LEGISLATIVE PROPOSALS RELATING TO INCOME TAX, EXCISE DUTIES AND SALES TAX

PART 1

INCOME TAX

INCOME TAX ACT

1. (1) Subsection 17(1) of the *Income Tax Act* is replaced by the following:

Amount owing by non-resident

17. (1) If this subsection applies to a corporation resident in Canada in respect of an amount owing to the corporation (in this subsection referred to as the "debt"), the corporation shall include in computing its income for a taxation year the amount, if any, determined by the formula

$$A - B$$

where

A is the amount of interest that would be included in computing the corporation's income for the year in respect of the debt if interest on the debt were computed at the prescribed rate for the period in the year during which the debt was outstanding; and

B is the total of all amounts each of which is

(*a*) an amount included in computing the corporation's income for the year as, on account of, in lieu of or in satisfaction of, interest in respect of the debt,

(*b*) an amount received or receivable by the corporation from a trust that is included in computing the corporation's income for the year or a subsequent taxation year and that can reasonably be attributed to interest on the debt for the period in the year during which the debt was outstanding, or

(*c*) an amount included in computing the corporation's income for the year or a subsequent taxation year under subsection 91(1) that can reasonably be attributed to interest on an amount owing (in this paragraph referred to as the "original debt") — or where the amount of the original debt exceeds the amount of the debt, a portion of the original debt that is equal to the amount of the debt — for the period in the year during which the debt was outstanding if

(i) without the existence of the original debt, subsection (2) would not have deemed the debt to be owed by the non-resident person referred to in paragraph (1.1)(*a*),

(ii) the original debt was owed by a non-resident person or a partnership each member of which is a non-resident person, and

(iii) where subsection (11.2) applies to the original debt,

(A) an amount determined under paragraph (11.2)(*a*) or (*b*) in respect of the original debt is an amount referred to in paragraph (2)(*a*), and because of the amount referred to in paragraph (2)(*a*), the debt is deemed to be owed by the non-resident person referred to in paragraph (1.1)(*a*), and

(B) the original debt was owing by an intermediate lender to an initial lender or by an intended borrower to an intermediate lender (within the meanings of those terms assigned by subsection (11.2)).

Amount owing by non-resident

(1.1) Subsection (1) applies to a corporation resident in Canada in respect of an amount owing to the corporation if, at any time in a taxation year of the corporation,

(*a*) a non-resident person owes the amount to the corporation;

(*b*) the amount has been or remains outstanding for more than a year; and

(*c*) the amount that would be determined under B in subsection (1), if that subsection applied, for the year in respect of the amount owing is less than the amount of interest that would be included in computing the corporation's income for the year in respect of the amount owing if that interest were computed at a reasonable rate for the period in the year during which the amount was outstanding.

(2) The portion of paragraph 17(2)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) it is reasonable to conclude that the amount or a portion of the amount became owing, or was permitted to remain owing, to the particular person or partnership because

(3) The portion of subsection 17(2) of the Act after paragraph (*b*) is replaced by the following:

the non-resident person is deemed at that time to owe to the corporation an amount equal to the amount, or the portion of the amount, as the case may be, owing to the particular person or partnership.

(4) Subsection (1) applies to taxation years that begin after February 23, 1998.

(5) Subsections (2) and (3) apply to taxation years that begin after ANNOUNCEMENT DATE.

2. (1) Paragraph 81(1)(*c*) of the Act is replaced by the following:

Ship or aircraft of non-residents

(*c*) the income for the year of a non-resident person earned in Canada from international shipping or from the operation of aircraft in international traffic, if the country in which the person is resident grants substantially similar relief for the year to persons resident in Canada;

(2) Subsection (1) applies to taxation years that begin after ANNOUNCEMENT DATE.

3. (1) Section 87 of the Act is amended by adding the following after subsection (8.2):

Anti-avoidance

(8.3) Subsection (8) does not apply in respect of a taxpayer's shares of the capital stock of a predecessor foreign corporation that are exchanged for or become, on a foreign merger, shares of the capital stock of the new foreign corporation or the foreign parent corporation, if

(*a*) the new foreign corporation is, at the time that is immediately after the foreign merger, a foreign affiliate of the taxpayer;

(*b*) shares of the capital stock of the new foreign corporation are, at that time, excluded property (as defined in subsection 95(1)) of another foreign affiliate of the taxpayer; and

(*c*) the foreign merger is part of a transaction or event or a series of transactions or events that includes a disposition of shares of the capital stock of the new foreign corporation, or property substituted for the shares, to

(i) a person with whom the taxpayer was dealing at arm's length immediately after the transaction, event or series, or

(ii) a partnership a member of which was a person with whom the taxpayer was dealing at arm's length immediately after the transaction, event or series.

