination of the amount of a taxpayer's SR&ED expenditures made outside Canada that will be considered to have been made in Canada for the purposes of new subsection 37(1.4). Subsection 37(1.5) limits the amount eligible for the purposes of subsection 37(1.4) to the lesser of the amounts described in paragraphs 37(1.5)(*a*) and (*b*).

New paragraph 37(1.5)(*a*) describes the total of all expenditures made by the taxpayer after February 25, 2008 for an expense incurred in a taxation year for salary or wages paid to the taxpayer's employees who carried on SR&ED outside Canada. In order for the employees' salary or wages to be included in the amount, the employees, at the time the expense was incurred, must have been resident in Canada. As well, the SR&ED carried on by the employees outside Canada must have been solely in support of SR&ED carried on in Canada by the taxpayer. It should also be noted that new paragraph 37(9)(*b*) provides that an expense for salary or wages paid to an employee for SR&ED carried on outside Canada does not include an expense that is subject to tax in a foreign jurisdiction. For further details, refer to the commentary accompanying new paragraph 37(9)(*b*).

New paragraph 37(1.5)(*b*) is the amount that is 10% of the expenditures made by the taxpayer in the taxation year that are in respect of salary or wages paid in the year to the taxpayer's employees in respect of SR&ED carried on in Canada by the taxpayer. For this purpose, salary or wages paid to the employees of the taxpayer do not include salary or wages that are treated as being incurred in Canada under new subsection 37(1.4).

New subsection 37(1.5) generally applies to taxation years that end on or after February 26, 2008. For taxation years that include February 26, 2008, the 10% limit in new paragraph 37(1.5)(*b*) is pro-rated based on the number of days in that taxation year that are after February 25, 2008.

Example:

A Canadian company (Canco) is conducting SR&ED in Canada to create a flying toy, the "Toychuk", that could withstand "tornado speed" winds. After testing the Toychuk under simulated conditions in a laboratory in Canada, the company sends one of its full-time SR&ED employees, Gurjot, to a foreign country where tornados are common. Gurjot conducts tests on the Toychuk under real conditions in that foreign country during January 2008. The company sends another of its full-time SR&ED employees, Bianca, for subsequent tests on the product under real conditions in another foreign country in December 2008. Bianca and Gurjot are residents of Canada and the salary paid to them by Canco is not subject to income taxes in any other country.

Canco has a calendar year-end. The company has 10 full-time employees carrying on SR&ED in Canada and each of them is paid $96,000 annually. In 2008 the company paid $960,000 in total salaries to its SR&ED employees (not including bonuses or similar remuneration).

For the 2008 taxation year, Canco may treat $8,000 in respect of salaries paid to employees carrying on SR&ED outside Canada as having been incurred in Canada. This $8,000 is the amount that is the lesser of:

(a) $8,000[1] (salary for Bianca for December 2008 ($96,000/12)), and

(b) $79,956 (calculated as (($960,000 - $16,000) x (10% x 310/366[2])).

SR&ED carried on outside Canada

ITA
37(2)(a)

Subsection 37(2) of the Act allows a taxpayer to deduct expenditures of a current nature made in respect of SR&ED carried on outside Canada. SR&ED expenditures made outside Canada are not pooled, but rather must be deducted in the year they are made.

Paragraph 37(2)(*a*) is amended consequential to the introduction of new subsection 37(1.4), which treats certain expenses incurred for salary or wages on SR&ED carried on outside Canada by the taxpayer to have been made in respect of SR&ED carried on in Canada by the taxpayer. This amendment ensures that those expenditures are excluded from subsection 37(2).

This amendment applies to taxation years that end on or after February 26, 2008.

Salary or wages

ITA
37(9)

Subsection 37(9) of the Act provides that, for the purposes of clauses 37(8)(*a*)(ii)(A) and (B), salary or wages does not include remuneration based on profits nor a bonus, where the remuneration or bonus is for a specified employee of the taxpayer. The term "specified employee" of a person is defined in subsection 248(1) of the Act.

Subsection 37(9) is reworded by moving the content of the present subsection to new paragraph 37(9)(*a*) and by adding new paragraph 37(9)(*b*). This addition is consequential to the introduction of new subsection 37(1.4), which treats certain expenses incurred in respect of salary or wages on SR&ED carried on outside Canada as having been incurred in respect of SR&ED carried on in Canada.

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[1] Does not include Gurjot's salary for January 2008 because it was incurred before February 25, 2008.

[2] Since Canco's 2008 taxation year includes February 26, 2008, the amount that is 10% of the Canadian SR&ED salaries and wages paid during the year is pro-rated based on the number of days after February 25, 2008 that are in the 2008 taxation year.

New paragraph 37(9)(*b*) provides that an expense for salary or wages is treated as having been incurred in Canada by a taxpayer for the purpose of paragraph 37(1.5)(*a*) only if the taxpayer reasonably believes that the salary or wages is not subject to an income or profits tax imposed by a foreign government. (This rule takes into account only those taxes that are applied because of an employee's presence or activities in a foreign country – and not, for example, a tax that applies to a country's citizens regardless of where they live or work.) If this condition is not satisfied – for example, if the taxpayer knows or has reason to believe that the amount is being taxed in the foreign country where its employees are carrying out the SR&ED – salary or wages paid to the employee would not be included in the amount determined under paragraph 37(1.5)(*a*) for the purposes of determining the amount of SR&ED expenditures considered to have been made in Canada, under subsection 37(1.4) of the Act.

These amendments apply to taxation years that end on or after February 26, 2008.

Clause 4

Gifts of securities

ITA
38

Section 38 of the Act defines a taxpayer's taxable capital gain, allowable capital loss or allowable business investment loss from the disposition of a property. Paragraph 38(*a.1*) provides that, where a capital gain results from the making of a gift of certain securities to a qualified donee, no portion of the capital gain in respect of such a gift is included in computing a taxpayer's taxable capital gains.

Paragraph 38(*a.1*) is amended to add new subparagraph (iii), which extends its application to shares of corporations that are disposed of in exchange for securities described in subparagraph 38(*a.1*)(i) (generally referred to as "publicly traded securities"), where

- the exchanged shares included, at the time they were issued, a condition allowing the holder to exchange them for the publicly traded securities;
- the publicly traded securities are the only consideration received on the exchange; and
- the publicly traded securities are donated to a registered charity or other qualified donee within 30 days of the exchange.

New paragraph 38(*a.3*) of the Act introduces a reduction to the taxable portion of the capital gain arising from the exchange of an interest in a partnership (other than a prescribed interest in a partnership) for a publicly traded security, where new subparagraph 38(*a.1*)(iii) would have applied to exempt the gain if the partnership interest had been a share. In general, the taxable capital gain will be the lesser of the taxable capital gain otherwise determined and one-half of the amount, if any, by which the cost to the donor of the exchanged partnership interest (including any contributions to partnership capital by the donor) exceeds the adjusted cost base to the donor of that interest (determined without reference to distributions of partnership capital).

Paragraph 38(*a*) of the Act is amended consequential to these amendments, to refer to new paragraph 38(*a.3*).

These amendments apply in respect of gifts made on after February 26, 2008.

Clause 5

Gains and Losses – Limitations

ITA
40(2)(g)

Subsection 40(2) of the Act sets out a number of specific rules relating to the determination of a taxpayer's gain or loss for a taxation year. Clause 40(2)(*g*)(iv)(A) denies a capital loss arising from the disposition of property by a taxpayer to a trust governed by a registered retirement income fund (RRIF) or certain other registered plans under which the taxpayer is the beneficiary. Clause 40(2)(*g*)(iv)(B) provides a similar stop-loss rule for dispositions to RRSP trusts.

Clause 40(2)(*g*)(iv)(A) is amended to extend the stop-loss rule so that it applies to the disposition of property by a taxpayer to a trust governed by a TFSA under which the taxpayer is the beneficiary (i.e., holder).

This amendment applies to the 2009 and subsequent taxation years.

Clause 6

Attribution Rules – Where Sections 74.1 to 74.3 do not apply

ITA
74.5(12)

Sections 74.1 to 74.5 of the Act provide "attribution rules" in respect of property transferred by an individual to or for the benefit of the individual's spouse or common-law partner or certain individuals under the age of 18 years. Very generally, the rules attribute to the transferor amounts of income and capital gains from the transferred property.

Subsection 74.5(12) provides several exceptions from these rules, including an exception for a transfer of property made by way of a premium paid by an individual to an RRSP that is a spousal or common-law partner plan in relation to the individual.

Subsection 74.5(12) is amended to add an exception 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 TFSA of which the spouse or common-law partner is the holder. This will ensure that the investment income earned in the TFSA will not be attributed back to the transferor individual. The exception from the attribution rules applies only while the transferred property (or any substituted property) remains in a TFSA and only to the extent that the contribution is made using the spouse or common-law partner's available TFSA contribution room.

This amendment applies to the 2009 and subsequent taxation years.

Clause 7

Attribution Rules – Trusts – Exceptions

ITA
75(3)(a)

Subsection 75(2) of the Act generally attributes income from trust property to a person where the property was received by the trust from the person and can revert to the person (or pass to other persons determined by that person). Subsection 75(3) of the Act exempts from this rule income from property held by trusts governed by RRSPs and certain other trusts.

Paragraph 75(3)(*a*) is amended to extend the exemption so that it applies to property held by a trust governed by a TFSA.

This amendment applies to the 2009 and subsequent taxation years.

Clause 8

Dividend “Gross–up”

ITA
82(1)(b)

Subsection 82(1) of the Act requires taxpayers to include amounts in their income in relation to taxable dividends that they receive from corporations resident in Canada. Where an individual receives a taxable dividend from a taxable Canadian corporation, in addition to the actual dividend received, a “gross-up” amount is calculated and required to be included in income under paragraph 82(1)(*b*) in respect of the dividend. Using this gross-up, which is intended to approximate average combined federal and provincial corporate income taxes, the tax system in effect treats the individual as having earned directly the amount that the corporation is assumed to have earned to pay the dividend. A tax credit provided under paragraph 121(*b*) of the Act then compensates the individual for corporate level tax presumed to have been paid on that amount. In relation to “eligible dividends” (very generally, dividends that a corporation pays out of income that has borne tax at full corporate rates), both the gross-up and the dividend tax credit use different factors from the ones they use in relation to other dividends.

Paragraph 82(1)(*b*) is amended by replacing subparagraph (ii) to reflect scheduled reductions in the general corporate income tax rate by adjusting the dividend gross-up factor for eligible dividends. The eligible dividend gross-up will be reduced from its current level of 45% to 44% for the 2010 taxation year, 41% for the 2011 taxation year, and 38% for the 2012 and subsequent taxation years. Related changes to the dividend tax credit are described in the commentary on paragraph 121(*b*), below.

This amendment applies to the 2009 and subsequent taxation years, although for the 2009 taxation year the amended provision leaves in place the existing 45% gross-up.

Clause 9

Amalgamations – Shares Deemed Listed

ITA
87(10)

Section 87 of the Act sets out rules that apply where two or more taxable Canadian corporations have amalgamated to form a new corporation. Subsection 87(10) provides a rule dealing with an amalgamation of two or more corporations where shares of a predecessor corporation that are listed on a “designated stock exchange” are temporarily replaced by unlisted shares of the new corporation. Subsection 87(10) deems those temporary shares to have been listed on a designated stock exchange for the purposes of subsection 116(6), the definitions “qualified investment” in subsections 146(1), 146.1(1) and 146.3(1), in section 204 and in subsection 205(1), and the definition “taxable Canadian property” in subsection 248(1).

Subsection 87(10) is amended to add a reference to the definition “qualified investment” in new subsection 207.01(1). This amendment, which applies to the 2009 and subsequent taxation years, is consequential to the introduction of TFSAs.

Clause 10

Qualifying Disposition

ITA
107.4(1)

Under subsection 107.4(3) of the Act, a qualifying disposition of property to a trust generally qualifies for a tax-deferred “rollover”. For this purpose, subsection 107.4(1) defines “qualifying disposition” to be a disposition of property to a trust that does not result in any change in the beneficial ownership of the property and that otherwise meets the conditions set out in that subsection. Paragraph 107.4(1)(*j*), which applies where the transferor is a trust governed by a registered education savings plan (RESP) or certain other special purpose trusts, requires the transferor trust to be the same type of trust as the transferee trust. For example, if the transferor trust is an RESP trust, the transferee trust must also be an RESP trust for the disposition to be a qualifying disposition.

Paragraph 107.4(1)(*j*) is amended so that it also applies to transfers between trusts governed by TFSAs.

This amendment applies to the 2009 and subsequent taxation years.

Clause 11

Taxation of Trusts and their Beneficiaries – Definitions

ITA
108(1)

“trust”

Subsection 108(1) of the Act defines “trust” to exclude certain trusts for the purposes of the 21-year deemed disposition rule and other specified measures. Under paragraph (*a*), trusts governed by RRSPs or certain other registered plans are among the excluded trusts for these purposes.

Paragraph (*a*) of the definition is amended to add to the list of exclusions a trust governed by a TFSA.

This amendment applies to the 2009 and subsequent taxation years.

Clause 12

Eligible medical gift

ITA
110.1(8)

Subsection 110.1(8) of the Act defines an “eligible medical gift” of a corporation for the purposes of paragraph 110.1(1)(*a.1*) – a rule that entitles a corporation to a special deduction in respect of such gifts. An eligible medical gift is generally a gift of a drug, within the meaning of the *Food and Drugs Act*, made out of the inventory of a corporation for charitable activities outside Canada. Three amendments are made to subsection (8), in respect of gifts made on or after July 1, 2008.

Paragraph 110.1(8)(*b*) is amended to provide that, in order to qualify as an eligible medical gift, the gift must be donated at least six months prior to the expiration date of the medicine.

Paragraph 110.1(8)(*c*), which sets out certain additional requirements, is amended to remove a distinction between gifts made after October 2, 2007 and other gifts. (Since these amendments apply only as of July 1, 2008, that distinction is now unnecessary.)

Paragraph 110.1(8)(*e*) provides that, to be an eligible medical gift, a gift must be made to a registered charity that has received a disbursement under an international development assistance program of the Canadian International Development Agency. Paragraph (*e*) is amended to provide instead that the Minister for International Cooperation must be of the opinion that the recipient of the gift is a registered charity that meets conditions to be prescribed by regulation. It is intended that the conditions in this proposed regulation will ensure that charities who receive these gifts

- act in a manner consistent with the principles and objectives of the World Health Organization Guidelines for Drug Donations;
- have expertise in delivering medical donations to the developing world; and
- implement appropriate policies and practices with respect to the delivery of international development assistance.

As noted above, these amendments apply in respect of gifts made on or after July 1, 2008.

Clause 13

Northern Resident Deduction

ITA
110.7

Section 110.7 of the Act provides, in computing an individual's taxable income for a taxation year, a special deduction in respect of certain travel benefits and living costs if the individual resides, throughout a period of at least 6 consecutive months commencing or ending in the year, in a northern or isolated area that is a "prescribed zone" under section 7303 of the Regulations.

The deduction in respect of living costs is provided in paragraph 110.7(1)(*b*). The amount of this deduction is currently set at $7.50 for each day throughout which an individual resided in a prescribed area, and $7.50 for each day during which the taxpayer maintained and resided in a self-contained domestic establishment in a prescribed zone and for which no other person residing in that establishment claimed a housing deduction. The total deduction relating to the cost of living in a prescribed zone in a year is limited to 20% of the taxpayer's income for the year.

Both of the references to $7.50 are replaced by references to $8.25, increasing the daily living cost amount by 10%.

This amendment applies to the 2008 and subsequent taxation years.

Clause 14

Disposition by non-resident person of certain property

ITA
116

In addition to being taxed in Canada on any Canadian-source employment income and Canadian-source business or property income, a non-resident of Canada is liable to pay Canadian income tax on capital gains from dispositions of "taxable Canadian property" and on income or gains from dispositions of certain other property. Section 116 of the Act generally provides for a withholding procedure under which a purchaser of such properties is required to withhold certain amounts from the purchase price and remit them on account of the non-resident vendor's potential income tax liability. Those rules also allow the non-resident vendor to obtain from the Minister of National Revenue a "clearance certificate" (verifying that the non-resident vendor has made arrangements for the payment of any resulting tax), and so to relieve, wholly or in part, the purchaser's obligation to withhold.

More specifically, under subsection 116(5) or (5.3) (depending on the type of property) the purchaser is required to withhold an amount in respect of tax except to the extent of protection afforded to the purchaser by a clearance certificate obtained by the vendor, under any of subsections 116(2), (4) or (5.2), from the Minister of National Revenue. However, this obligation to withhold does not apply where the property is "excluded property" as defined in subsection 116(6).

Subsections 116(5) and (5.3) also provide a "safe-harbour" protection for purchasers. A purchaser is not liable for failure to remit if the purchaser had, after reasonable inquiry, no reason to believe that the non-resident vendor was not resident in Canada.

In many cases, dispositions of the properties currently envisaged by section 116 may be exempt from Canadian income taxation under a tax treaty. Section 116 of the Act is therefore amended in a number of ways to take these treaty exemptions into account.

First, subsections 116(5) and (5.3) are amended to expand the safe-harbour protection afforded to purchasers of property from non-resident persons. Each of those subsections is amended to ensure that the purchaser is not required to withhold if new subsection 116(5.01) applies to the acquisition. New subsection 116(5.01) applies to an acquisition of property by a purchaser from a non-resident person if all of the following conditions are satisfied:

1. The purchaser concludes after reasonable inquiry that the non-resident person is, under a tax treaty that Canada has with a particular country, resident in the particular country.
2. The property would be "treaty-protected property" (a term defined in subsection 248(1) of the Act) of the non-resident person if the non-resident person were, under the tax treaty referred to in 1, resident in the particular country.
3. The purchaser provides notice under new subsection 116(5.02) in respect of the acquisition.

It is important to note that the first and second of these requirements are different in kind. Although the purchaser's conclusion as to the vendor's country of residence will usually be correct as a matter of fact, that is not strictly necessary. What is necessary is that the purchaser conclude, based on the results of a reasonable inquiry, that the non-resident is resident in a particular tax-treaty country. In contrast to this, the treaty effects of being resident in that particular country are not a matter of reasonable enquiry by the purchaser, but rather of the actual effect of the treaty. The following examples – which have been contrived for clarity and are not intended to be realistic – illustrate this difference.

Background

A non-resident is selling shares of Forco, a foreign private corporation that has as its only property a farm in Canada, and as its only income the rent it earns from leasing the land to an arm's length person. Since the shares of Forco are taxable Canadian property, Canada will tax the non-resident vendor's gain on the shares unless the vendor is resident in a country whose tax treaty with Canada precludes Canada from doing so. In fact, treaties vary on this point: for example, the Canada-Russia tax treaty does not ordinarily allow Canada to tax a Russian resident's gain on the shares of a corporation that is not resident in Canada, while the Canada-Moldova treaty allows Canada to tax a Moldovan resident's gain on any shares whose value derives principally from Canadian immovable property.

Case 1

The vendor of the Forco shares is resident in Moldova, but the purchaser does not know this. Instead, the purchaser makes a reasonable inquiry and concludes that the vendor is resident in Russia, thus satisfying the first condition described above. The second condition is also satisfied, since if the vendor were indeed resident in Russia, the property would be treaty-protected property. Accordingly, the purchaser can rely on new subsection 116(5.01), and by providing the notice required under new subsection 116(5.02) need not withhold any amount from the purchase price.

Case 2

The vendor is resident in Moldova, and the purchaser's inquiry leads the purchaser to the correct conclusion on that point. The first condition is satisfied. But the second condition is not satisfied: even if the purchaser (perhaps assuming that all tax treaties are alike) believes that the shares are treaty-protected property under the Canada-Moldova treaty, they are not. The purchaser must withhold under section 116, unless the vendor has obtained a clearance certificate beforehand.

New subsection 116(5.02), which is also relevant for new subsection 116(6.1), as discussed below, explains that a purchaser provides notice under that subsection if they send to the Minister of National Revenue, within 30 days of the acquisition, a notice setting out

- the date of the acquisition,
- the name and address of the non-resident vendor,
- a description of the property sufficient to identify it,
- the amount paid by the purchaser for the property, and
- the vendor's country of residence.

Second, subsection 116(6) is amended to expand the list of "excluded property" to include any property that is a "treaty-exempt property". "Treaty-exempt property" is defined in new subsection 116(6.1) as a property

- that is, at that time, a "treaty-protected property", and
- in respect of the disposition of which, where the purchaser and the non-resident person are related at that time, the purchaser provides notice under new subsection 116(5.02).

These amendments to section 116 apply in respect of dispositions of property that occur after 2008.

Clause 15

Direct Designation – RRSPs, RRIFs and TFSAs

ITA
118.1(5.3)

Section 118.1 of the Act provides a tax credit in respect of an individual’s charitable gifts, Crown gifts, cultural gifts and ecological gifts. Subsection 118.1(5.3) extends this tax credit to a transfer of money from a deceased individual’s RRSP or RRIF under certain conditions, where the transfer is made as a consequence of a qualified donee being named a beneficiary under the plan or fund. Subsection 118.1(5.3) does not apply to RRSPs or RRIFs under which the issuer or carrier is a licensed annuities provider. Instead, similar treatment is available for such plans under a general rule for life insurance policies set out in subsection 118.1(5.1).

Subsection 118.1(5.3) is amended so that it applies to TFSAs. This will allow the proceeds of a deceased individual’s TFSA that are donated by way of a direct designation under the terms of the TFSA to a qualified donee to be claimed as a tax credit in computing the individual's tax for the year of death. As is the case with RRSPs and RRIFs, subsection 118.1(5.1) will apply to TFSAs that are issued by a licensed annuities provider.

This amendment applies to the 2009 and subsequent taxation years.

Clause 16

Medical Expense Tax Credit

ITA
118.2(2)

Section 118.2 of the Act provides rules for determining the amount which may be claimed as a tax credit in respect of an individual’s medical expenses. Subsection 118.2(2) contains a list of expenditures which qualify as medical expenses for this purpose . Paragraph (2)(*l*) allows the cost of acquiring a dog to assist a blind person, a person who is profoundly deaf or has a severe and prolonged impairment that markedly restricts the use of the person’s arms or legs (as well as the costs for the care and maintenance of the dog) to qualify as a medial expense. The scope of this provision is extended, for the 2008 and subsequent taxation years, so that it applies as well to individuals who are suffering from severe autism or severe epilepsy.

Paragraph (2)(*n*) is also amended. This paragraph provides that the costs of drugs, medicaments or other preparations or substances purchased for use by a patient as prescribed by a medical practitioner or dentist and as recorded by a pharmacist are eligible for the purposes of the medical expense tax credit The paragraph is amended, for expenses incurred after February 26, 2008, to clarify that generally, drugs, medications and other substances and preparations that can lawfully be purchased without a prescription are not eligible for the medical expense tax credit. The amendment also contemplates that some drugs, etc., such as insulin, should continue to qualify notwithstanding that a medical prescription is in some cases not required, and allows for such drugs, etc. to be prescribed by regulation.

Clause 17

Dividend Tax Credit

ITA
121(b)

Section 121 of the Act provides a dividend tax credit for individuals in respect of taxable dividends received from taxable Canadian corporations. Paragraph 121(*b*) specifies the amount of the dividend tax credit that is available for an “eligible dividend” (very generally, a dividend that a corporation pays out of income that has borne tax at full corporate rates).

The tax credit in paragraph 121(*b*) is calculated as a fraction of the “gross-up” amount included in the individual’s income pursuant to subparagraph 82(1)(*b*)(ii) of the Act. The gross-up amount effectively treats the individual as having earned directly the amount that the corporation is assumed to have earned to pay the dividend. The tax credit provided in paragraph 121(*b*) then compensates the individual for federal corporate income tax presumed to have been paid on that amount.

Paragraph 121(*b*) is amended to adjust the tax credit rate for eligible dividends to reflect scheduled corporate income tax rate reductions. As such, the tax credit rate provided in paragraph 121(*b*) will change, moving from 11/18 of the gross-up amount to 10/17 for 2010, 13/23 for 2011, and 6/11 for 2012 and subsequent years. Related changes to the gross up amount are described in the commentary on changes to paragraph 82(1)(*b*).

This amendment applies to the 2009 and subsequent taxation years, although for the 2009 taxation year the amended provision leaves in place the existing 11/18 credit.

Clause 18

Tax payable by inter vivos trust

ITA
122(1)

Section 122 of the Act contains rules for determining an inter vivos trust’s income tax payable under Part I of the Act (before accounting for the rules in subdivision c of Division E of that Part).

Paragraph 122(1)(*a*) of the Act provides the section’s basic rules: the rate of the tax is 29%; and the base is a trust’s “amount taxable” for a taxation year. “Amount taxable” is defined in subsection 117(2) of the Act as taxable income for the taxation year, or taxable income earned in Canada for the taxation year, in the case of a non-resident.

Paragraph 122(1)(*b*) provides, for SIFT trusts, an additional amount of tax payable for a taxation year: for this purpose, the tax base is the SIFT trust’s “taxable SIFT distributions” for the taxation year (as determined under the definition of that expression in subsection 122(3)); the tax rate is, in general terms, the difference between a combined federal-provincial tax rate on corporate taxable income, and the federal income tax that applies to inter vivos trust taxable income. The combined tax rate’s provincial component – which is set out in the description of D of the formula in paragraph 122(1)(*b*) – is the “provincial SIFT tax factor” (currently defined in subsection 248(1) of the Act to be decimal 0.13, which is an average provincial corporate income tax rate).

Paragraph 122(1)(*b)* is amended to replace the reference to “provincial SIFT tax factor” in the description of D with a reference to a SIFT trust’s “provincial SIFT tax rate” for a taxation year. This change is consequential upon the repeal of the definition “provincial SIFT tax factor” in subsection 248(1) and its replacement by the new definition “provincial SIFT tax rate” in subsection 248(1). Under the new “provincial SIFT tax rate” definition, the provincial component of a SIFT trust’s combined SIFT tax rate will be the prescribed amount, expressed as a decimal fraction, determined in respect of the SIFT trust for the taxation year. For more detail, see the commentary in these notes on the definition “provincial SIFT tax rate” in subsection 248(1).

This amendment applies for the 2009 and subsequent taxation years. It also applies for a SIFT trust’s 2007 and 2008 taxation years if the SIFT trust elects in its return of income for 2007 to have the new “provincial SIFT tax rate” definition in subsection 248(1) of the Act apply starting in that year, or for a SIFT trust’s 2008 taxation year if the SIFT trust so elects in its return of income for 2008.

ITA
122(3)

Definitions

Subsection 122(3) of the Act sets out definitions that apply in determining a SIFT trust's tax payable under paragraph 122(1)(*b*).

"taxable SIFT trust distributions"

The "taxable SIFT trust distributions" of a SIFT trust for a taxation year is the lesser of two amounts. The first amount is the SIFT trust's "amount taxable" for the taxation year. Since a SIFT trust must be resident in Canada, this is the same as its taxable income for the taxation year (see subsection 117(2) of the Act).

The second amount is a "grossed-up" function of the SIFT trust's non-deductible distributions amount for the taxation year. The gross-up restores the amount to its presumed pre-tax equivalent, and so ensures that the tax under paragraph 122(1)(*b*) applies to the full amount of the SIFT's earnings that supported its non-deductible distributions.

The definition "taxable SIFT trust distributions" in subsection 122(3) is amended to replace the reference to "provincial SIFT tax factor" in the description of C with a reference to a SIFT trust's "provincial SIFT tax rate" for a taxation year. This change is consequential upon the repeal of the definition "provincial SIFT tax factor" in subsection 248(1) of the Act and its replacement by the new definition "provincial SIFT tax rate" in subsection 248(1). Under the new "provincial SIFT tax rate" definition, the provincial component of a SIFT trust's combined SIFT tax rate will be the prescribed amount, expressed as a decimal fraction, determined in respect of the SIFT trust for the taxation year. For more detail, see the commentary in these notes on the definition "provincial SIFT tax rate" in subsection 248(1).

This amendment applies for the 2009 and subsequent taxation years. It also applies for a SIFT trust's 2007 and 2008 taxation years if the SIFT trust elects in its return of income for 2007 to have the new "provincial SIFT tax rate" definition in subsection 248(1) apply starting in that year, or for a SIFT trust's 2008 taxation year if the SIFT trust so elects in its return of income for 2008.

Clause 19

Investment tax credit: Definitions

ITA
127(9)

Section 127 of the Act permits deductions in computing taxable income in respect of logging, political contributions and investment tax credits (ITCs). Subsection 127(5) provides for the deduction of ITCs from a taxpayer's Part I tax otherwise payable.

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the ITCs of a taxpayer.

"flow-through mining expenditure"

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines the expenses ("eligible expenses") that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2007 and before April 2008.

The definition is amended to include eligible expenses incurred by a corporation after March 2008 and before 2010 where the expenses are incurred under a flow-through share agreement made after March 2008 and before April 2009.

Additions to investment tax credits: expenditure limit

ITA
127(10.2)

Subsection 127(10.1) of the Act provides an additional 15% ITC (enhanced ITCs) to Canadian-controlled private corporations (CCPCs), based on the least of: the amount that the corporation claims (paragraph 127(10.1)(*a*)), the corporation's SR&ED qualified expenditure pool for the year (paragraph 127(10.1)(*b*)) and the corporation's expenditure limit for the year (paragraph 127(10.1)(*c*)).

A corporation's expenditure limit referred to in paragraph 127(10.1)(*c*) is determined under subsection 127(10.2), using the following formula:

$$(\$6,000,000 – 10A) \times B/C$$

In the formula, A is the taxable income of the corporation and its associated corporations, if any, for the preceding taxation year. B is the current year "business limit" of the corporation and any associated corporations – in effect, the maximum amount of the group's income that can benefit from the special tax rate for small-business income. C is the amount that would be that business limit without the reduction of the business limit that can result under subsections 125(5) and (5.1) of the Act.

Under the formula, the expenditure limit of a corporation will be an amount from nil to $2 million. As a result of the interaction of various variables in the formula, the maximum expenditure limit of $2 million is reduced by $10 for each dollar of taxable income over $400,000 in the preceding taxation year, and the expenditure limit is then further reduced by $2 for every $5 of taxable capital employed in Canada in excess of $10 million in the preceding taxation year.

The formula in subsection 127(10.2) of the Act is amended by:

- replacing the reference to "$6,000,000" with "$7 million",
- replacing B with "$40 million – B",
- replacing C with "$40 million", and
- redefining B.

The new formula — ($7 million – $10A) x [($40 million – $B)/$40 million] — increases the maximum expenditure limit from $2 million to $3 million, increases the upper limit of the phase-out range of taxable income from $600,000 to $700,000, and increases the upper limit of the phase-out range of taxable capital employed in Canada from $15 million to $50 million. The new formula no longer relies upon the business limits determined under section 125 of the Act.

B is nil if the corporation's taxable capital employed in Canada is less than or equal to $10 million. In any other case, B is equal to the excess of the corporation's taxable capital employed in Canada over $10 million. This ensures that the expenditure limit of the corporation is reduced $3 for every $40 in taxable capital employed in Canada by the corporation in excess of $10 million. For this purpose, the taxable capital employed in Canada by the corporation has the meaning assigned by section 181.2 of the Act and includes the taxable capital employed in Canada in the year of any associated corporation.

The new formula generally applies to taxation years that end on or after February 26, 2008. For a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008.

Example:

A Co. and B Co are CCPCs and have taxation years ending on November 30. For the 2007 taxation year, each corporation had $200,000 in taxable income and $10 million of taxable capital employed in Canada. In the 2008 taxation year, each corporation spent $2 million on SR&ED carried on in Canada. For the 2008 taxation year, A Co and B Co are associated with each other and have agreed to share equally all benefits available to them under the Act. All necessary elections and agreements have been filed to this effect with the Minister of National Revenue.

For the 2008 taxation year, their expenditure limit – under the old formula – is $0, because their combined taxable capital employed in Canada exceeds $15 million. Neither A Co nor B Co can, therefore, claim the 15% enhanced ITCs.

The corporations' combined expenditure limit for 2008 – under the new formula – would be $2.25 million. This is not the amount they can actually use as their expenditure limit, however, because of the pro-rating described below.

The corporations' expenditure limit under the old formula is $0 and the expenditure limit under the new formula is $2.25 million. Because the corporations' 2008 taxation year includes February 26, 2008, any increase in the expenditure limit for that taxation year is pro-rated based on the number of days that are in that year and that are after February 25, 2008:

$2.25 million x 279/366 = $1,715,164

A Co and B Co have agreed to equally share the expenditure limit of $1,715,164, thereby entitling each corporation to claim the 15% enhanced ITCs on $857,582.

Clause 20

Changes in Residence – Definitions

ITA
128.1(10)

"excluded right or interest"

Section 128.1 of the Act provides for the tax effects of becoming or ceasing to be resident in Canada. Subsection 128.1(10) defines the expression "excluded right or interest" for the purposes of these "taxpayer migration rules". This definition is primarily of relevance for paragraphs 128.1(1)(*b*) and (4)(*b*), which treat individuals as having disposed of (and to have immediately reacquired) most of their property on immigrating to or emigrating from Canada. Generally, excluded rights or interests are exempted from these deemed disposition rules. Paragraph (*a*) of the definition refers to rights under, or an interest in a trust governed by, certain registered plans, including RRSPs.

Paragraph (*a*) of the definition is amended to add a reference to TFSAs. This is added for clarity and will ensure that a beneficiary under a TFSA who immigrates to or emigrates from Canada will not be treated as having disposed of their rights under the TFSA.

This amendment applies to the 2009 and subsequent taxation years.

Clause 21

Mutual Fund Qualifying Exchanges

ITA
132.2(1)(k)

Section 132.2 of the Act provides rules to allow two mutual fund trusts, or a mutual fund trust and a mutual fund corporation, to merge on a tax-deferred basis. The merger is accomplished in part through a transfer of property from one fund to the other. Paragraph 132.2(1)(*k*) ensures that such a merger will not cause shares or units of the transferor fund to cease to be qualified investments for trusts governed by RRSPs and certain other registered plans.

Paragraph 132.2(1)(*k*) is amended to add a reference to the definition “qualified investment” in new subsection 207.01(1). This amendment, which applies to the 2009 and subsequent taxation years, is consequential to the introduction of TFSAs.

Clause 22

Segregated Funds – Where ss. (1) to (6) do not apply

ITA
138.1(7)

Section 138.1 of the Act sets out rules that apply in respect of life insurers’ “segregated fund” policies. Subsection 138.1(7) of the Act ensures that where a segregated fund policy is issued as an RRSP or RRIF or issued under a registered pension plan, the policyholder will not be required to include in income those amounts which are deemed to become payable out of the income of the related segregated fund trust to the policyholder under subsection 138.1(1).

Subsection 138.1(7) is amended to extend its application to a segregated fund policy that is issued as a TFSA. This will ensure that such a TFSA does not give rise to any income in the hands of the holder of the TFSA. It is also intended that an annuity contract that is issued as a TFSA not be subject to the accrual rules under section 12.2 of the Act. Subsection 304(1) of the *Income Tax Regulations* will be amended to this effect. An annuity contract, including a segregated fund annuity contract, can be issued as a TFSA if it complies with the conditions set out in section 146.2 of the Act. For more details on TFSAs, refer to the commentary on that section.

This amendment applies to the 2009 and subsequent taxation years.

Clause 23

Registered Education Savings Plans

ITA
146.1

Section 146.1 of the Act contains the rules relating to registered education savings plans (RESPs).

Conditions for Registration

ITA
146.1(1) and (2)

Subsection 146.1(1) of the Act contains definitions that are relevant for the purposes of section 146.1. Subsection 146.1(2) sets out the conditions that must be satisfied in order for an education savings plan to be an RESP.

Paragraph 146.1(2)(*h*) provides that contributions to a plan can be made for only 21 years following the year in which the plan is entered into. Paragraph 146.1(2)(*i*) requires that a plan provide for its termination no later than the end of the 25th year following the year in which it was entered into. These limits are extended by an additional four and five years, respectively, in the case of a “specified plan”, as defined in subsection 146.1(1). A specified plan is essentially a single beneficiary plan under which the beneficiary is an individual who is entitled to a disability tax credit under subsection 118.3(1) for the individual's taxation year that ends in the 21st year following the year in which the plan was entered into (or who would be so entitled if certain deductions under section 118.2 were ignored). Further, at all times after the end of the 25th year following the year in which the plan was entered into, a specified plan must not permit another individual to be designated as a beneficiary under the plan.

Paragraph 146.1(2)(*j*) sets out several conditions that apply to plans that permit more than one beneficiary at any given time (referred to in these notes as “family plans”). The condition in clause 146.1(2)(*j*)(ii)(A) requires that family plans not permit contributions to be made for a beneficiary who is 21 years of age or older.

As set out in the table below, these provisions are amended to increase each of the time parameters referred to above by an additional 10 years.

Time Parameter	**Existing**	**Amended**
ITA 146.1(2)(*h*)		
• Number of contribution years after plan entered into	• 21 years • For specified plans, 25 years	• 31 years • For specified plans, 35 years
ITA 146.1(2)(*i*)		
• Deadline for plan termination	• Year that includes the 25th anniversary of the plan • For specified plans, year that includes the 30th anniversary of the plan	• Year that includes the 35th anniversary of the plan • For specified plans, year that includes the 40th anniversary of the plan
ITA 146.1(1) “specified plan”		
• DTC eligible year	• Year that includes the 21st anniversary of the plan	• Year that includes the 31st anniversary of the plan
• Restriction on designating other beneficiaries	• No designation of other beneficiaries after the end of the year that includes the 25th anniversary of the plan	• No designation of other beneficiaries after the end of the year that includes the 35th anniversary of the plan
ITA 146.1(2)(*j*)		
• Contribution age limit for family plan	• No contributions for beneficiary who is 21 years of age or older	• No contributions for beneficiary who is 31 years of age or older

These amendments apply to the 2008 and subsequent taxation years.

Extension for Making Educational Assistance Payments

ITA
146.1(2.21) and (2.22)

Under paragraph 146(2)(*g.1*) of the Act, an RESP is permitted to make an educational assistance payment (EAP) to an individual only if, at the time of the payment, the individual is enrolled as a student in either a qualifying educational program (which is generally a full-time program) or a specified educational program (which is a part-time program) at a post-secondary educational institution. Individuals enrolled in a qualifying educational program may receive up to $5,000 of EAPs during their first 13-week period of study. Thereafter, there is no dollar limit on the amount of EAPs. Students enrolled in specified educational program may receive up to $2,500 of EAPs during each 13-week period of study.