(2) Subsection (1) applies to foreign mergers that occur after ANNOUNCEMENT DATE.

4. (1) Section 91 of the Act is amended by adding the following after subsection (1):

Deemed year-end

(1.1) For the purposes of this section, if a taxpayer resident in Canada has (or would have, if the taxpayer were a corporation) a surplus entitlement percentage in respect of a controlled foreign affiliate of the taxpayer immediately before a particular time and at the particular time has (or would have if the taxpayer were a corporation) no surplus entitlement percentage, or a lesser surplus entitlement percentage, in respect of the affiliate, the affiliate's taxation year that would, in the absence of this subsection, have included the particular time is deemed to have ended immediately before the particular time.

Increase in surplus entitlement percentage

(1.2) Subsection (1.1) does not apply to a taxpayer if another taxpayer resident in Canada that is, at the particular time referred to in subsection (1.1), connected to the taxpayer has, at the particular time, an increase in its surplus entitlement percentage in respect of the affiliate equal to the reduction in the taxpayer's surplus entitlement percentage in respect of the affiliate at the particular time. For this purpose, taxpayers are connected at the particular time if one holds, directly or indirectly, at the particular time 90% or more of each class of shares of the capital stock of the other or if another taxpayer resident in Canada holds, directly or indirectly, at the particular time 90% or more of each class of shares of the capital stock of each taxpayer.

(2) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE.

5. (1) The portion of subsection 93.1(1) of the Act before paragraph (*a*) is replaced by the following:

Shares held by partnership

93.1 (1) For the purposes of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2) and 20(12), sections 93 and 113, paragraph 128.1(1)(*d*), (and any regulations made for the purposes of those provisions), section 95 (to the extent that it is applied for the purposes of those provisions), subsection 95(2.2) and section 126, if, based on the assumptions contained in paragraph 96(1)(*c*), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, then each

member of the partnership is deemed to own at that time the number of those shares that is equal to the proportion of all those shares that

(2) The portion of subsection 93.1(1) of the Act before paragraph (*a*), as enacted by subsection (1), is replaced by the following:

Shares held by partnership

93.1 (1) For the purposes of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2), 20(12) and 39(2.1), sections 90, 93 and 113, paragraph 128.1(1)(*d*), (and any regulations made for the purposes of those provisions), section 95 (to the extent that it is applied for the purposes of those provisions), paragraph 95(2)(*g.04*), subsection 95(2.2) and section 126, if, based on the assumptions contained in paragraph 96(1)(*c*), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, then each member of the partnership is deemed to own at that time the number of those shares that is equal to the proportion of all those shares that

(3) The portion of subsection 93.1(1) of the Act before paragraph (*a*), as enacted by subsection (2), is replaced by the following:

Shares held by partnership

93.1 (1) For the purposes of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2), 20(12) and 39(2.1), sections 90, 93 and 113, paragraphs 128.1(1)(*c.3*) and (*d*), section 212.3 and subsection 219.1(2), (and any regulations made for the purposes of those provisions), section 95 (to the extent that it is applied for the purposes of those provisions), paragraph 95(2)(*g.04*), subsection 95(2.2) and section 126, if, based on the assumptions contained in paragraph 96(1)(*c*), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, then each member of the partnership is deemed to own at that time the number of those shares that is equal to the proportion of all those shares that

(4) The portion of subsection 93.1(1) of the Act before paragraph (*a*), as enacted by subsection (3), is replaced by the following:

Shares held by partnership

93.1 (1) For the purposes of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of a specified provision, if, based on the assumptions contained in paragraph 96(1)(*c*), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, then each member of the partnership is deemed to own at that time the number of those shares that is equal to the proportion of all those shares that

(5) Section 93.1 of the Act is amended by adding the following after subsection (1):

Specified provisions for subsection (1)

(1.1) For the purposes of subsection (1), the specified provisions are

(*a*) subsections (2), (5), 20(12) and 39(2.1), sections 90, 93 and 113, paragraphs 128.1(1)(*c.3*) and (*d*), section 212.3, subsection 219.1(2) and section 233.4;

(*b*) section 95 to the extent that section is applied for the purposes of the provisions referred to in paragraph (*a*);

(*c*) any regulations made for the purposes of the provisions referred to in paragraph (*a*); and

(*d*) paragraph 95(2)(*g.04*), subsection 95(2.2) and section 126.

(6) Paragraph 93.1(2)(*a*) of the Act is replaced by the following:

(*a*) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, each member of the partnership (other than another partnership) is deemed to have received the proportion of the partnership dividend that

(i) the fair market value of the member's interest held, directly or indirectly through one or more other partnerships, in the partnership at that time

is of

(ii) the fair market value of all the interests in the partnership held directly by members of the partnership at that time;

(7) Paragraph 93.1(3)(*c*) of the Act is replaced by the following:

(*c*) subsections 39(2.1), 40(3.6) and 87(8.3).