New subsection 146.1(2.21) of the Act relaxes the requirement that EAPs be made only during periods of enrolment by providing a six-month grace period for making EAPs. Specifically, subsection 146.1(2.21) will allow an RESP to provide for the payment of an EAP to an individual for up to six months after the individual ceased to be enrolled as a student in a qualifying educational program or a specified educational program, as the case may be. However, this additional flexibility will apply only where the payment would have qualified under the normal rules for EAPs if it had been made immediately before the individual's enrolment ceased. Thus, for example, an individual who had received a $2,000 EAP while enrolled in a ten-week specified educational program would be entitled to receive up to $500 of additional EAPs during the six-month period following the end of the program (that is, without having to enrol in another program).

New subsection 146.1(2.22) provides a special timing rule for an EAP that is made in accordance with subsection 146.1(2.21). It treats the EAP as having been made immediately before the cessation of enrolment for the purposes of applying the EAP limits in paragraph 146.1(2)(*g.1*).

These amendments apply to the 2008 and subsequent taxation years, except that they do not apply in respect of cessations of enrolment that occur before 2008.

Clause 24

Tax-free Savings Accounts

ITA
146.2

New section 146.2 of the Act provides rules relating to tax-free savings accounts (TFSAs).

A TFSA is a flexible, general-purpose savings vehicle that allows residents of Canada to make contributions each year and to withdraw funds at any time in the future to be used for any purpose. Individuals can contribute to a TFSA throughout their adult lifetimes, and are not required to begin making withdrawals at any given age. TFSA contributions are not deductible, but income earned within a TFSA (including capital gains) and distributions from a TFSA are tax-free.

Starting in 2009, new TFSA contribution room will be allocated each year to individuals who are at least 18 years of age and resident in Canada. This allocation is not dependent on the individual having earned income (as is the case for the allocation of RRSP contribution room). The amount of new TFSA contribution room allocated in 2009 will be $5,000. Thereafter, the amount of new room allocated each year will be determined by indexing $5,000 to inflation and rounding to the nearest $500. The amount of TFSA contribution room available to an individual in a given year will also include the amount of distributions made under the individual's TFSAs in the preceding year. If an individual does not fully use the amount of TFSA contribution room available in a given year, the unused room is carried forward and can be used by the individual in any future year. If an individual makes an excess TFSA contribution, the individual will be subject to a tax of one per cent per month on the contribution until such time as the contribution is withdrawn. (Refer to the commentary on new sections 207.02 and 207.03 of the Act for more information on the rules relating to TFSA contributions.)

New section 146.2 applies to the 2009 and subsequent taxation years.

Definitions

ITA
146.2(1)

New subsection 146.2(1) of the Act defines a number of terms that are relevant for the purposes of section 146.2 and new Part XI.01 of the Act.

“distribution”

Subsection 146.2(1) defines a “distribution” under an arrangement of which an individual is the holder to be a payment that is made out of or under the arrangement in full or partial satisfaction of the holder’s interest in the arrangement. In everyday terms, a distribution may be thought of as a withdrawal of funds from the arrangement.

The definition is relevant, not only for various provisions in section 146.2, but also for the definitions “excess TFSA amount” and “unused TFSA contribution room” in new subsection 207.01(1) of the Act. Under those definitions, distributions made from an individual’s TFSAs in a year are included in the determination of what is in effect the individual’s TFSA contribution room for the following year. Distributions will also be taken into account for the year in which the distribution is made, but only to the extent that they are required to reduce or eliminate tax that would otherwise be payable under section 207.02 by the individual on excess TFSA contributions.

“holder”

Subsection 146.2(1) defines the “holder” of an arrangement to be, until the death of the individual who entered into the arrangement with the issuer, that individual. If, upon the individual’s death, the individual’s survivor acquires all of the individual’s rights as the holder of the arrangement, the survivor becomes the holder of arrangement at that time. However, this will be the case only if the survivor acquires (either as part of the deceased individual’s rights as holder or in addition to those rights) an unconditional right to revoke any beneficiary designation made by the individual, or any similar direction imposed by the individual, under the arrangement or relating to property held in connection with the arrangement. Requiring that the survivor have such rights in order to become the holder helps to ensure that the survivor has control of the arrangement.

The definition “holder” is relevant primarily for:

- the “qualifying arrangement” conditions in subsection 146.2(2);
- subsection 146.2(3), which provides that an arrangement ceases to be a TFSA on the death of the last holder of the arrangement; and
- new Part XI.01, which imposes taxes on a TFSA holder in connection with certain transactions, such as excess contributions and the acquisition of a non-qualified or prohibited investment.

While an arrangement may provide for an entity to assume the rights of the last holder of a TFSA after the death of that holder, that entity would clearly not be a holder for tax purposes. To avoid confusion issuers may wish when establishing the wording of a TFSA arrangement to use a term other than “holder” to refer to such an entity.

“issuer”

Subsection 146.2(1) defines the “issuer” of an arrangement to be the person described as the issuer in the definition “qualifying arrangement”, that is, the trust company, licensed annuities provider, member of the Canadian Payments Association or credit union with which the individual referred to in that definition has the arrangement.

“qualifying arrangement”

The definition “qualifying arrangement” in subsection 146.2(1) is relevant primarily for subsection 146.2(3). Under that subsection, an arrangement can become a TFSA only if it is a qualifying arrangement at the time it is entered into, and ceases to be a TFSA if it subsequently ceases to be a qualifying arrangement.

The definition “qualifying arrangement” sets out a number of conditions that must be met for an arrangement to be a qualifying arrangement at any particular time.

Paragraph (*a*) requires that the arrangement be entered into after 2008, and that it be between an individual (other than a trust) who is at least 18 years of age and another person (the “issuer”).

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

- An arrangement in trust with a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.
- An annuity contract with a licensed annuities provider, other than a contract that is adjoined to another contract or arrangement. “Licensed annuities provider” is defined by subsections 147(1) and 248(1) of the Act to be a person licensed or otherwise authorized under the laws of Canada or a province to carry on an annuities business in Canada. While the requirement that the contract not be adjoined is intended to preclude contracts commonly referred to as “split-dollar” arrangements, it does not preclude employers from offering TFSAs to its employees as a group arrangement, using the same approach currently adopted for “group RRSPs”.
- A deposit with a person who is (or is eligible to become) a member of the Canadian Payments Association or who is a credit union that is a shareholder or a member of a body corporate referred to as a “central” in the Canadian Payments Act.

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

Paragraph (*d*) requires that the issuer and the individual agree, at the time the arrangement is entered into, that the issuer will file with the Minister of National Revenue (the “Minister”) an election to register the arrangement as a TFSA. Under subsection 146.2(3), the issuer must file the election on or before the 60th day after the end of the calendar year in which the arrangement was entered into, in order for the arrangement to become a TFSA. Thus only those arrangements that are established with the intention of being TFSAs can actually qualify as such.

Paragraph (*e*) requires that, at all times since the arrangement was entered into, it have complied with the conditions set out in subsection 146.2(2). (Refer to the commentary on that subsection for further information.)

“survivor”

Subsection 146.2(1) defines an individual to be a “survivor” of another individual if the individual was, immediately before that other individual’s death, a spouse or common-law partner of that other individual.

An individual who is the holder of a TFSA may provide for a survivor to become the holder of the TFSA upon the individual’s death.

If, on the death of a TFSA holder, a survivor of the holder does not become the successor holder, the arrangement ceases to be a TFSA. However, if payments are made from the arrangement to a survivor of the holder within the two-year period following the holder’s death, the survivor may contribute up to an equivalent amount to his or her own TFSA, within that same period, without affecting the survivor’s TFSA contribution room. (Refer to the commentary on section 207.02 of the Act for more information.)

“qualifying arrangement” conditions

ITA
146.2(2)

New subsection 146.2(2) of the Act sets out the conditions referred to in paragraph (*e*) of the definition “qualifying arrangement” in subsection 146.2(1). In determining if an arrangement is a qualifying arrangement at a particular time, that paragraph requires that the conditions in subsection 146.2(2) be met from the time the arrangement was entered into until the particular time.

The conditions in subsection 146.2(2) also apply for the purposes of paragraph 146.2(3)(*c*), which provides that an arrangement ceases to be a TFSA at any time that it ceases to be administered in accordance with the conditions in subsection 146.2(2).

Under paragraph 146.2(2)(*a*), the arrangement must require that it be maintained for the exclusive benefit of the holder. For this purpose, any right of a person to receive a payment out of or under the arrangement only on or after the death of the holder is disregarded.

Paragraph 146.2(2)(*b*) requires that the arrangement prohibit, while there is a holder of the arrangement, anyone who is neither the holder nor the issuer of the arrangement from having rights under the arrangement relating to the amount and timing of distributions and the investing of funds. An arrangement ceases to have a holder on the death of the individual who entered into the arrangement or, if the individual’s survivor acquires the individual’s rights as holder of the arrangement (refer to the commentary on the definition “holder”), on the death of the survivor.

Paragraph 146.2(2)(*c*) requires that the arrangement prohibit anyone other than the holder from making contributions. This will not preclude contributions from being made on behalf of the holder under an agency agreement, such as contributions made under an employer-sponsored group arrangement. As with group RRSPs, contributions made under such an arrangement would be included in the income of the employee on whose behalf the contribution is made.

Paragraph 146.2(2)(*d*) requires that the arrangement permit distributions to be made to reduce the amount of tax that would otherwise be payable by the holder under new section 207.02 or 207.03 of the Act. Those sections impose taxes on excess TFSA contributions and TFSA contributions made by the holder while non-resident. Subsection 207.06(1) allows the Minister to waive any such tax that arises as a consequence of reasonable error if the holder arranges, without delay, for TFSA distributions totalling not less than the amount of the relevant contributions.

Under paragraph 146.2(2)(*e*), the arrangement must provide that the issuer will, when directed to do so by the holder, transfer all or any part of the property held in connection with the arrangement (or an amount equal to its value) to another TFSA of the holder.

If the arrangement is an arrangement in trust, paragraph 146.2(2)(*f*) requires that it prohibit the trust from borrowing for the purposes of the arrangement.

Paragraph 146.2(2)(*g*) requires that the arrangement comply with prescribed conditions. While no specific conditions are anticipated at this time, this provision will allow issues that arise in the implementation of TFSAs to be dealt with through regulations, as necessary.

TFSA

ITA
146.2(3)

New subsection 146.2(3) of the Act describes the circumstances under which an arrangement is a TFSA.

An arrangement becomes a TFSA at the time it is entered into if

- it is a "qualifying arrangement" (as defined in subsection 146.2(1) of the Act) at the time it is entered into; and
- on or before the 60th day after the year in which the arrangement was entered into, the issuer files (in prescribed form and manner) an election with the Minister to register the arrangement as a TFSA under the Social Insurance Number of the individual with whom the issuer entered into the arrangement.

An arrangement ceases to be a TFSA on the occurrence of any of the following events:

- The last holder of the TFSA dies.
- The arrangement ceases to be a qualifying arrangement, as defined in subsection 146.2(1).
- The arrangement is not administered in accordance with the conditions in subsection 146.2(2).

Trust not taxable

ITA
146.2(4)

New subsection 146.2(4) of the Act provides that tax is not payable by a trust governed by a TFSA, unless the trust carries on a business or holds a "non-qualified investment" (as defined in new subsection 207.01(1)). Under these circumstances, tax is payable by the trust on the amount that would be its income for the relevant taxation year if it had no income or losses other than from the businesses that it carried on in the year and the non-qualified investments that it held in the year, and no capital gains or capital losses other than from the disposition of its non-qualified investments. Subsection 146.2(4) provides that, for this purpose, "income" includes dividends described by section 83 of the Act and the trust's taxable capital gain or allowable capital loss from the disposition of a property is equal to the full amount of the capital gain or capital loss from the disposition.

If an arrangement that governs a trust ceases to be a TFSA at any time, the trust loses its tax-exempt status. Under new subsection 146.2(6) of the Act, a new taxation year of the trust is deemed to have begun at that time, and the trust is treated as having acquired each of its properties at that time at a cost equal to the property's fair market value. (See the commentary on that subsection for more information.)

Amount credited to a deposit

ITA
146.2(5)

New subsection 146.2(5) of the Act provides that, in the case of a TFSA that is a deposit, the mere crediting of interest (or the addition of other income) in respect of the deposit does not constitute the receipt of that interest or other income by the TFSA holder. Consequently, the holder is not required to include that amount in income.

It is also intended that subsection 7000(6) of the *Income Tax Regulations* be amended to provide that a TFSA that is a deposit be a prescribed contract for the purpose of the definition "investment contract" in subsection 12(11). This will ensure that such TFSAs are excluded from subsection 12(4) of the Act, which provides for the annual reporting of interest accrued on an investment contract.

Trust ceasing to be a TFSA

ITA
146.2(6)

New subsection 146.2(6) of the Act contains rules that apply where an arrangement governing a trust ceases to be a TFSA, as provided for in new subsection 146.2(3).

Paragraph 146.2(6)(*a*) treats the trust as having disposed of each of its properties immediately before the particular time the arrangement ceases to be a TFSA, and as having reacquired each of those properties at the particular time. It also deems the proceeds of disposition, and the cost of acquisition, for each such property to be the property's fair market value immediately before the particular time. Paragraphs 146.2(6)(*b*) and (*c*) deem the trust's current taxation year to have ended immediately before the particular time and for a new taxation to have begun at the particular time.

Annuity contract ceasing to be a TFSA

ITA
146.2(7)

New subsection 146.2(7) of the Act contains rules that apply if an annuity contract ceases to be a TFSA, as provided for in subsection 146.2(3).

Paragraph (*a*) treats the holder as having disposed of the contract at the time immediately before it ceases to be a TFSA, for proceeds of disposition equal to the fair market value of the contract at that time. Paragraph (*b*) treats the contract as a separate contract that was issued at the time it ceases to be a TFSA, and as not having been issued or effected as a TFSA. Under paragraph (*c*), each person with an interest in the contract at the time it ceases to be a TFSA is treated as having acquired that interest at that time at a cost equal to its fair market value at that time.

Deposit ceasing to be a TFSA

ITA
146.2(8)

New subsection 146.2(8) of the Act contains rules that apply if a deposit ceases to be a TFSA, as provided for in subsection 146.2(3).

Paragraph (*a*) treats the holder as having disposed of the deposit at the time immediately before it ceases to be a TFSA for proceeds of disposition equal to the fair market value of the deposit at that time. Under paragraph (*b*), each person with an interest in the deposit at the time it ceases to be a TFSA is treated as having acquired that interest at that time at a cost equal to its fair market value at that time.

Arrangement is TFSA only

ITA
146.2(9)

New subsection 146.2(9) of the Act ensures that an arrangement that is a "qualifying arrangement" (as defined in subsection 146.2(1)) at the time it is entered into is not a retirement savings plan, an education savings plan, a retirement income fund or a disability savings plan. This provision avoids any confusion that might otherwise arise from the fact that a qualifying arrangement might also fit within the definition of one or more of these arrangements, as set out in subsections 146(1), 146.1(1), 146.3(1) and 146.4(1) of the Act respectively.

Clause 25

Registered Disability Savings Plans

ITA
146.4

Section 146.4 of the Act provides rules that apply to registered disability savings plans (RDSPs).

The beneficiary under an RDSP must be a “DTC-eligible individual” in respect of the year in which the plan is established. Subsection 146.4(1) generally defines an individual as being a “DTC-eligible individual” in respect of a year if the disability tax credit (DTC) can be claimed for the year in respect of the individual under section 118.3 of the Act. There are two basic conditions that must be met for the DTC to be claimed in respect of an individual:

- The individual must have one or more severe and prolonged impairments in mental or physical functions, the effects of which are described in paragraph 118.3(1)(*a.1)* of the Act.
- The certification of a qualified medical practitioner attesting to the effects of the impairment must be filed with the Minister of National Revenue (the “Minister”).

An RDSP is required, by subparagraph 146.4(4)(*p*)(ii), to provide for the plan to be wound-up – i.e., the funds in the plan paid to the beneficiary (less any repayments required under the *Canada Disability Savings Act*) and the plan terminated – by the end of the year following the year in respect of which the beneficiary ceases to be a DTC-eligible individual (as defined in subsection 146.4(1)). Paragraph 146.4(12)(*d*) allows the Minister to extend this deadline if there is some uncertainty as to the beneficiary’s status as a DTC-eligible individual or the issuer was unaware of the beneficiary ceasing to be a DTC-eligible individual.

Subparagraph 146.4(4)(*p*)(ii) is amended to require that an RDSP provide for the wind-up of the plan by the end of the year following the first calendar year throughout which the beneficiary has no severe and prolonged impairments the effects of which are described in paragraph 118.3(1)(*a.1*), rather than the end of the year following the year in respect of which the beneficiary ceases to be a DTC-eligible individual.
Paragraph 146.4(12)(*d*) is amended to reflect the amendment to subparagraph 146.4(4)(*p*)(ii) and to improve its readability. These amendments ensure that the beneficiary of a parent-initiated RDSP cannot, contrary to the parent’s wishes, gain access to the funds in the plan simply by rescinding the medical certificate filed for the purposes of section 118.3.

The amendment to subparagraph 146.4(4)(*p*)(ii) will not affect the definition “DTC-eligible individual” in subsection 146.4(1). Thus, the rescission of a medical certificate by an RDSP beneficiary whose condition has not improved to the extent required for DTC disqualification will, nevertheless, result in the beneficiary ceasing to be a “DTC-eligible individual”. This means that, while there will be no requirement to wind-up the beneficiary’s RDSP, contributions will no longer be permitted to be made to the plan. If such a beneficiary were to re-establish eligibility for the DTC, this would re-instate their status as a “DTC-eligible individual” for purposes of the RDSP rules.

These amendments to section 146.4 apply to the 2008 and subsequent taxation years.

Clause 26

Life Insurance Policies

ITA
148(1)

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

Subsection 148(1) is amended to add an exception for a life insurance policy that is issued as a TFSA. A life insurance policy that is an annuity contract can be issued as a TFSA, if it complies with the conditions set out in section 146.2 of the Act. For more details on TFSAs, refer to the commentary on that section.

This amendment applies to the 2009 and subsequent taxation years.

Clause 27

TFSA Trust

ITA
149(1)

New paragraph 149(1)(*u.2*) of the Act exempts from tax under Part I trusts governed by a TFSA, to the extent provided by new section 146.2. Subsection 146.2(4) provides that no tax is payable under Part I on the taxable income of a trust governed by a TFSA, except in very limited circumstances where the trust carries on a business or holds non-qualified investments. For more details, refer to the commentary on that subsection.

This amendment applies to the 2009 and subsequent taxation years.

Clause 28

Filing returns of income

ITA
150

Subsection 150(1) of the Act sets out the time limits within which, and the circumstances in which, various kinds of taxpayers are required to file a Canadian income tax return. Subsection 150(1.1) restricts the application of subsection 150(1) in certain circumstances.

Subsections 150(1) and (1.1) are amended to better target the circumstances in which taxpayers are required to file Canadian income tax returns, in order to take into account the possibility that income or gains are exempt under a tax treaty. This is accomplished, in part, by the introduction of a new term, “excluded disposition”, in new subsection 150(5) and by amending subsections 150(1) and (1.1) to reference that term. As well, this is accomplished by making a change to subparagraph 150(1)(*a*)(ii) in respect of so-called “treaty-based returns”.

The amendments to subsections 150(1) and (1.1) consist of amending subparagraphs 150(1)(*a*)(i) and (1.1)(*b*)(iii) to ensure that a non-resident corporation or a non-resident individual is no longer required to file an income tax return for a year solely because they have a taxable capital gain in the year, or because they have disposed of taxable Canadian property in the year, where the gain or disposition is in respect of an “excluded disposition”.

Under new subsection 150(5), a disposition of a property by a taxpayer at any time in a taxation year is an excluded disposition if

- the taxpayer is non-resident at that time,
- no tax is payable under Part I of the Act by the taxpayer for the taxation year,
- the taxpayer is, at that time, not liable to pay any amount under the Act in respect of any previous taxation year (other than an amount for which the Minister of National Revenue has accepted, and holds, adequate security under section 116 or 220 of the Act), and
- each taxable Canadian property disposed of by the taxpayer in the taxation year is
  - excluded property within the meaning assigned by subsection 116(6), or
  - a property in respect of the disposition of which the Minister of National Revenue has issued to the taxpayer a certificate under subsection 116(2), (4) or (5.2).

Subparagraph 150(1)(a)(ii) currently requires a corporation to file a Canadian income tax return even if it has no tax payable, where it is relying on the provisions of a tax treaty to eliminate its tax liability. Such returns are sometimes referred to as “treaty-based returns”. The amendment to this subparagraph ensures that a corporation is no longer required to file such a “treaty-based return” where this requirement arises solely because of a disposition of taxable Canadian property that is treaty-protected property.

These amendments to section 150 apply in respect of dispositions of property that occur after 2008.

Clause 29

Withholding and Remittance

ITA
153(1)

Section 153 of the Act requires the withholding of tax from certain payments described in paragraphs 153(1)(*a*) to (*t*). The person making such a payment is required to remit the amount withheld to the Receiver General on behalf of the payee. A prescribed person is required to remit the amount to a designated financial institution. Subsection 153(1) is amended to treat the remittance of a prescribed person as having been made to the account of the Receiver General at a designated institution if it is remitted at least one day before the day upon which the amount is due.

This amendment applies to remittances that are first due on or after February 26, 2008.

Clause 30

Tax on SIFT partnership

ITA
Part IX.1

Part IX.1 of the Act, which is comprised of section 197, imposes a tax on certain publicly-listed partnerships as if they were persons.

ITA
197(2)

Subsection 197(2) provides a formula for calculating the Part IX.1 tax that is imposed on a SIFT partnership for a taxation year: for this purpose, the tax base is the taxable non-portfolio earnings of the partnership for the taxation year; the tax rate is the sum of the “net corporate income tax rate” for a taxation year and the “provincial SIFT tax factor”.

Subsection 197(2) is amended to replace the reference to “provincial SIFT tax factor” in the description of C with a reference to “provincial SIFT tax rate”. This change is consequential upon the repeal of the definition “provincial SIFT tax factor” in subsection 248(1) and its replacement by the new expression “provincial SIFT tax rate” in subsection 248(1). Under the new “provincial SIFT tax rate” definition, the provincial component of a SIFT partnership’s combined SIFT tax rate will be the prescribed amount, expressed as a decimal fraction, determined in respect of the SIFT partnership for the taxation year. For more detail, see the commentary in these notes on the definition “provincial SIFT tax rate” in subsection 248(1).

This amendment applies for the 2009 and subsequent taxation years. It also applies for a SIFT partnership’s 2007 and 2008 taxation years if the SIFT partnership elects in its return under Part XI.1 for 2007 to have the new “provincial SIFT tax rate” definition in subsection 248(1) of the Act apply starting in that year, or for a SIFT partnership’s 2008 taxation year if the SIFT partnership so elects in its return for 2008.

Clause 31

Taxes in respect of TFSAs

ITA
Part XI.01

New Part XI.01 of the Act imposes a special tax on excess contributions made to a TFSA. It also imposes a tax on contributions made by an individual to a TFSA while the individual was non-resident.

Part XI.01 also imposes taxes in connection with certain transactions relating to TFSAs. In general terms, the transactions that give rise to these taxes are investing in non-qualified or prohibited investments and extending supplementary advantages. These transactions are similar to those transactions that give rise to sanctions in connection with RRSPs.

Part XI.01 applies to the 2009 and subsequent taxation years.

Definitions

ITA
207.01(1*)*

New subsection 207.01(1) of the Act defines a number of expressions that apply for the purposes of Part XI.01. For detailed explanations of the expressions “excess TFSA amount”, “qualifying transfer”, “TFSA dollar limit” and “unused TFSA contribution room”, refer to the commentary on section 207.02. For explanations of the expressions “non-qualified investment”, “prohibited investment”, qualified investment” and “restricted property”, refer to the commentary on section 207.04. For the expression “advantage”, refer to the commentary on section 207.05; and for the expression “allowable refund”, refer to the commentary on section 207.07.

Subsection 207.01(1) also provides that the definitions in subsection 146.2(1) of the Act apply for the purposes of Part XI.01. The key definitions are “distribution”, “holder”, “issuer” and “survivor”.

Exempt Contribution to Survivor TFSA

ITA
207.01(2)

New subsection 207.01(2) of the Act describes an exempt contribution for the purpose of the special tax on excess TFSA contributions. The term is relevant where a survivor of a deceased individual makes a contribution to a TFSA with proceeds from the deceased’s TFSA. Refer to the commentary on section 207.02 for more details.

Survivor as Successor Holder

ITA
207.01(3)

New subsection 207.01(3) of the Act provides a special rule that applies for the purpose of the tax on excess TFSA contributions where an individual becomes a successor holder of a TFSA on the death of the individual’s spouse or common-law partner. Refer to the commentary on section 207.02 for more details.

Significant Interest

ITA
207.01(4)

New subsection 207.01(4) of the Act sets out the circumstances in which an individual is considered to have a significant interest in a corporation, partnership or trust. The rule applies for the purpose of the special taxes imposed under section 207.04 on the holding of prohibited investments. Refer to the commentary on that section for more details.

Obligation of Issuer

ITA
207.01(5)

New subsection 207.01(5) of the Act requires that the issuer of a TFSA that governs a trust exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the trust holds a non-qualified investment. If the issuer of a TFSA fails to comply with this obligation, the issuer will be subject to a penalty, under subsection 162(7) of the Act, equal to $25 per day of default (subject to a $100 minimum and a $2,500 maximum).

Tax payable on excess TFSA amount

ITA
207.02

New section 207.02 of the Act imposes a special tax on excess TFSA contributions. If at any time in a calendar month an individual has an excess TFSA amount, section 207.02 imposes a tax on the individual, in respect of that month, equal to one per cent of the individual’s highest excess TFSA amount in that month. It should be noted that excess contributions are not determined separately for each TFSA, but rather cumulatively for all of the TFSAs to which the individual has contributed. Subsection 207.06(1) allows the Minister to waive all or part of any tax imposed under section 207.02 if the Minister is satisfied that the excess arose because of reasonable error and the individual arranges, without delay, for the excess to be withdrawn.

The expression “excess TFSA amount” and related expressions are defined in new subsection 207.01(1), and are described below.

“excess TFSA amount” – subsection 207.01(1)

An individual’s “excess TFSA amount” at a particular time in a particular calendar year is defined in subsection 207.01(1) as the amount, if any, determined under the formula

$$A - B - C - D - E$$

where, in general terms,

A = the total amount of TFSA contributions made by the individual in the particular year and at or before the particular time;

B = the individual’s unused TFSA contribution room at the end of the year preceding the particular year;

C = the total amount of distributions made under TFSAs of the individual in the year preceding the particular year;

D = the TFSA dollar limit for the particular year; and

E = the total amount of distributions made in the year, and at or before the time, under TFSAs of the individual – other than prescribed distributions (i.e., distributions that exceed the excess TFSA amount that would otherwise be determined at that time).

These variables are described in greater detail below.

It should be noted that the amount of TFSA contribution room available to an individual for a given year is not explicitly defined, but is determined by reference to the definition "excess TFSA amount". It is the amount of contributions that the individual could make in the year without creating an excess amount – i.e., the sum of variables B, C and D. If variable B is negative, this will diminish or eliminate the amount of contribution room that would otherwise be provided through variables C and D.

Variable A

Variable A is the total of all TFSA contributions made by the individual in the year and at or before the particular time, other than exempt contributions and contributions made by way of a qualifying transfer.

For this purpose, an exempt contribution is, generally speaking, a contribution made in connection with a payment received by the individual, as a consequence of the death of the individual's spouse or common-law partner, from an arrangement that ceased to be a TFSA because of that death. An amount is contributed to a TFSA as a qualifying transfer if the amount is transferred from another TFSA of the individual or is transferred in connection with a breakdown of the individual's marriage or common-law partnership. (Refer to commentary below on "exempt contribution" and "qualifying transfer" for further information.)

Where an individual's "survivor" (as defined in new subsection 146.2(1)) becomes the successor holder of a TFSA of the deceased individual, and the deceased individual had an excess TFSA amount immediately before death, new subsection 207.01(3) of the Act may treat the survivor as having made a TFSA contribution at the beginning of the month following the month in which the individual died. The amount of this deemed contribution will be the amount, if any, by which that excess TFSA amount exceeds the fair market value of all the properties held in connection with those arrangements that ceased to be TFSAs as a consequence of the individual's death. This reflects the fact that a certain portion of the individual's excess continues to be held in a tax-exempt TFSA and, to the extent that the survivor does not have sufficient TFSA contribution room to absorb the amount, it should be subject to the one per cent per month tax imposed under section 207.02. The survivor is deemed to have made the contribution only in the month following death in recognition of the fact that the deceased individual will be subject to the tax in the month of death.

Variable B

Variable B is the amount of the individual's "unused TFSA contribution room" (as defined in subsection 207.01(1)) at the end of the calendar year preceding the particular year. An individual's unused TFSA contribution room for years prior to 2009 is nil. For years after 2008, it is the amount of contribution room that was available to the individual for the year *minus* the TFSA contributions made by the individual in the year. (Refer to the commentary below on "unused TFSA contribution room" for further information.)

The amount of an individual's unused TFSA contribution room at the end of a given year can be positive or negative. If it is negative, it will diminish or eliminate altogether the amount of contribution room that would otherwise become available to the individual in the following year by virtue of variables C and D. A negative B amount can thus cause a positive excess TFSA amount.

Variable C

Variable C is the total amount of all distributions made from TFSAs of the individual in the calendar year preceding the particular calendar year in respect of which the excess TFSA amount is being determined, other than distributions made by way of a qualifying transfer and prescribed distributions.

A distribution under a TFSA is a qualifying transfer if the amount of the distribution is transferred to another TFSA of the individual or is transferred in connection with a breakdown of the individual's marriage or common-law partnership. (Refer to the commentary below for further information on qualifying transfers.) It is not expected that distributions will be prescribed for this purpose at the present time.

The effect of variable C is to allow individuals who have received distributions from their TFSAs to fully replenish their TFSAs in future years.

Variable D

Variable D is the TFSA dollar limit for the particular year in which the individual's excess TFSA amount is being determined. This amount – which is $5,000 indexed to inflation after 2009 and rounded to the nearest $500 – is allocated to the individual only if, at some time in the particular year, the individual is at least 18 years of age and resident in Canada. (See the commentary below for further information on the TFSA dollar limit.)

Variable E

Variable E is the total of all distributions made from TFSAs of the individual in the particular year and at or before the particular time, other than distributions made by way of a qualifying transfer and prescribed distributions.

It is intended that a particular distribution be prescribed for this purpose to the extent that the distribution exceeds the amount that would be the individual's excess TFSA amount at the time of the distribution if the distribution had not been made. In other words, only that portion of a distribution that is required to reduce or eliminate the individual's excess TFSA amount will be included in determining the value of E. Including this portion of a distribution in the value of E ensures that the individual can take action to reduce or eliminate any liability that would otherwise be imposed under section 207.02. In variable C, the full amount of the distribution (including the prescribed portion) is recognized in the year following the year of distribution.

To illustrate the determination of the value of variable E, assume that an individual with an excess TFSA amount of $8,000 receives a TFSA distribution of $10,000. Since only $8,000 was required to eliminate the excess TFSA amount, the remaining $2,000 is a prescribed distribution and is thus excluded in determining the value of E.

"exempt contribution" – subsection 207.01(2)

New subsection 207.01(2) of the Act defines "exempt contribution". In general terms, an exempt contribution is a designated contribution made by an individual's "survivor" (as defined in new subsection 146.2(1) of the Act) in connection with a payment received by the survivor from an arrangement that ceased, because of the individual's death, to be a TFSA.

More specifically, a contribution made by an individual's survivor to a TFSA of which the survivor is the holder is an exempt contribution if the following conditions are met.

Paragraph 207.01(2)(*a*) requires that the contribution be made during the "rollover period". This is defined as the period that begins when the individual dies and that ends on the second anniversary of the individual's death. The Minister may, on a discretionary basis, approve a later date for the end of the rollover period in a particular instance.

Under paragraph 207.01(2)(*b*), a payment (referred to as the “survivor payment”) has to have been made, as a consequence of the individual’s death, to the survivor during the rollover period from an arrangement that ceased to be a TFSA because of the individual’s death (i.e., excluding a TFSA of which a survivor of the individual became the holder). Such a payment may have been made either directly to the survivor or indirectly -- for example, a payment made indirectly to the survivor as a beneficiary of the individual’s estate.

Under paragraph 207.01(2)(*c*), the survivor is required to designate, in the return of income for the taxation year in which the contribution is made, the contribution in relation to the survivor payment, and to do so in prescribed form and manner.

Paragraph 207.01(2)(*d*) requires that the amount of the contribution not exceed the least of three amounts.

The first amount is the excess of the particular survivor payment over the total of all other contributions designated by the survivor in relation to the particular payment. For example, if the particular payment was $20,000 and the survivor had already designated a $15,000 contribution in relation to the payment, the survivor could designate only an additional $5,000 contribution in relation to the particular payment.

The second amount is the excess of the proceeds of disposition referred to in paragraph 146.2(6)(*a*), (7)(*a*) or (8)(*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 paragraphs (which apply to arrangements in trust, annuity contracts and deposits respectively) are the fair market value of the trust’s properties, the insurance contract or the deposit, as the case may be, immediately before the individual’s death.

Thus, for example, if the value of assets held by a trust that had been governed by a TFSA grows from $100,000 to $120,000 following the death of the holder and the $120,000 is paid entirely to the holder’s survivor in two equal instalments, the amount of contributions that the survivor is permitted to designate in relation to the survivor payments cannot exceed $100,000.

The third amount is relevant only if the individual had an excess TFSA amount immediately before death or if survivor payments are made in the rollover period to more than one survivor of the individual (as might be the case if, immediately before death, the individual had both a legal spouse from whom the individual was separated and a common-law partner). In these circumstances, this third amount will be nil, unless the Minister agrees to allow for a greater amount in respect of the contribution.

“qualifying transfer” – subsection 207.01(1)

Under subsection 207.01(1) of the Act, a contribution under a particular TFSA of an individual is considered to have been made by way of a qualifying transfer if

- it is transferred to the particular TFSA from another TFSA of the individual, or
- it is transferred to the particular TFSA from a TFSA of the individual’s spouse or common-law partner or former spouse or common-law partner, where the transfer relates to a division of property arising on the breakdown of their marriage or common-law partnership.

“TFSA dollar limit” – subsection 207.01(1)

Subsection 207.01(1) of the Act defines the expression “TFSA dollar limit” for a calendar year. For 2009, the limit is $5,000. For each year thereafter, it is the amount determined by indexing $5,000 to inflation and rounding the result to the nearest $500. Thus, if the rate of inflation were two per cent, the TFSA dollar limit would remain at $5,000 for 2010 and 2011 and would increase to $5,500 for 2012.

“unused TFSA contribution room” – subsection 207.01(1)

An individual’s unused TFSA contribution room is defined by subsection 207.01(1) to be nil for years before 2009. An individual’s unused TFSA contribution room at the end of a particular calendar year after 2008 is the amount, which can be positive or negative, determined by the formula

$$A + B + C - D$$

where

A = The individual’s unused TFSA contribution room at the end of the year preceding the particular year.

B = The total amount of distributions made in that preceding year under TFSAs of the individual, but excluding qualifying transfers and prescribed distributions. (Refer to the commentary on variable C of the definition “excess TFSA amount” for further information.)

C = The TFSA dollar limit for the particular year if, at some time in the particular year, the individual is at least 18 years of age and resident in Canada. If the individual is under 18 years old, or is non-resident, throughout the year, the C amount is nil. (Refer to the commentary on “TFSA dollar limit” for further information.)

D = The total of all TFSA contributions made by the individual in the particular year, but excluding contributions made by way of a qualifying transfer and exempt contributions. (See the commentary above for further information on “qualifying transfers” and “exempt contributions”.) If the individual becomes a successor holder of a TFSA on the death of a spouse or common-law partner, new subsection 207.01(3) of the Act may treat the individual as having made a TFSA contribution. (Refer to the commentary on Variable A of the definition “excess TFSA amount” for further information.)

Tax payable on non-resident contributions

ITA
207.03

New section 207.03 of the Act imposes a special tax on an individual who makes a TFSA contribution while non-resident.

The tax is equal to one per cent of the contribution. It is imposed on a monthly basis until such time as the total of all distributions subsequently made under TFSAs of the individual, and designated by the individual in connection with the contribution, is at least equal to the amount of the contribution or, if earlier, the individual becomes resident in Canada. This tax applies regardless of whether the individual has TFSA contribution room.

Subsection 207.06(1) allows the Minister to waive all or part of any such tax if the Minister is satisfied that the liability under this section arose because of reasonable error and the individual arranges, without delay, for an amount equivalent to the non-resident contribution to be withdrawn.

Tax Payable on Prohibited or Non-qualified Investments

ITA
207.04

New section 207.04 of the Act imposes a tax on the holder of a TFSA if a trust governed by the TFSA (in these notes referred to as a “TFSA trust”) acquires a non-qualified investment or a prohibited investment, or if property held by the trust becomes a non-qualified investment or a prohibited investment. The section also provides for a refund of the tax when the TFSA trust disposes of the property. Finally, section 207.04 imposes an additional tax, payable by the holder, in respect of any income earned on prohibited investments and capital gains realized on the disposition of such investments.

Several expressions that are relevant for the purposes of section 207.04 are defined in subsection 207.01(1).

“non-qualified investment”

A “non-qualified investment” for a TFSA trust is simply property that is not a “qualified investment” for the trust. A non-qualified investment is one of the two types of property in respect of which tax is determined under subsection 207.04(1). The definition is also relevant for new subsection 146.2(4) of the Act, which provides that a TFSA trust is taxable on any income and capital gains derived from non-qualified investments.

“qualified investment”

The definition “qualified investment” sets out the types of property that a TFSA trust is permitted to hold generally without adverse tax consequences. The list of investments that qualify for a TFSA trust is similar to the list of investments that qualify for trusts governed by other registered plans, including RRSPs (referred to in these notes as “registered plan trusts”). In general terms, the following are defined to be qualified investments for a TFSA trust:

- money, deposits and guaranteed investment certificates;
- debt obligations issued by the federal government, by a provincial or municipal government or by a crown corporation;
- 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;
- debt obligations issued by a corporation the shares of which are listed on a designated stock exchange in a foreign country and certain debt obligations issued by an authorized foreign bank;
- most investment-grade debt obligations;
- shares, units, options and other securities (other than futures contracts) that are listed on a designated stock exchange in Canada or in a foreign country; and
- segregated fund annuity contracts.

The expression “designated stock exchange” is defined in subsection 248(1) of the Act.

Qualified investments will also include prescribed investments. It is expected that section 4900 of the *Income Tax Regulations* will be amended to provide that most investments that are prescribed investments for registered plan trusts will be prescribed investments for TFSA trusts. This will ensure, for example, that TFSA trusts will be able to invest in mutual fund trusts and mutual fund corporations. The Government also intends to review section 4900 in light of the introduction of TFSAs to determine if changes are required.

It is also intended that subsection 4900(1) of the Regulations be amended to confirm that an American Depositary Receipt (ADR) will continue to be a qualified investment for registered plan trusts (including, starting in 2009, TFSA trusts), provided the underlying share that the ADR represents remains listed on a designated stock exchange.

“prohibited investment”

A “prohibited investment” is the other type of property in respect of which tax is determined under subsection 207.04(1). The definition is also relevant for subsection 207.04(6), which imposes an additional tax on any income and capital gains derived from prohibited investments.

Prohibited investments for a TFSA trust consist of the following:

- A debt of the holder of the TFSA.
- A share of the capital stock of, an interest in, or a debt of, a corporation, partnership or trust in which the holder has a significant interest. New subsection 207.01(4) defines “significant interest” for this purpose. In the case of a corporation, an individual is considered to have a significant interest if the individual is a “specified shareholder” (as defined in subsection 248(1) of the Act) of the corporation. Generally, a person is a specified shareholder of a corporation if the person, together with related parties, owns or is deemed to

own 10% or more of the shares of any class of the capital stock of the corporation. In the case of a partnership or trust, an individual is considered to have a significant interest if the individual, together with non-arm's length parties, holds interests in the partnership or trust that have a fair market value equal to 10% or more of the fair market value of all the interests in the partnership or trust.

- A share of the capital stock of, an interest in, or a debt of a person or partnership that does not deal at arm's length with the holder or with a person or partnership described in the previous paragraph.
- An interest in, or a right to acquire, property described above.
- A restricted property, which will have the meaning assigned by regulation. The question of what types of property will be restricted property will be considered as part of the review of the qualified investment rules described earlier in these notes.

The definition prohibited investment specifically excludes a prescribed property. The question of whether to prescribe any of the existing qualified investments for this purpose will also be considered as part of the review of the qualified investment rules.

Subsections 207.04(1) to (7)

New subsection 207.04(1) imposes a tax on the holder of a TFSA when a trust governed by the TFSA acquires a non-qualified investment or prohibited investment or when property held by a TFSA trust becomes a non-qualified investment or prohibited investment.

New subsection 207.04(2) provides that the amount of the tax is equal to 50 per cent of the fair market value of the property, which fair market value is to be determined at the time it was acquired or became a non-qualified investment or prohibited investment, as the case may be.

New subsection 207.04(3) applies where property is, at the same time, both a non-qualified investment and a prohibited investment. It provides that the property is not considered to be, at that time, a non-qualified investment. This in effect gives priority to the rules in section 207.04 relating to prohibited investments in those circumstances where the property would, but for the priority, also fall within the scope of the rules in subsection 146.2(4) and section 207.04 relating to non-qualified investments.

New subsection 207.04(4) provides that the holder is entitled to a refund of any tax imposed under subsection 207.04(1) if the TFSA trust disposes of the property before the end of the calendar year following the calendar year in which the tax arose (or such later time permitted by the Minister of National Revenue). However, no refund is available if it is reasonable to expect that the holder knew or ought to have known at the time the property was acquired by the TFSA trust that the property was, or would become, a non-qualified investment or prohibited investment.

New subsection 207.04(5) provides a special rule that applies where a property ceases to be a non-qualified investment or a prohibited investment while continuing to be held by the TFSA trust. This could occur, for example, where the shares of a corporation are re-listed on a designated stock exchange. In these circumstances, subsection 207.04(5) provides that the TFSA trust is treated as having disposed of the property for proceeds of disposition equal to its fair market value and to have immediately reacquired the property at a cost equal to that value. This rule ensures that a refund is available under subsection 207.04(4), without the need to actually dispose of the property. It also ensures that there is a realization of any capital gain that has accrued on the property and that the gain is therefore subject to taxation under subsection 146.2(4) or 207.04(6).

New subsection 207.04(6) imposes an additional tax in respect of prohibited investments. The main purpose of this tax is to remove any tax benefits that might otherwise be enjoyed by holding prohibited investments in a TFSA. The provision is comparable to new subsection 146.2(4), which provides that a TFSA trust is taxable on any income and capital gains derived from non-qualified investments. However, unlike subsection 146.2(4), liability for the tax is placed on the TFSA holder. This difference reflects the practical difficulties that TFSA issuers would have in obtaining the necessary information to ensure compliance with the prohibited investment rules on an on-going basis.

New subsection 207.04(7) sets out the manner for determining the amount of the additional tax payable under subsection 207.04(6) for a calendar year. The amount of tax is equal to the amount of tax that would be payable under Part I by the TFSA trust for the taxation year that ends in the calendar year if the trust had no income or losses other than from the prohibited investments that it held in the year, and no capital gains or capital losses other than from the disposition of its prohibited investments. The subsection provides that, for this purpose, "income" includes dividends described by section 83 of the Act and the trust's taxable capital gain or allowable capital loss from the disposition of a property is equal to the full amount of the capital gain or capital loss from the disposition. Further, in determining the amount of tax payable, the Act is to be read without reference to the paragraph 82(1)(*b*) (dividend gross-up), section 121 (dividend tax credit) and subsection 146.2(4) (TFSA trust taxable on non-qualified investments).

Tax Payable where Advantage Extended

ITA
207.05

New section 207.05 of the Act imposes a tax for a calendar year if, in the year, an advantage (defined in subsection 207.01(1)) in relation to a TFSA is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA.

"advantage"

An "advantage" in relation to a TFSA is any supplementary benefit, loan or indebtedness that is, in any way, dependent on the existence of the TFSA. It also includes a prescribed benefit. Exceptions are provided for administrative or investment services provided in connection with TFSA and for loans and debt that are on arm's length terms. An advantage could include, for example, trips, merchandise, interest-free loans and TFSA investments that do not reflect commercial terms.

It is intended that prescribed benefits include benefits derived from transactions designed to artificially shift taxable income away from the holder and into the shelter of a TFSA or to circumvent the TFSA contribution limits.

Subsections 207.05(1) to (3)

New subsection 207.05(1) sets out the charging provision for the tax. A separate tax is payable for each advantage.

New subsection 207.05(2) provides that the amount of the tax is equal to:

- in the case of a benefit, the fair market value of the benefit; and
- in the case of a loan or an indebtedness, the amount of the loan or indebtedness.

New subsection 207.05(3) provides that the TFSA holder is liable to pay the tax. However, if the advantage is extended by the TFSA issuer or by a person not dealing at arm's length with the issuer, the issuer is liable to pay the tax, rather than the holder.

Waiver of Tax Payable

ITA
207.06

New subsection 207.06(1) of the Act allows the Minister of National Revenue (the "Minister") to waive all or part of any tax imposed under section 207.02 on excess TFSA contributions or under section 207.03 on non-resident TFSA contributions, if the Minister is satisfied that the tax liability arose because of reasonable error and the individual arranges, without delay, for the contributions to be withdrawn.

New subsection 207.06(2) allows the Minister to waive all or part of any tax imposed under section 207.04 in respect of non-qualified or prohibited TFSA investments or under section 207.05 on supplementary advantages extended in connection with a TFSA, where it is just and equitable to do so, having regard to all factors (including whether the tax arose because of a reasonable error and the extent to which the same transaction also gave rise to tax under another provision of Part XI.01).

Return and Payment of Tax

ITA
207.07(1)

New subsection 207.07(1) of the Act requires a person liable for tax under Part XI.01 for all or part of a calendar year to file a return for the year, and pay any tax owing (net of the person's allowable refund for the year), within 90 days after the end of the year. The "allowable refund" of a person for a calendar year is defined in new subsection 207.01(1) of the Act as the total amounts refundable to the person for the year under new subsection 207.04(4) of the Act as a result of the disposition of a non-qualified investment or prohibited investment.

Refund

ITA
207.07(2)

New subsection 207.07(2) of the Act requires the Minister to refund a person's allowable refund for a calendar year, to the extent that it has not been applied against the person's tax payable for the year.

Provisions Applicable to Part

ITA
207.07(3)

New subsection 207.07(3) of the Act provides that certain provisions of Part I relating to returns, assessments, payments and appeals apply for the purposes of Part XI.01 with any required modifications.

Clause 32

Tax on Investment Income of Life Insurers - Definitions

ITA
211(1)

Section 211(1) of the Act defines a number of terms for the purposes of Part XII.3, which imposes a special tax on the taxable Canadian life investment income of a life insurer. Registered life insurance policies, which include a life insurance policy that is issued as an RRSP, are specifically excluded from the scope of this tax.

The definition "registered life insurance policy" is amended to include a life insurance policy that is issued as a TFSA. A life insurance policy can be issued as a TFSA if it complies with the conditions set out in section 146.2 of the Act. For more details on TFSAs, refer to the commentary on that section.

This amendment applies to the 2009 and subsequent taxation years.

Clause 33

Penalty

ITA
227(9)

Subsection 227(9) of the Act imposes a penalty for failure to remit or pay an amount deducted or withheld as required under the Act or a regulation. The penalty currently is 10% of the amount that is not remitted or paid, as required, and 20% of the amount if the failure is made knowingly or under circumstances amounting to gross negligence.

Paragraph 227(9)(*a*) is amended to replace the 10% penalty with a graduated penalty.

The penalty is 3% of the amount if the amount is received on or before the day it was due, but not in the manner required. This would be the case if the amount was not remitted to a designated financial institution in the case of a prescribed person to which subsection 153(1) of the Act applies.

In cases where the amount is not received on time, the penalty is 3% of the amount if three or fewer days late; 5% of the amount if four or five days late; 7% of the amount if six or seven days late; or 10% of the amount if more than seven days late.

This amendment applies to payments and remittances that are required to be first made on or after February 26, 2008.

Clause 34

Definitions

ITA
248(1)

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

“disposition”

The expression “disposition” is used throughout the Act, particularly in provisions relating to transactions involving property. Paragraph (*f*) of the definition generally excludes from the definition certain simple trust-to-trust transfers, such as transfers of property between trusts governed by an RESP, involving no change in beneficial ownership. For paragraph (*f*) to apply, the transferor trust is required to be the same type of trust as the transferee trust.

Paragraph (*f*) of the definition is amended so that it also applies to trusts governed by a TFSA. This will ensure that a transfer of property between TFSA trusts will generally not be treated as a disposition.

This amendment applies to the 2009 and subsequent taxation years.

“provincial SIFT tax rate”

SIFT trusts and partnerships are liable to an income tax (“SIFT tax”) under Parts I and XI.1 of the Act respectively. The rate of this SIFT tax is made up of two components. The first is equal to the federal general corporate tax rate. The second component is an additional tax in lieu of provincial tax. The tax rate of this additional provincial component is the “provincial SIFT tax factor”, meaning the decimal fraction 0.13, which represents an average provincial corporate income tax rate.

The expression “provincial SIFT tax factor” is replaced by the expression “provincial SIFT tax rate”. The “provincial SIFT tax rate” will be a prescribed amount, expressed as a decimal fraction, determined in respect of the SIFT partnership for the taxation year.

In general terms, for a SIFT trust or partnership with a permanent establishment in only one province, the prescribed amount will be the decimal fraction representing that province's general corporate income tax rate for public corporations. If that province is Quebec, the decimal fraction will be nil to take into account the SIFT tax imposed by that province. For SIFT trusts or partnerships with permanent establishments in more than one province the prescribed amount will be the decimal fraction amount that is an average of the relevant provincial general corporate income tax rates for public corporations weighted on the basis of the general corporate taxable income allocation formula in Part IV of the Income Tax Regulations (i.e., by reference to wages and salaries and gross revenues attributable to those permanent establishments). The provincial rate for amounts allocated to the province of Quebec will be deemed to be nil in determining this weighted average. If under the allocation formula amounts are not allocated to any province, then prescribed amount will be the decimal fraction 0.10.

It is intended that the Income Tax Regulations be amended to provide the formula for determining the weighted average and to provide any assumptions needed to ensure that those regulations apply properly to SIFT trusts and partnerships in determining the provincial SIFT tax rate.

This amendment applies for the 2009 and subsequent taxation years. It also applies for a SIFT's 2007 and 2008 taxation years if the SIFT elects in its return of income (or, in the case of a SIFT partnership, its return under Part XI.1 of the Act) for 2007 to have the new "provincial SIFT tax rate" definition in subsection 248(1) of the Act apply starting in that year, or for a SIFT's 2008 taxation year if the SIFT so elects in its return for 2008.

"TFSA"

Subsection 248(1) is amended to introduce the definition "TFSA", effective for the 2009 and subsequent taxation years. A TFSA is a tax-free savings account and has the meaning assigned by subsection 146.2(3) of the Act. For details on TFSAs, refer to the commentary on section 146.2.

Clause 35

Extended meaning of "spouse" and "former spouse"

ITA
252(3)

Subsection 252(3) of the Act extends the meaning of the terms "spouse" and "former spouse" to include, for a number of purposes, a party to a void or voidable marriage.

Subsection 252(3) is amended, consequential on the introduction of TFSAs, so that it applies for the purposes of the definition "survivor" in subsection 146.2(1) of the Act and the definition "qualifying transfer" in subsection 207.01(1) of the Act.

This amendment applies to the 2009 and subsequent taxation years.

Clause 36

Investments in Limited Partnerships

ITA
253.1

Section 253.1 of the Act applies for specified provisions of the Act and Regulations where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership. (It is important to note that the section does not affect the determination of whether a trust or corporation is, apart from that specific acquisition and holding, carrying on a business or other activity.)

Section 253.1 is amended so that it also applies for the purpose of subsection 146.2(4), which provides that a trust governed by a TFSA is taxable on any business income it may earn. The amendment to section 253.1 ensures that the mere acquisition and holding of a limited partnership interest (that is a qualified investment) by a trust governed by a TFSA will not expose the trust to taxation.

This amendment applies to the 2009 and subsequent taxation years.

Clause 37

Proportional Holdings in Trust Property

ITA
259(1)

Subsection 259(1) of the Act provides a "look-through" rule that applies to registered plan trusts that acquire units of a "qualified trust". If the qualified trust so elects, each registered plan trust is deemed to acquire, hold and dispose of its proportionate interest in the underlying assets of the qualified trust. This rule can benefit a registered plan trust where the direct investment in the units of the qualified trust would constitute a non-qualified investment. By "looking through" to the underlying assets of the qualified trust, a registered plan trust may be able to reduce or eliminate the sanctions that result from holding non-qualified investments.

Subsection 259(1) is amended so that it applies for the purposes of Parts XI and XI.01 of the Act, which impose taxes on the holder of a registered disability savings plan (RDSP) or the holder of a TFSA if a trust governed by the RDSP or TFSA holds a non-qualified investment.

This amendment will permit an RDSP trust or a TFSA trust to make a direct investment in a qualified trust that is itself a non-qualified investment, without exposing the holder to tax, provided the qualified trust restricts its holdings to qualified investments.

This amendment applies to the 2009 and subsequent taxation years.

Canada Pension Plan

Clause 38

Withholding and Remittance

CPP
21(1) and (1.1)

Subsection 21(1) of the Canada Pension Plan requires an employer to withhold from remuneration paid to an employee the employee's Canada Pension Plan contribution in respect of the remuneration and to remit the amount (together with the employer's contribution) to the Receiver General. In addition, an employer that is a prescribed person under regulation is required to remit the amount to a financial institution.

New subsection 21(1.1) treats the remittance of a prescribed person as having been made to the account of the Receiver General at a financial institution if it is remitted to the account of the Receiver General at least one day before the day upon which the amount is due. This amendment applies to remittances that are first due on or after February 26, 2008.

Penalty

CPP
21(7)

Subsection 21(7) of the Canada Pension Plan imposes a penalty for failure to remit or pay an amount deducted or withheld as required under the Plan. The penalty currently is 10% of the amount that is not remitted or paid, as required, and 20% of the amount if the failure is made knowingly or under circumstances amounting to gross negligence.

Paragraph 21(7)(*a*) is amended to replace the 10% penalty with a graduated penalty.

The penalty is 3% of the amount if the amount is received on or before the day it was due, but not in the manner required such as to a financial institution in the case of a prescribed person to which subsection 21(1) applies.

In cases where the amount is not received on time, the penalty is 3% of the amount if three or fewer days late; 5% of the amount if four or five days late; 7% of the amount if six or seven days late; or 10% of the amount if more than seven days late.

This amendment applies to payments and remittances that are required to be first made on or after February 26, 2008.

Employment Insurance Act

Clause 39

Withholding and Remittance

EIA
82(1), (3) and (3.1)

Subsection 82(1) of the Employment Insurance Act requires an employer to withhold from remuneration paid to an employee the amount of the employee's employment insurance premium in respect of the remuneration and to remit that amount (together with the employer's premium) to the Receiver General on or before the time prescribed by regulation.

Subsection 82(3) provides that a prescribed person is required to remit the amount to a financial institution.

New subsection 82(3.1) treats the remittance of a prescribed person as having been made to the account of the Receiver General at a financial institution if it is remitted to the account of the Receiver General at least one day before the day upon which the amount is due.

This amendment applies to remittances that are first due on or after February 26, 2008.

Penalty

EIA
82(9)

Subsection 82(9) of the Act imposes a penalty for failure to remit or pay an amount deducted or withheld as required under the Act or a regulation. The penalty currently is 10% of the amount that is not remitted or paid, as required, and 20% of the amount if the failure is made knowingly or under circumstances amounting to gross negligence.

Paragraph 82(9)(*a*) is amended to replace the 10% penalty with a graduated penalty.

The penalty is 3% of the amount if the amount is received on or before the day it was due, but not in the manner required such as to a financial institution in the case of a prescribed person to which subsection (3) applies.

In cases where the amount is not received on time, the penalty is 3% of the amount if three or fewer days late; 5% of the amount if four or five days late; 7% of the amount if six or seven days late; or 10% of the amount if more than seven days late.

This amendment applies to payments and remittances that are required to be first made on or after February 26, 2008.

Coordinating Amendments

Clauses 40 to 44

Bill C-10

Bill C-10, introduced in the 2nd session of the 39th Parliament and entitled the *Income Tax Amendments Act, 2006*, includes a number of measures that enact or amend provisions that are also the subject of the present enactment. If both are enacted, it will be necessary to ensure that the changes to those provisions are coordinated. This is accomplished through a series of technical coordinating amendments in the present enactment.

The first of these, in clause 41 of the present enactment, relates to the modification of section 132.2 of the *Income Tax Act*, which provides for the tax-deferred merger of two mutual fund trusts or a mutual fund trust and a mutual fund corporation. Bill C-10 includes a substantial restructuring of the section, while the present enactment adjusts only one paragraph, as a consequence of the introduction of the TFSA rules. Clause 41 ensures that both the restructuring and the adjustment will operate as intended, regardless of the order of the two enactments.

The coordinating amendment in clause 42 ensures that the present enactment modifies the correct version of subsection 252(3) of the *Income Tax Act*, which provides extended meanings of “spouse” and “former spouse” for a number of purposes under that Act. Bill C-10 includes a change to one of the statutory references in the subsection, while the present enactment adds a reference in relation to the TFSA rules. Clause 42 ensures that both of these will operate as intended, regardless of the order of the two enactments.

Clause 43 performs a comparable function in respect of amendments to section 253.1 of the *Income Tax Act*, which treats the mere acquisition and holding of a limited partnership interest as not constituting the carrying on of the partnership’s business for certain purposes of that Act.

Clause 44 ensures the correct interaction of amendments in the two enactments to section 259 of the *Income Tax Act*, which provides a “look-through” rule that applies to registered plan trusts that acquire units of a “qualified trust”.

Conditional Amendments

Clauses 45 to 48

Bill C-253

Clause 45 of the present enactment provides that measures contained in clauses 46 to 48 will apply only if Bill C-253, introduced in the 1st session of the 39th Parliament and entitled *An Act to amend the Income Tax Act (deductibility of RESP contributions)*, receives royal assent. The effect of those measures would be to undo the changes made in respect of the tax treatment of registered education savings plans (RESPs) by Bill C-253, and specifically to replace paragraph 60(*i*) of the *Income Tax Act*, repeal subsection 146.1(2.01) of that Act, repeal its paragraph 146.1(7.1)(*c*) and re-enact its subsection 146.1(7.2), all with effect as of the day on which Bill C-253 received royal assent.

Part 2

Amendments in respect of Excise Duty on Tobacco Products and Alcohol

Excise Act

Clause 49

Definition “beer” or “malt liquor”

EA
4

The definition of “beer” or “malt liquor” currently means all fermented liquor brewed from malt or grain without any process of distillation, excluding wine. The definition is amended to establish an upper limit for the alcoholic content of beer or malt liquor at 11.9 per cent absolute ethyl alcohol by volume (ABV). The 11.9 per cent represents the highest alcohol concentration achievable via traditional yeast fermentation processes.

Subsection (2) provides that, with respect to brewed products in excess of 11.9 per cent ABV, a valid licence held by a brewer under the *Excise Act* is deemed to be a valid spirits licence under the *Excise Act, 2001* until the day that is 30 days after the day on which this measure receives Royal Assent. This will assist producers of such products with the transition to the licensing regime of the *Excise Act, 2001*.

Subsection (3) provides that, for the purposes of applying the provisions of the *Excise Act, 2001* and the *Customs Act* that provide for the payment of or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the provision of the budget implementation Act, which implements this amendment, was assented to on February 27, 2008.

The proposed amendment is deemed to have come into force on February 27, 2008.

Excise Act, 2001

Clause 50

Definition “tobacco manufacturing equipment”

EA, 2001
2

Section 2 of the *Excise Act, 2001* defines terms that apply for the purposes of the Act. The Act is amended to add a new definition, “tobacco manufacturing equipment”. “Tobacco manufacturing equipment” means any machinery or equipment designed or modified specifically for the manufacture of a tobacco product. The definition is relevant for the purposes of new section 32.1, which sets out controls on the possession and importation of tobacco manufacturing equipment.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 51

Possession

EA, 2001
5

Section 5 provides that, in certain specified situations, possession of an item by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person’s possession. Furthermore, in some situations possession is given an extended meaning to include possession by another person or having in a place for one’s own use or benefit or the use or benefit of another person.

Subsections (1) and (2) are amended to add references to new subsection 32.1(1), which sets out controls on the possession of tobacco manufacturing equipment.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 52

Licences and registrations

EA, 2001
23

Manufacturers of tobacco products must hold a licence under the *Excise Act, 2001*. Section 23 provides the Minister of National Revenue with the discretion to refuse to issue a licence, to amend, suspend, renew, cancel, or reinstate a licence and to set conditions on the activities of the licensee.

Subclause 52(1)

Refusal to issue licence or registration

EA, 2001
23(1)

The subsection currently provides that the Minister may refuse to issue a licence or registration for any reason the Minister considers sufficient in the public interest. It is amended to make explicit that the Minister may refuse to issue a licence or registration to a person if the Minister has reason to believe that access to the premises of the person will be denied or impeded by any person, or that the refusal is otherwise in the public interest.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Subclause 52(2)

Cancellation, etc. — access to premises

EA, 2001
23(2.1)

Existing subsection (2) provides that the Minister may, subject to the regulations, amend, suspend, renew, cancel, or reinstate a licence or registration. New subsection 23(2.1) allows the Minister to amend, suspend or cancel any licence or registration of a person if access to the premises of the licensee or registrant is denied or impeded by any person, or it is otherwise in the public interest.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 53

Prohibitions — tobacco manufacturing equipment

EA, 2001
32.1

New section 32.1 establishes prohibitions on tobacco manufacturing equipment. Subsection (1) prohibits a person from possessing tobacco manufacturing equipment with the intent of manufacturing a tobacco product unless the person is a tobacco licensee or is manufacturing for their personal use as permitted under subsection 25(3). Subsection (2) prohibits a person from importing tobacco manufacturing equipment unless one of the exceptions described in paragraphs (*a*) through (*d*) applies.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 54

Delivery of imported tobacco

EA, 2001
38

Section 38 outlines the requirements for tobacco products that do not bear a stamp indicating that duty has been paid on the products. These products are required to have certain prescribed information affixed to them and can only be delivered to or sold in specified locations, for example, a duty free shop or a customs bonded warehouse.

Subclause 54(1)

No delivery of imported tobacco without markings

EA, 2001
38(2)

Subsection 38(2) currently provides that, other than for certain specified exceptions, all imported manufactured tobacco or cigars being delivered to a duty free shop, accredited representative or customs bonded warehouse must have tobacco markings and other prescribed information printed on, or affixed to, the manufactured tobacco's or cigars' containers. The subsection is amended to add a reference to new subsection (2.1) to the list of exceptions, to allow imported manufactured tobacco that was manufactured outside Canada and that is stamped to be delivered to a duty free shop or a customs bonded warehouse.

The proposed amendment is deemed to have come into force on February 27, 2008.

Subclause 54(2)

Delivery of imported stamped tobacco

EA, 2001
38(2.1)

New subsection 38(2.1) allows a container of imported manufactured tobacco that was manufactured outside Canada and that is stamped to be delivered to a duty free shop or a customs bonded warehouse. This will enable foreign producers to pre-pay the duty on their tobacco product intended for duty free shops.

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 55

Duty relieved — reimportation of stamped tobacco by individual

EA, 2001
47(2)

Existing section 47 provides for relief from the duty imposed by section 42 in the case of stamped Canadian manufactured tobacco that has been exported and is reimported by an individual for the individual's personal use.

Section 47 is amended to establish new subsection 47(2), which provides relief from the duty imposed by section 42 to previously imported stamped manufactured tobacco that has been exported and reimported by an individual for their personal use.

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 56

Special duty on imported manufactured tobacco delivered to duty free shop

EA, 2001
53(1)

Section 53 imposes a special duty, at the rates set out in section 1 of Schedule 3, on imported manufactured tobacco that is delivered to a duty free shop. Subsection 53(1) is amended to relieve stamped imported manufactured tobacco from this special duty, since duty was already paid on the product at the time it was imported.

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 57

Exception to the special duty on traveller's tobacco

EA, 2001
54(4)

Section 54 imposes a special duty, at the rates set out in section 2 of Schedule 3, on manufactured tobacco imported by a returning resident of Canada for his personal use in quantities that are within the travellers' allowances specified in Chapter 98 of the Schedule to the *Customs Tariff*. An exemption from the duty is currently provided under subsection 54(4) for tobacco which was manufactured in Canada and is stamped (the stamp indicates that duty was already paid).

Subsection 54(4) is amended to allow relief if duty under section 42 was previously imposed on the tobacco and the tobacco is stamped, thereby extending the relief to imported products on which duty was already paid.

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 58

Refund — imported black stock tobacco

EA, 2001
180.1

New section 180.1 provides a refund for imported black stock tobacco on which full domestic duties have been paid and that were subsequently delivered to domestic or foreign duty free shops. Subsection (1) specifies that the refund is available to a person who has imported manufactured tobacco if satisfactory evidence is provided that duty was imposed on the tobacco under section 42 at a rate set out in paragraph 1(*b*), 2(*b*) or 3(*b*) of Schedule 1 (*i.e.*, the general domestic rates), and paid, and that the tobacco was black stock delivered or exported for delivery to a duty free shop, to a customs bonded warehouse or as ships' stores. The person must apply for the refund within two years after the tobacco was imported.

Subsection (2) states that the amount of the refund is equal to the difference in the duty paid upon importation (*i.e.*, the general domestic rates) and the duty that would have been imposed if the applicable rate had been the rate set out in paragraph 1(*a*), 2(*a*) or 3(*a*) of Schedule 1 (*i.e.*, the reduced duty rates for tobacco sold in duty free markets).

The proposed amendment applies to imported manufactured tobacco that is black stock and that is delivered or exported for delivery after February 26, 2008.

Clause 59

Keeping records — tobacco manufacturing equipment

EA, 2001
206(2.1)

New subsection 206(2.1) requires every person who possesses tobacco manufacturing equipment (other than equipment for personal use) to keep records that will enable the determination of the source, the type and the disposition of that equipment. This amendment is consequential to the new limits on the possession of tobacco manufacturing equipment imposed under new section 32.1.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 60

Unlawful production, sale, etc. of tobacco or alcohol

EA, 2001
214

Section 214 provides that it is an offence to contravene various provisions of the Act, including manufacturing a tobacco product without a tobacco licence (section 25) and knowingly purchasing or receiving for sale tobacco products from unlicensed tobacco manufacturers, tobacco products that are not properly packaged and stamped, or fraudulently stamped tobacco products (section 29). A person convicted of any of these offences is liable to a fine or to imprisonment.

The section is amended to add a reference to new subsection 32.1(1), which sets out controls on the possession of tobacco manufacturing equipment.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 61

Penalty

EA, 2001
216(2)(*a*)(ii) and 216(3)(*a*)(ii)

Section 216 currently makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 32, tobacco products that are not stamped. A person convicted of selling, offering to sell or possessing contraband tobacco products is liable to a fine determined under subsections 216 (2) and (3), or to imprisonment. The amounts of the fines are a function of the rates of duty on tobacco products.

The amounts in subparagraphs 216(2)(*a*)(ii) and 216(3)(*a*)(ii) that are used to determine the fines are increased, consequential to the increase in the rates of duty on tobacco sticks set out in Schedule 1 to the Act.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 62

Penalty

EA, 2001
240(*b*)

Section 240 imposes a penalty on a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5% limit on exports established in subsection 50(5). The penalty is based on the rates of duty on tobacco products.

Paragraph 240(*b*) is amended to increased the penalty to $0.361448 per tobacco stick ($72.29 per carton of 200), consequential to the increase in the rates of duty on tobacco sticks set out in Schedule 1 to the Act.

The proposed amendment comes into force on the day on which this Act receives Royal Assent.

Clause 63

Duties on tobacco sticks

EA, 2001
Schedule 1, section 2

Schedule 1 specifies the rates of duty imposed under section 42 of the Act on Canadian-produced or imported tobacco products.

Section 2 sets out the rates for tobacco sticks. The section is amended to equalize the tax rate on tobacco sticks with cigarettes: the reduced rate for sticks for delivery to a duty free shop or customs bonded warehouse or as ships' stores in paragraph 2(*a*) is increased to $0.074975 per stick ($15 per carton of 200) and the general rate in paragraph 2(*b*) to $0.085 per stick ($17 per carton of 200).

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 64

Duties on other manufactured tobacco

EA, 2001
Schedule 1, section 3

Schedule 1 specifies the rates of duty imposed under section 42 of the Act on Canadian-produced or imported tobacco products.

Section 3 sets out the rates for other manufactured tobacco. The section is amended to express the duty rates per unit of 50 grams or fraction thereof: the reduced rate for tobacco for delivery to a duty free shop or customs bonded warehouse or as ships' stores in paragraph 3(*a*) will be $2.49915 per 50 grams or fraction thereof and the general rate in paragraph 3(*b*) will be $2.8925 per 50 grams or fraction thereof.

The proposed amendment comes into force, or is deemed to have come into force, on July 1, 2008.

Clause 65

Special duty on imported manufactured tobacco

EA, 2001
Schedule 3, section 1

Schedule 3 sets out the rates of special duty imposed under sections 53, 54 and 56 of the Act. Section 1 sets out the rates of special duty imposed under section 53 on imported manufactured tobacco delivered to a duty free shop.

Paragraph 1(*b*) is amended to equalize the tax rate on tobacco sticks with cigarettes: the rate is increased to $0.075 per stick ($15 per carton of 200). This proposed amendment is deemed to have come into force on February 27, 2008.

Paragraph 1(*c*) is amended to express the duty rate for other manufactured tobacco per unit of 50 grams or fraction thereof: the rate will be $2.50 per 50 grams or fraction thereof. This proposed amendment comes into force, or is deemed to have come into force, on July 1, 2008.

Clause 66

Special duty on traveller's tobacco

EA, 2001
Schedule 3, section 2

Schedule 3 sets out the rates of special duty imposed under sections 53, 54 and 56 of the Act. Section 2 sets out the rates of special duty imposed under section 54 on traveller's tobacco.

Paragraph 2(*b*) is amended to equalize the tax rate on tobacco sticks with cigarettes: the rate is increased to $0.075 per stick ($15 per carton of 200). This proposed amendment is deemed to have come into force on February 27, 2008.

Paragraph 2(*c*) is amended to express the duty rate for other manufactured tobacco per unit of 50 grams or fraction thereof: the rate will be $2.50 per 50 grams or fraction thereof. This proposed amendment comes into force, or is deemed to have come into force, on July 1, 2008.

Clause 67

Special duty on unstamped tobacco products

EA, 2001
Schedule 3, paragraph 3(*b*)

Schedule 3 sets out the rates of special duty imposed under sections 53, 54 and 56 of the Act. Section 3 sets out the rates of special duty imposed under section 56 on Canadian tobacco products that are exported up to the 1.5% threshold.

Paragraph 3(*b*) is amended to equalize the tax rate on tobacco sticks with cigarettes: the rate is increased to $0.075 per stick ($15 per carton of 200). This proposed amendment is deemed to have come into force on February 27, 2008.

Clause 68

Special duty on stamped tobacco products

EA, 2001
Schedule 3, section 4

Schedule 3 sets out the rates of special duty imposed under sections 53, 54 and 56 of the Act. Section 4 sets out the rates of special duty imposed under section 56 on Canadian tobacco products that are exported over the 1.5% threshold.

Paragraph 4(*b*) is amended to equalize the tax rate on tobacco sticks with cigarettes: the rate is increased to $0.095724 per stick ($19.1448 per carton of 200). This proposed amendment is deemed to have come into force on February 27, 2008.

Paragraph 4(*c*) is amended to express the duty rate for other manufactured tobacco per unit of 50 grams or fraction thereof: the rate will be $2.3001 per 50 grams or fraction thereof. This proposed amendment comes into force, or is deemed to have come into force, on July 1, 2008.

Clause 69

Application of interest

EA, 2001
Schedule 1, paragraphs 2(*a*) and (*b*), 3(*a*) and (*b*); Schedule 3, paragraphs 1(*b*) and (*c*), 2(*b*) and (*c*), 3(*b*), 4(*b*) and (*c*)

This clause provides that, for the purposes of applying the provisions of the *Customs Act* that provide for the payment of, or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if:

- clause 63, paragraph 1(*b*) of Schedule 3 to the Act, as amended by subclause 65(1), paragraph 2(*b*) of Schedule 3 to the Act, as amended by subclause 66(1), clause 67 and paragraph 4(*b*) of Schedule 3 to the Act, as amended by subclause 68(1), had come into force on February 27, 2008; and
- clause 64, paragraph 1(*c*) of Schedule 3 to the Act, as amended by subclause 65(1), paragraph 2(*c*) of Schedule 3 to the Act, as amended by subclause 66(1), and paragraph 4(*c*) of Schedule 3 to the Act, as amended by subclause 68(1), had come into force on July 1, 2008.

Related Amendments

Customs Tariff

Clause 70

Definition “spirits”

CT
21

Section 21 of the *Customs Tariff* currently provides for definitions that are consistent with terms used in the *Excise Act, 2001*, for the purposes of imposing a duty on imported alcohol products equivalent to the excise duty imposed on domestic alcohol products.

Subsection (1) amends the definition of “spirits” by adding new paragraph (*a.1*) to include alcohol products of an alcoholic strength by volume exceeding 11.9 per cent, of heading No. 22.03, as spirits for the purpose of imposing a duty on imports of these products equivalent to the excise duty imposed on such domestic products under the *Excise Act, 2001*.

Subsection (2) provides that, for the purposes of applying the provisions of the *Excise Act, 2001* and the *Customs Act* that provide for the payment of or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the provision of the budget implementation Act, which implements this amendment, was assented to on February 27, 2008

The proposed amendment is deemed to have come into force on February 27, 2008.

Clause 71

Non-application to stamped manufactured tobacco

CT
92(3)

Section 92 of the *Customs Tariff* defers the payment of duties imposed on goods that are delivered to a customs bonded warehouse until the goods are removed from that warehouse, with certain specified exceptions.

Existing subsection 92(3) provides that deferral does not apply to duties payable on manufactured tobacco manufactured in Canada under the *Excise Act, 2001*. The subsection is amended to provide that deferral also does not apply to duties payable under that Act to imported manufactured tobacco that is stamped in accordance with that Act.

The proposed amendment is deemed to have come into force on February 27, 2008.

Part 3

Amendments in respect of the Goods and Services Tax and Harmonized Sales Tax (GST/HST)

Excise Tax Act

Clause 72

Natural resources

ETA
162

Section 162 of the *Excise Tax Act* (the Act) provides special deeming rules in respect of a supply of a right to explore for or exploit certain natural resources, including a related right of entry or user or a related right to receive a royalty or profit interest.

Subclause 72(1)

Natural resources

ETA
162(2)

Under existing subsection 162(2) of the Act, a supply of a right to explore for or exploit a peat bog, a deposit of minerals or peat, or a forestry, water or fishery resource, including a related right of entry or user or a related right to receive a royalty or profit interest, is deemed not to be a supply, and consideration for that supply is deemed not to be consideration, for purposes of the goods and services tax and harmonized sales tax (GST/HST).

New paragraph 162(2)(*d*) deems a supply of a right to enter or use land to generate, or evaluate the feasibility of generating, electricity from the sun or wind not to be a supply, and consideration for that supply not to be consideration, for GST/HST purposes.

This amendment applies to supplies made on or after February 26, 2008. It also applies to supplies made before that date but only in respect of the portion of the consideration for the supply that become payable, or is paid without having become payable, on or after February 26, 2008.

Subclause 72(2)

Exception

ETA
162(3)

Existing subsection 162(3) of the Act provides that the deeming rules in subsection 162(2) do not apply to a supply of a right to take or remove forestry products, products that grow in water, fishery products, minerals or peat, or a related right of entry or user, if the supply is made to a consumer or a non-registrant who acquires the right in the course of a business of making such supplies to consumers.

Subsection 162(3) is amended to provide that the deeming provisions in subsection 162(2) do not apply to a supply of a right to enter or use land to generate, or evaluate the feasibility of generating, electricity from the sun or wind if that supply is made to a consumer or to a non-registrant who acquires the right in the course of a business of making supplies of electricity to consumers.

This amendment applies to supplies made on or after February 26, 2008. It also applies to supplies made before that date but only in respect of the portion of the consideration for the supply that become payable, or is paid without having become payable, on or after February 26, 2008.

Clause 73

Self-supply of real property

ETA
191

Section 191 of the Act applies where a builder constructs or substantially renovates a residential complex and subsequently rents it out to others or occupies it as a place of residence. In these circumstances, the builder is treated as having sold and repurchased the residential complex, which is referred to as self-supply. As a result, the builder is required to account for GST on the fair market value of the self-supplied complex. This rule ensures that such builders are treated in a manner that is consistent with the treatment of persons who purchase a new or substantially renovated residential complex for rental purposes. Where a builder has paid GST/HST under the self-supply rules, any subsequent sale of the complex may be exempt under Part I of Schedule V to the Act.

Under the existing rules, self-supply occurs once the construction or substantial renovation of the residential complex is substantially completed and the builder first gives possession of the complex or a unit in the complex under a lease, licence or similar arrangement entered into for the purpose of occupancy of the complex or unit by an individual as a place of residence. Similar self-supply rules apply to a newly constructed addition to an existing multiple unit residential complex.

Recent jurisprudence suggests that the word “possession” in section 191 refers to a right of exclusive occupancy, requiring a high degree of control over the unit. However section 191 is intended to apply also in situations where a person does not obtain exclusive use or occupancy of the complex or unit in the complex, such as where a builder of a multiple unit residential complex first gives use (but not exclusive rights to have possession) of a unit to a person under a lease, licence or similar arrangement and that arrangement is entered into for the purpose of occupancy of the unit by an individual as a place of residence.

To ensure that it applies as intended, section 191 is amended to apply where a builder of a multiple-unit residential complex first gives use or possession of a unit in the complex to a person under a lease, licence or similar arrangement and that arrangement is entered into for the purpose of occupancy of the unit by an individual as a place of residence.

For purposes of the amendments to section 191, subsection 191(9) applies in determining the time when a substantial renovation is substantially completed and subsection 191(10) applies in determining the time when possession of a residential complex or residential unit is given to a person. In applying these two subsections, each shall be read as amended by the *Budget Implementation Act, 2008* (the amending Act).

Subclauses 73(1) to (12) and (14) to (17)

Self-supply residential complexes

ETA
191(1), (3) and (4)

Subparagraphs 191(1)(*b*)(i), 191(1)(*b*)(ii), 191(3)(*b*)(i), 191(3)(*b*)(i.1), 191(4)(*b*)(i) and 191(4)(*b*)(i.1) of the Act are amended to clarify that the self-supply rules apply where a builder gives possession or use of a complex or a unit in a complex or addition under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence. The words “or use” are added to the existing language to ensure that these self-supply rules apply to a builder of a newly constructed or substantially renovated residential complex or a newly-constructed addition to an existing multiple unit residential complex where the builder first gives use (e.g., use with no exclusive right of possession) of the complex or a unit in the complex or addition to a person under a lease, licence or similar arrangement for the purpose of occupancy of the unit by an individual as a place of residence.

Further clarifying amendments to paragraphs 191(1)(*c*), 191(3)(*c*) and 191(4)(*c*) are made to remove the words "tenant" or "licensee", which are terms used to describe an individual who has entered into a lease, licence or similar arrangement with the particular person referred to in section 191. The two terms are replaced with a direct reference to an individual who has entered into a lease, licence or similar arrangement with the particular person.

For the same reason, paragraphs 191(1)(*d*), 191(3)(*d*) and 191(4)(*d*) are also amended to add the words "or use" to the existing language in these three provisions.

For example, a builder constructs a multiple unit residential complex for use as a long-term residential care facility and the builder, as operator of the facility, makes an exempt supply of health care that includes giving possession or use of a unit in the residential complex to a particular person under a lease, licence or similar arrangement entered into for the purpose of its occupancy as an individual's place of residence. In this case, the builder is subject to the self-supply rule in subsection 191(3) and is required to account for GST/HST on the fair market value of the complex at the later of the time the construction of the complex is substantially completed and the time possession or use of the complex is first given to the particular person.

The application of the amendments to subsections 191(1), (3) or (4) to a residential complex or addition to a residential complex depends on the particular time that is the later of (a) the time the construction or substantial renovation of the complex or addition is substantially completed and (b) the time the builder of the complex or addition first either occupies the complex, or a residential unit in the complex or addition, or gives possession or use of the complex, or of a residential unit in the complex or addition, to a person for the purpose of the occupancy of the complex or unit by an individual as a place of residence.

The amendments to subsections 191(1), (3) or (4) apply if the particular time described above is after February 26, 2008. The amendments also apply if the particular time is on or before February 26, 2008, provided that (a) the builder would have been deemed to have sold and repurchased the property had section 191, as amended by this amending Act, applied at the particular time, and (b) in applying section 191, the builder reported an amount as or on account of GST/HST in the determination of net tax of a reporting period the return for which is filed or required to be filed on or before February 26, 2008.

Subclause 73(13)

Transfer of possession attributed to builder

ETA
191(10)

Existing subsection 191(10) of the Act applies the self-supply rules in section 191 to a builder who makes a supply of a residential complex or a residential unit in the complex by way of lease, licence or similar arrangement that is an exempt supply under section 6.1 of Part I of Schedule V to a recipient who is acquiring the complex or unit for the purpose of making supplies of exempt residential rental accommodation under section 6 of Part I of Schedule V. The builder in this case is deemed to have given possession of the complex or unit to an individual under a lease, licence or similar arrangement for the purpose of its occupancy by an individual as a place of residence. As a result, the builder is deemed, under either subsection 191(1), (3) or (4) to have made and received a taxable supply of the complex or unit and to have paid and collected tax calculated on the fair market value of the complex or unit.

The amendments to paragraph 191(10)(*a*) ensure that this subsection applies to a builder who makes an exempt supply of a residential complex or a unit in a residential complex or addition to a recipient under new section 6.11 of Part I of Schedule V (see commentary on new section 6.11 of Part I of Schedule V).

The amendments to paragraph 191(10)(*b*) ensure that this subsection will apply where the property acquired under a supply included in section 6.11 is used by the recipient for the purpose of making exempt supplies that include, as part of an exempt supply, giving possession or use of the units as described in paragraph (*b*) of new section 6.11.

The application of the amendments to subsection 191(10) to a residential complex or addition to a residential complex depends on the particular time that is the later of (a) the time the construction or substantial renovation of the complex or addition is substantially completed, and (b) the time a builder of the complex or addition gives possession of the complex, or of a residential unit in the complex, to a person for use or supply in the course of making exempt supplies that include giving possession or use of the complex or unit by the person under a lease, licence or similar arrangement under which it is to be occupied by an individual as a place of residence or lodging.

The amendments to subsection 191(10) apply if the particular time described above is after February 26, 2008. The amendments also apply if the particular time is on or before February 26, 2008, provided that (a) the builder would have been deemed to have sold and repurchased the property had section 191, as amended by this amending Act, applied at the particular time, and (b) in applying section 191, the builder reported an amount as or on account of GST/HST in the determination of net tax of a reporting period the return for which is filed or required to be filed on or before February 26, 2008.

Subclause 73(18)

Transitional rule for unclaimed input tax credits

ETA
191

A transitional rule allows a builder that may be deemed under amended section 191 of the Act to have made a self-supply after February 26, 2008 to claim input tax credits relating to the self-supply that would normally be disallowed as of February 26, 2008 due to the limitation periods in which to claim the input tax credits. This rule recognizes that some builders, who will become subject to the self-supply rules under section 191 as a result of the amendment to that section, may not have thought they were required to self-supply and eligible to claim input tax credits in respect of the self-supply and, therefore, may not have claimed those input tax credits within the statutory time limit.

This transitional rule applies where a builder of a residential complex or an addition is deemed under subsections 191(1), (3) or (4) to have sold and repurchased the complex or addition after February 26, 2008. The builder must be entitled to claim an input tax credit, or amount that would be an input tax credit if section 191 were read as amended by this amending Act, in respect of property or services acquired by the builder during a reporting period that ends on or before February 26, 2008 for consumption or use in making the self-supply of the complex or addition. However, the input tax credits allowed under this transitional rule (referred to as “unclaimed credits”) must not have been previously claimed or deducted in determining the builder’s net tax for any reporting period the return for which is filed or required to be filed on or before February 26, 2008. If these conditions are met, the unclaimed credits in relation to the complex or addition are deemed to be input tax credits for a reporting period of the builder that includes February 26, 2008 and not to be input tax credits for any other period.

Clause 74

Subsidized residential complexes

ETA
191.1(2)

Exiting section 191.1 of the Act provides for special self-supply rules for government-funded residential buildings designed to be occupied by individuals having special needs or limited financial resources, in recognition of the fact that it is often difficult to ascertain the “fair market value” of these buildings. This provision ensures that the builder must account for an amount of tax that is at least equal to the total of all tax that was payable by the builder in respect of real property forming part of the complex or addition or in respect of improvements to the real property. Where the builder is registered for purposes of the GST/HST, the builder would have been entitled to claim input tax credits for these amounts so the net effect of section 191.1 will be to at least recapture the amount of those credits.

Clarifying amendments to paragraph 191.1(2)(*b*) are made to add the words “possession or use” and to replace the word “supplied” with the words “given for the purpose of their occupancy as a place of residence or lodging by”.

Clarifying amendments to subparagraphs 191.1(2)(*b*)(vi) are made to replace the words “lease payments” in respect of residential units with the concept of “payments in respect of their occupancy as a place of residence or lodging”. Also, clarifying amendments to 191.1(2)(*b*)(vii) are made to replace the words “of the units” with the words “that include giving possession or use of the units for occupancy by the individuals as a place of residence or lodging”.

These amendments correspond to similar amendments made to subsections 191(1), (3) and (4) and are made for the same reasons as the amendments to those subsections (see commentary on section 191).

The application of the amendments to subsection 191.1(2) to a residential complex or addition to a residential complex depends on the particular time that is the later of (a) the time the construction or substantial renovation of the complex or addition is substantially completed, and (b) the time the builder of the complex or addition first either occupies the complex, or a residential unit in the complex or addition, or gives possession or use of the complex, or of a residential unit in the complex, to a person for the purpose of the occupancy of the complex or unit by an individual as a place of residence.

The amendments to subsection 191.1(2) apply if the particular time described above is after February 26, 2008. The amendments also apply if the particular time is on or before February 26, 2008, provided that (a) the builder would have been deemed to have sold and repurchased the property had section 191, as amended by the amending Act, applied at the particular time, and (b) in applying section 191, the builder reported an amount as or on account of GST/HST in the determination of net tax of a reporting period the return for which is filed or required to be filed on or before February 26, 2008.

For the purposes of these amendments to subsection 191.1(2) , subsection 191(9) applies in determining the time a substantial renovation is substantially completed and subsection 191(10) applies in determining the time when possession of a residential complex or residential unit is given to a person. In applying these two subsections, they shall be read as amended by the amending Act.

Clause 75

Election for residential complex

ETA
236.4

New section 236.4 of the Act allows a builder of a residential complex or an addition to a multiple unit residential complex to elect to claim a GST new residential rental property rebate in circumstances where the builder has not self-assessed and reported an amount as or on account of GST/HST in respect of a complex or addition on or before February 26, 2008 (i.e., the builder treated the existing self-supply rules as not applying to the complex or addition). In order to make the election, the builder must have been required to report the self-assessed GST/HST, and been eligible to claim a new residential rental property rebate, if sections 191 and 256.2 had applied, as amended by the amending Act, on or before February 26, 2008. As well, to make the election, the builder must not have sold the complex or addition to another person on or before February 26, 2008 and must not have made another election under this section in respect of the complex or addition. The builder must file the election in prescribed form containing prescribed information for a particular reporting period that ends on or before February 26, 2010.

If the election is made, the builder is required to adjust its net tax for the particular reporting period for which the election is filed. The formula for the adjustment to net tax requires the builder to add an amount equal to the tax deemed collected under self-supply (element A), to deduct an amount equal to the GST new residential rental property rebate (element B) and to deduct from the result of (A - B) amounts that are equal to the input tax credits for property or services acquired, imported or brought into a participating province in respect of the complex or addition prior to self-supply that have not been previously claimed or deducted by the builder (element C). The adjustment to net tax can either increase or decrease the net tax of the reporting period in which the election is made.

As a result of making the election, the builder is deemed to have reported self-assessed tax in respect of the complex or addition and to have claimed, in the reporting period in which the election is filed, the GST new residential rental property rebate and input tax credits. This ensures that such amounts, which are included in the adjustment to net tax, are not assessed by the Minister as unreported or claimed by the builder in a subsequent reporting period and also ensures that the Minister has until four years after the day on which the election is required to be filed to assess, reassess or make an additional assessment with respect to any amount included or required to be included in the adjustment to net tax.

New subsection 236.4(4) contains a timing rule respecting input tax credits of a builder making an election under new subsection 236.4(1). It provides that where a builder makes the election in respect of a residential complex or addition, any input tax credit in respect of the complex or addition that the builder is deemed to have received under the self-supply referred to in new paragraph 236.4(3)(*a*), is deemed, for the purposes of subsection 225(4), to be an input tax credit of the builder for the builder's reporting period that includes February 26, 2008 and not for another reporting period. This means that, for example, if a builder had, prior to February 26, 2008, constructed or substantially renovated a complex or addition for use in commercial activities (e.g., where the head lease of the complex is treated as taxable) and has accounted for self-assessed tax under this new election, the builder could still claim that self-assessed tax even though the statutory limit for claiming that amount as an input tax credit has expired.

In addition, if the election is made in respect of a residential complex or addition, any subsequent sale of the residential complex or addition may be exempted under Part I of Schedule V to the Act.

For the purposes of this election, an addition to a multiple unit residential complex is treated as property that is separate from the remainder of the multiple unit residential complex. This ensures that, where the builder has made an addition or multiple additions to a multiple unit residential complex, the builder will be entitled, where applicable, to file separate elections in respect of the original complex and each addition to the complex, as the case may be.

New section 236.4 applies to any reporting period that ends on or after February 26, 2008. Also, for the purposes of applying section 236.4, sections 191, 191.1 and 256.2 are to be read as amended by the amending Act.

Clause 76

Rebate to owner or lessee of land leased for residential purposes

ETA
256.1(1)

Generally, existing subsection 256.1(1) of the Act provides a rebate of tax to an owner or lessee of land where tax was paid by the owner or lessee in purchasing or improving the land. This rebate is available where the land has been leased or sub-leased to a person (referred to as the "particular lessee") who will be required to self-assess tax as a result of using the land for residential purposes. In these circumstances, the existing rebate under section 256.1 is available to the owner or any other lessee (other than the particular lessee) who has paid tax when either purchasing or improving the land.

To be eligible for the rebate, existing subsection 256.1(1) requires that the owner or lessee of the land (referred to as the “landlord”) make an exempt supply of the land under section 6.1 of Part I of Schedule V and that the particular lessee acquire the land for the purposes of making supplies that include that land and that are exempt supplies under paragraph 6(*a*) of Part I of Schedule V or certain exempt supplies under section 7 of Part I of Schedule V. Also, as a consequence of making these supplies, the particular lessee must be subject to the self-supply rule under section 190 in respect of the land or the self-supply rules under section 191 in respect of a residential complex or addition that includes the land.

Clarifying amendments are made to subsection 256.1(1), which correspond to similar amendments to section 191, and section 6.1 and new section 6.11 of Part I of Schedule V. These amendments ensure that the rebate under subsection 256.1(1) applies if an exempt supply of land is made by the landlord not only under section 6.1 but also under the new section 6.11.

The amendments allow a rebate under subsection 256.1(1) to be claimed by a landlord where the particular lessee has acquired the land for the purpose of making exempt supplies (other than supplies that are only exempt under paragraph 6(*b*) of Part I of Schedule V) that include giving possession or use of a residential complex or a residential unit forming part of a residential complex under a lease, licence or similar arrangement entered into for the purpose of the complex or unit’s occupancy by an individual as a place of residence or lodging and, as a consequence of making these supplies, the particular lessee is required to self-supply in respect of the land or in respect of a residential complex or addition that includes the land.

These amendments apply in respect of a supply of land where the particular lessee is deemed to have made another supply of property that includes the land under the applicable self-supply rules in section 190 or 191 after February 26, 2008.

These amendments also apply if the particular lessee was deemed to have made another supply of property that includes the land under the applicable self-supply rules in section 190 or 191 on or before February 26, 2008, if certain conditions are met. These amendments apply in this case if the supply of land to the particular lessee would have been included in new section 6.11 if that section had been in effect at that time and if the landlord treated that supply, or any other supply of the land, as if it were an exempt supply by not having charged, collected or remitted, on or before February 26, 2008, any amount as or on account of tax in respect of that supply, or any other supply of the land. However, a person is not entitled to the rebate under amended section 256.1 in respect of the tax on a purchase of land or improvements to the land, if the person is not a landlord in respect of the land at the time the application for the rebate is filed.

Where the amendments apply on or before February 26, 2008, a person who is eligible for the rebate under subsection 256.1(1) may file a rebate application after the two year time limit referred to in subsection 256.1(2) provided that the rebate application is filed no later than February 26, 2010. Also, despite subsection 262(2), a person who has already filed an application for this rebate may file a second application for this rebate under subsection 256.1(1) provided that the first application had been assessed before the person files the second application.

Clause 77

New residential rental property rebate

ETA
256.2

Existing section 256.2 of the Act provides for up to a 36% rebate of the tax imposed under subsection 165(1) (or a maximum of $6,300 per qualifying residential unit at the 5 per cent GST rate) in respect of newly-constructed or substantially-renovated residential rental accommodation (including buildings deemed to be substantially renovated as a result of a conversion to residential use). The rebate also applies to the construction of additions of residential units to multiple unit residential complexes and to the leasing of land, or the conversion of land, for residential purposes.

Section 256.2 is amended to extend the rebate eligibility to persons who would have qualified for the rebate but who were disqualified because they do not make supplies of qualified residential units under section 6 of Part I of Schedule V but rather make exempt supplies of property or services that include giving possession or use of a unit to a person under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence. The amendments to section 256.2 are made in conjunction with amendments to section 191.

Clause 256.2(1)(*a*)(ii)(A) of the definition "qualifying residential unit" in subsection 256.2(1) is amended by replacing the requirement that a person hold the unit for the purpose of making exempt supplies included in section 6 of Part I of Schedule V with the requirement that the person hold the unit for the purpose of making exempt supplies of property or a service that includes giving possession or use of a unit to a person under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence.

Subparagraph 256.2(3)(*a*)(ii) is amended to replace the requirement that the builder make an exempt supply included in section 6 or 6.1 of Part I of Schedule V that results in the builder being deemed to have self-supplied a complex or addition under section 191 with the requirement that the builder give possession or use of a unit to a person under a lease, licence or similar arrangement entered into for the purpose of its occupancy by an individual as a place of residence, that results in the builder being deemed to have self-supplied the complex or addition under section 191.

New subsection 256.2(6.1) applies to deal with situations where a person was not entitled to the existing GST new residential rental property rebate in respect of a residential complex, an interest in a residential complex or an addition to a multiple unit residential complex, but will be entitled to the amended GST new residential rental property rebate once the Budget Implementation Act, 2008 receives Royal Assent. In these situations, where the person is also entitled to a transitional rebate under any of subsections 256.3 to 256.77, in respect of the residential complex, interest or addition, as the case may be, the total of the tax under subsection 165(1) used to calculate the applicable GST new residential rental property rebate is reduced by the total of all transitional rebates payable to the person.

The amendments to subsections 256.2(1) and (3) apply, in the case of a builder-landlord, if the tax under the self-supply rule in section 191 is deemed to have been paid after February 26, 2008 and, in the case of a purchaser-landlord, if the tax in respect of the purchase of the residential complex or an interest therein from another person first becomes payable after February 26, 2008.

The amendments to subsections 256.2(1) and (3) also apply, in the case of a builder-landlord, if tax under the self-supply rule in section 191 is deemed to have been paid on or before February 26, 2008, and where certain conditions are met. These amendments apply if the builder has reported the tax resulting from the self-supply rule in the determination of net tax for the reporting period that includes a day that is on or before February 26, 2008 and the builder has remitted all net tax remittable, if any, as reported in the return for that reporting period. These amendments apply, in the case of a purchaser-landlord, if the tax in respect of the purchase of the residential complex or an interest therein from another person first becomes payable on or before February 26, 2008 and the purchaser-landlord has paid all of that tax.

Where the amendments to subsections 256.2(1) and (3) apply on or before February 26, 2008, a person who is eligible for the rental property rebate may file a rebate application after the two year time limit referred to in paragraph 256.2(7)(*a*) provided the rebate application is filed not later than February 26, 2010. Also, despite subsection 262(2), a person who has already filed an application for this rebate may file a second application under subsection 256.2(3) provided the first application has been assessed before the person files the second application.

New subsection 256.2(6.1) applies effective July 1, 2006.

Clause 78

Lease of real property where exempt re-supply

ETA
Schedule V, Part I, section 6.1

Existing section 6.1 of Part I of Schedule V to the Act exempts certain leases of real property to a person who holds the property for the purpose of re-supplying it in circumstances in which the re-supply is exempt under section 6, 6.1 or 7 of that Part.

Section 6.1 is amended to remove from paragraph 6.1(*b*) the reference to "that forms part of a residential complex" and to delete paragraph 6.1(*c*), which referred to a "residential complex". The amendments to section 6.1 are consequential to the amendments that introduce new section 6.11 of Part I of Schedule V (see commentary on section 6.11 of Part I of Schedule V).

The amendments to section 6.1 apply to any supply for which consideration becomes due after February 26, 2008, without having been paid on or before that day, or is paid after that day without having become due.

Clause 79

Lease of real property where exempt re-supply

ETA
Schedule V, Part I, section 6.11

New section 6.11 of Part I of Schedule V to the Act exempts in certain situations a supply made by way of lease, licence or similar arrangement of a residential complex, or of land, a building or that part of a building that forms or is reasonably expected to form part of a residential complex. The addition of new subsection 6.11 is made in conjunction with corresponding amendments to section 6.1 of this Part, sections 256.1 and 256.2 as well as subsections 191(1), (3), (4) and (10).

New paragraph 6.11(*a*) applies to exempt the supply by way of lease, licence or similar arrangement of property (forming all or part of a residential complex) where the property is supplied, or is held for the purposes of being supplied, by the lessee or any sub lessee for the purpose of the occupancy of the property (or parts thereof) by individuals as a place of residence or lodging and where all or substantially all of the supplies of the property (or parts thereof) are exempt supplies under section 6 of this Part. This exemption was formerly found under section 6.1.

New paragraph 6.11(*b*) ensures that the exemption will be extended to apply to situations where the recipient (referred to as the "lessee") is not making supplies of residential units that are exempt under section 6 but rather is using all or substantially all of the property it acquired by way of lease, licence, or similar arrangement for the purpose of making other exempt supplies. This exemption applies if, as part of one or more of those exempt supplies, the recipient is giving possession or use of all or substantially all of the residential units situated in the property under a lease, licence or similar arrangement for the purpose of their occupancy by individuals as a place of residence.

For example, a builder constructs a multiple unit residential complex for use as a long-term residential care facility and the builder makes an exempt supply of the entire facility to an operator by way of lease, beginning after February 26, 2008. The operator of the long-term residential care facility in turn uses all or substantially all of the facility for the purpose of making exempt supplies of health care, and as part of one or more of those other exempt supplies of health care, the operator gives possession or use of all or substantially all of the residential units situated in the facility under a lease, licence or similar arrangement entered into for the purpose of the occupancy of those units by individuals as a place of residence. In this example, the lease of the facility from the builder to the operator is an exempt supply under section 6.11 for each lease interval that the operator continues to use all or substantially all of the facility for the purpose of making supplies, described in this example.

New section 6.11 applies to any supply of property for which the consideration becomes due after February 26, 2008, without having been paid on or before that day, or is paid after that day without having become due.

New section 6.11 also applies to any supply of property for which the consideration became due or was paid on or before February 26, 2008 if the supplier treated all of those supplies of the property as though they were exempt supplies under section 6.1 or section 6.11 (if those sections were read as amended by the amending Act) by having not charged, collected or remitted, on or before February 26, 2008, any amount as or on account of tax under Part IX of the Act in respect of those supplies.

Consequential to the introduction of new section 6.11, an adjustment is made to the basic tax content of land in circumstances where a registrant's supply of land was taxable on or before February 26, 2008 and becomes an exempt supply under section 6.11 after February 26, 2008 as a result of the enactment of section 6.11. In this case, the registrant ceases to use, or reduces the extent to which the land is used in commercial activities of the registrant such that the registrant is subject to the change-in-use rules. If the registrant would have been entitled to claim a rebate under subsection 256.1(1) at a particular time on or before February 26, 2008, if the amendments to subsection 256.1(1) and section 6.1 as well as new section 6.11 had applied at that particular time, the basic tax content of the land is adjusted on or after the particular time to take into account the amount of the rebate the registrant would have been entitled to claim under subsection 256.1(1). This rule ensures that where a registrant's head lease becomes exempt on a prospective basis, the registrant obtains the benefit of the rebate under subsection 256.1(1) where the registrant would have qualified for such a rebate if the amendments to section 256.1 and sections 6.1 and 6.11 of Part I of Schedule V were in effect on or before February 26, 2008.

An adjustment, similar to that described above, to the basic tax content of a residential complex is made in circumstances where a registrant's supply of the complex was taxable on or before February 26, 2008 and becomes an exempt supply under section 6.11 after February 26, 2008 as a result of the enactment of section 6.11. In this case, the registrant ceases to use, or reduces the extent to which the complex is used in commercial activities of the registrant such that the registrant is subject to the change-in-use rules. If the registrant would have been entitled to claim a rebate under subsection 256.2(3) at a particular time on or before February 26, 2008, if the amendments to subsection 256.2(3) and section 6.1 as well as new section 6.11 had applied at that particular time, the basic tax content of the residential complex is adjusted on or after the particular time to take into account the amount of the rebate the registrant would have been entitled to claim under subsection 256.2(3). This ensures that where a registrant's head lease becomes exempt on a prospective basis, the registrant obtains the benefit of the rebate under subsection 256.2(3) where the registrant would have qualified for such a rebate on a retrospective basis.

Clause 80

Physicians' and Dentists' Services and Nursing Services

ETA
Schedule V, Part II, sections 5 and 6

Existing section 5 of Part II of Schedule V to the Act has the effect of exempting supplies of medical or dental services made by licensed physicians or dentists, but does not cover services that are performed for cosmetic purposes and not for medical or reconstructive purposes.

Existing section 6 of Part II of Schedule V provides an exemption for nursing services rendered by a registered nurse, a registered nursing assistant, a licensed or registered practical nurse or a registered psychiatric nurse. The services are exempt if provided to an individual in a health care facility or in the individual's home. Also exempted are private-duty nursing services provided to an individual and nursing services supplied to public sector bodies.

Section 5 is amended to exempt the supply of those services if they are rendered by a licensed physician or dentist, regardless of whether they are supplied through a corporation or directly by the licensed physician or dentist.

Section 6 is amended to exempt from GST/HST all nursing services rendered to an individual within a nurse-patient relationship by a registered nurse, a registered nursing assistant, a licensed or registered practical nurse or a registered psychiatric nurse, regardless of where the service is performed.

The amendments to sections 5 and 6 apply to supplies made after February 26, 2008.

Clause 81

Practitioners' Services

ETA
Schedule V, Part II, section 7

Existing section 7 of Part II of Schedule V to the Act lists the services of health care practitioners whose supplies are exempt in all provinces from the GST/HST even when made in a province that does not cover the services under its own provincial health care plan. To qualify for the exemption, the services must be listed in the section and supplied by a practitioner of the services.

Section 7 is amended to exempt the supply of those services if rendered to an individual by a practitioner of the services and to remove the requirement that the services be supplied by the practitioner. As a result, the exemption will apply if the services are rendered by a practitioner, regardless of whether they are supplied through a corporation or directly by the practitioner.

The amendment applies to supplies made after February 26, 2008.

Clause 82

Dietetic Services and Social Workers' Services

ETA
Schedule V, Part II, sections 7.1 and 7.2

Existing section 7.1 of Part II of Schedule V to the Act has the effect of exempting supplies of dietetic services made by a dietician if the services are rendered to an individual or if the supplies are made to a public sector body or the operator of a health care facility.

Section 7.1 is amended to replace the requirement that dietetic services be supplied by a dietician with the requirement that those services be rendered by a dietician. As a result, the exemption will apply if the services are rendered by the dietician, regardless of whether they are supplied through a corporation or directly by the dietician.

Existing Section 7.2 of Part II of Schedule V has the effect of exempting the supply of a service of counselling individuals for the prevention or treatment of physical or mental disorders or of assisting afflicted individuals or their caregivers in coping with such conditions, if the service is rendered in the practice of the profession of social work and the supply is made by a social worker.

Section 7.2 is amended to replace the requirement that the service of counselling be supplied by a social worker with the requirement that this service be rendered by a social worker. As a result, the exemption will apply if the service is rendered by the social worker, regardless of whether the service is supplied through a corporation or directly by the social worker.

The amendments to sections 7.1 and 7.2 apply to supplies made after February 26, 2008.

Clause 83

Prescribed Health Care Service

ETA
Schedule V, Part II, section 10

Section 10 of Part II of Schedule V to the Act has the effect of exempting prescribed health care services when made on the order of a “medical practitioner” or “practitioner” as defined in section 1 of that Part. These prescribed health care services include laboratory, radiological or other diagnostic services generally available in a health care facility as well as the administration of drugs, biologicals or related preparations in conjunction with the provision of those services.

Section 10 is amended to expand the exemption for prescribed health care services to include those services made on the order of a registered nurse who is authorized under the laws of a province to order the services, if the order is made within a nurse-patient relationship. Section 10 is also amended to ensure that this exemption only applies if those services are rendered to an individual.

The amendment applies to supplies made after February 26, 2008.

Clause 84

Specially Designed Training

ETA
Schedule V, Part II, sections 14 and 15

New section 14 of Part II of Schedule V to the Act adds to the list of exempt supplies of health care services the supply of a training service that is specially designed to assist individuals with a disorder or disability in coping with the effects of the disorder or disability or to alleviate or eliminate those effects.

In order to qualify for the exemption, the training must be given to the individual with the disorder or disability or to another individual who provides personal care or supervision for such an individual otherwise than in a professional capacity. Moreover, one of the conditions listed in subparagraphs 14(*b*)(i) to (iii) must be met in order for a supply of a training service to be exempted under the section.

The first condition set out in new subparagraph 14(*b*)(i) is that one of the health professionals described in the subparagraph has, in the course of a professional-client relationship with a particular individual who suffers from a disorder or disability, certified in writing that the training is an appropriate means of assisting the individual in coping with the effects of the disorder or disability or to alleviate or eliminate those effects. These health professionals include a medical practitioner, a social worker, a registered nurse or another practitioner (as defined in section 1 of Part II of Schedule V).

The second condition set out in new subparagraph 14(*b*)(ii) is that a person prescribed by regulations, or a member of a class of persons prescribed by regulations, certifies in writing that the training is an appropriate means of assisting an individual with the effects of the disorder or disability or to alleviate or eliminate those effects. At this time, no persons are under consideration for the purposes of being prescribed by regulations.

The third condition in new subparagraph 14(*b*)(iii) can be met in one of three ways. First, the condition is met if the supplier of the training service is a government. Second, the condition is met if the supplier of the training service is paid to make the supply by a government or organization administering a government program targeted at assisting individuals with a disorder or disability. Third, the condition is met if the supplier receives evidence satisfactory to the Minister of National Revenue that an amount has been paid by a government or an organization administering a government program targeted at assisting individuals with a disorder or disability for the purpose of the acquisition of the service.

The last two conditions found in new clauses 14(*b*)(iii)(B) and (C) can be met even if only part of the consideration for the supply of a training service is subsidized by a payment described in those clauses. For example, the condition would be met if part of the consideration for a supply of a training service were paid for by a provincial government and the remainder paid by the parents of an individual suffering from a disorder or disability.

The interpretation rule under new section 15 of Part II of Schedule V excludes from the term “training service”, for the purposes of new section 14, any training that is similar to training offered to the general public.

The exemption under new section 14 does not apply to a zero-rated supply or to training that is excluded by virtue of new section 15.

New sections 14 and 15 apply to supplies made after February 26, 2008.

Clause 85

Prescription Drugs

ETA
Schedule VI, Part I, section 1

Part I of Schedule VI to the Act contains a listing of prescription drugs and biologicals that are zero-rated under the GST/HST. Section 1 of Part I of Schedule VI defines several terms that are used throughout the Part.

The amendments to section 1 described below apply to supplies made after February 26, 2008 and supplies made on or before February 26, 2008 if GST/HST was not charged, collected or remitted in respect of the supply.

Subclause 85(1)

Definition “prescription”

ETA
Schedule VI, Part I, section 1

The definition “prescription” in section 1 of Part I of Schedule VI to the Act is amended to add a reference to the new definition “authorized individual” (which is also defined in section 1). This amendment is consequential to the amendment made to paragraph 3(*b*) of Part I of Schedule VI.

Subclause 85(2)

Definition “authorized individual”

ETA
Schedule VI, Part I, section 1

Section 1 is amended by adding the new definition “authorized individual”, meaning an individual, other than a medical practitioner, who is authorized under the laws of a province to prescribe drugs. This amendment is consequential to the amendment made to paragraph 3(*b*) of Part I of Schedule VI.

Clause 86

Prescription Drugs

ETA
Schedule VI, Part I, paragraphs 2(*b*) and (*d*)

Section 2 of Part I of Schedule VI to the Act contains a listing of drugs and substances that are unconditionally zero-rated at all levels of production and distribution.

Existing paragraph 2(*b*) of Part I of Schedule VI provides that the supply of drugs listed in Schedule F of the *Food and Drug Regulations* other than drugs that may be sold to a consumer without a prescription pursuant to the *Food and Drugs Act* or the *Food and Drug Regulations* is zero-rated for the purposes of the GST/HST.

Paragraph 2(*b*) is amended to clarify that the only drugs listed in Schedule F that are excluded from zero-rating under this paragraph are those drugs that can be sold to a consumer with neither a prescription nor a written order signed by the Director (as designated in the *Food and Drug Regulations*) authorizing the sale.

Existing paragraph 2(*d*) of Part I of Schedule VI provides that the supply of drugs listed in the *Narcotic Control Regulations* other than drugs that may be sold to a consumer without a prescription pursuant to the *Controlled Drugs and Substances Act* or the *Narcotic Control Regulations* is zero-rated for the purposes of the GST/HST.

Paragraph 2(*d*) is amended to clarify that the only drugs listed in the *Narcotic Control Regulations* that are excluded from zero-rating under this paragraph are those drugs that can be sold to a consumer when neither a prescription nor an exemption from the Minister of Health authorizes the sale.

The amendments to paragraphs 2(*b*) and 2(*d*) apply to supplies made after February 26, 2008.

Clause 87

Prescription Drugs

ETA
Schedule VI, Part I, paragraph 3(*b*)

Section 3 of Part I of Schedule VI to the Act provides that a supply of a drug is zero-rated for purposes of the GST/HST if the drug is dispensed to an individual on the prescription of a medical practitioner. Drugs that are not required, under federal legislation, to be sold only on a prescription basis are zero-rated under this section when supplied under prescription.

Paragraph 3(*b*) is amended by adding the term “authorized individual” (see commentary on the new definition “authorized individual” under section 1 of Part I of Schedule VI). As a result, paragraph 3(*b*) has the effect of zero-rating all supplies of drugs prescribed by a medical practitioner or an authorized individual, who is authorized to prescribe the drugs under provincial legislation, and dispensed for the personal consumption or use of the individual named in the order.

The amendment applies to supplies made after February 26, 2008 and supplies made on or before February 26, 2008 if GST/HST was not charged, collected or remitted in respect of the supply.

Clause 88

Medical Devices

ETA
Schedule VI, Part II, section 1.1

Part II of Schedule VI to the Act enumerates a number of supplies of medical and assistive devices that are zero-rated for purposes of the GST/HST. Specially designed parts, accessories and attachments for tax-free medical devices as well as services relating to installing, maintaining, restoring, repairing or modifying these properties are also tax-free.

New section 1.1 of Part II of Schedule VI clarifies the long-standing policy intent that only the supply of the listed medical and assistive devices that are designed for human use, or for assisting an individual with a disability or impairment, are zero-rated.

New section 1.1 applies to supplies made after February 26, 2008.

Clause 89

Medical Devices

ETA
Schedule VI, Part II, section 6

Existing section 6 of Part II of Schedule VI to the Act provides that the supply of a mechanical percussor for postural drainage is zero-rated for GST/HST purposes. This device is used for airway clearance therapy that requires a special position to be assumed by the patient.

Section 6 is amended by adding a reference to supplies of chest wall oscillation systems. These devices perform a similar function as a mechanical percussor, but they do not require a special position to be assumed by the patient.

The amendment applies to supplies made after February 26, 2008.

Clause 90

Medical Devices

ETA
Schedule VI, Part II, sections 14 and 14.1

Existing section 14 of Part II of Schedule VI to the Act provides that the supply of chairs and other aids to locomotion that are specially designed for use by an individual with a disability are zero-rated for GST/HST purposes.

Section 14 is amended by removing the reference to “commode chairs” in order to add it to section 20. Moving commode chairs from section 14 to section 20 better reflects the nature of both provisions.

Section 14 is also amended to clarify that in order for their supply to qualify for zero-rating the chairs and other aids to locomotion must be specially designed to be operated by an individual with a disability for locomotion of the individual.

New section 14.1 provides that a supply of a chair that is specially designed for individuals with a disability is zero-rated for GST/HST purposes, if the chair is supplied on the written order of a medical practitioner for use by a consumer named in the order.

The amendments to section 14 and new section 14.1 apply to supplies made after February 26, 2008.

Clause 91

Medical Devices

ETA
Schedule VI, Part II, section 20

Existing section 20 of Part II of Schedule VI to the Act provides that a supply of a toilet-seat, bath-seat or shower-seat that is specially designed for use by an individual with a disability is zero-rated for GST/HST purposes.

Section 20 is amended by adding commode chairs, which are removed from section 14 (see commentary on section 14 of Part II of Schedule VI).

The amendment applies to supplies made after February 26, 2008.

Clause 92

Medical Devices

ETA
Schedule VI, Part II, sections 33 and 34

Existing sections 33 and 33.1 of Part II of Schedule VI to the Act provides that a supply of a dog that is, or is to be, trained as a guide dog for the use by a blind individual or to assist an individual with a hearing impairment, as well as the service of training the individual to use such a dog are zero-rated for GST/HST purposes.

Existing section 34 of Part II of Schedule VI provides that supplies of certain services related to medical devices listed in other cross-referenced sections of that Part are zero-rated for GST/HST purposes.

Sections 33 and 33.1 are replaced by new section 33, which provides that the supply of a service animal that is, or is to be, specially trained to assist an individual with a disability or impairment, as well as the service of training an individual to use such an animal, are zero-rated for GST/HST purposes, if the animal or service is supplied to or by an organization that is operated for the purpose of supplying such specially-trained animals.

Section 34 is amended by adding a reference to new section 41 of Part II of Schedule VI (see commentary on section 41 of Part II of Schedule VI).

New section 33 and the amendments to section 34 apply to supplies made after February 26, 2008.

Clause 93

Medical Devices

ETA
Schedule VI, Part II, section 41

New section 41 of Part II of Schedule VI to the Act adds to the list of zero-rated medical and assistive devices the supply of a device that is specially designed for neuromuscular stimulation therapy or standing therapy, if the device is supplied on the written order of a medical practitioner for use by a consumer with paralysis or a severe mobility impairment who is named in the order.

New section 41 applies to supplies made after February 26, 2008.