(8) Section 93.1 of the Act is amended by adding the following after subsection (3):

Partnership deemed to be corporation

(4) For the purpose of applying clause 95(2)(*a*)(ii)(D) in respect of an amount paid or payable by a partnership to a foreign affiliate, of a taxpayer, that is a member of the partnership or to another foreign affiliate of the taxpayer,

(*a*) if, at any time, all the members (in this subsection referred to as "member affiliates") of the partnership are foreign affiliates of the taxpayer,

(i) the partnership is deemed to be, at that time in respect of the taxpayer and the member affiliates, a non-resident corporation without share capital, and

(ii) all the membership interests in the partnership are deemed to be, at that time, equity interests in the corporation held by the member affiliates; and

(*b*) if, at any time, all the member affiliates are resident in a particular country and the partnership carries on business only in that country, the partnership is deemed to be, at that time, resident in that country.

Computing FAPI in respect of partnership

(5) For the purposes of applying a relevant provision in respect of a foreign affiliate of a taxpayer resident in Canada, if at any time the taxpayer is a partnership of which a particular corporation resident in Canada, or a foreign affiliate of the particular corporation, is a member and if, based on the relevant assumptions, the particular corporation and the taxpayer would be related, then

(*a*) a non-resident corporation that is, at that time, a foreign affiliate of the particular corporation is deemed to be, at that time, a foreign affiliate of the taxpayer; and

(*b*) the taxpayer is deemed to have, at that time, a qualifying interest in respect of that foreign affiliate if the particular corporation has, at that time, a qualifying interest in respect of the non-resident corporation.

Relevant provisions and assumptions

(6) For the purposes of subsection (5),

(*a*) the relevant provisions are

(i) paragraph (*b*) of the description of A in the definition “foreign accrual property income” in subsection 95(1),

(ii) in determining whether a property of a foreign affiliate of a taxpayer is excluded property of the affiliate, the description of B in the definition “foreign accrual property income” in subsection 95(1),

(iii) subparagraph 95(2)(*a*)(ii), and

(iv) paragraph 95(2)(*g*); and

(*b*) the relevant assumptions are that

(i) the partnership is a non-resident corporation having capital stock of a single class divided into 100 issued shares that each have full voting rights, and

(ii) each member of the partnership (other than another partnership) owns, at any time, the proportion of the issued shares of that class that

(A) the fair market value of the member’s interest held, directly or indirectly through one or more partnerships, in the partnership at that time

is of

(B) the fair market value of all the interests in the partnership held directly by members of the partnership at that time.

(9) Subsection (1) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999.

(10) Subsection (2) is deemed to have come into force on August 20, 2011.

(11) Subsection (3) is deemed to have come into force on March 29, 2012.

(12) Subsections (4) and (5) are deemed to have come into force on ANNOUNCEMENT DATE. However, if a taxpayer elects under subsection (15), then in respect of the taxpayer, subsections (4) and (5) are deemed to have come into force on January 1, 2010 and subsection 93.1(1.1) of the Act, as enacted by subsection (5), is to be read

(*a*) in respect of any time that is after 2009 and before August 20, 2011 as follows:

(1.1) For the purposes of subsection (1), the specified provisions are

(*a*) subsections (2), (5) and 20(12), sections 93 and 113 and paragraph 128.1(1)(*d*);

(*b*) section 95 to the extent that section is applied for the purposes of the provisions referred to in paragraph (*a*);

(*c*) any regulations made for the purposes of the provisions referred to in paragraph (*a*); and

(*d*) subsection 95(2.2) and section 126.

(*b*) in respect of any time that is after August 19, 2011 and before March 29, 2012 as follows:

(1.1) For the purposes of subsection (1), the specified provisions are

(*a*) subsections (2), (5), 20(12) and 39(2.1), sections 90, 93 and 113 and paragraph 128.1(1)(*d*);

(*b*) section 95 to the extent that section is applied for the purposes of the provisions referred to in paragraph (*a*);

(*c*) any regulations made for the purposes of the provisions referred to in paragraph (*a*); and

(*d*) paragraph 95(2)(*g.04*), subsection 95(2.2) and section 126.

(*c*) in respect of any time that is after March 28, 2012 and before ANNOUNCEMENT DATE as follows:

(1.1) For the purposes of subsection (1), the specified provisions are

(*a*) subsections (2), (5), 20(12) and 39(2.1), sections 90, 93 and 113, paragraphs 128.1(1)(*c.3*) and (*d*), section 212.3 and subsection 219.1(2);

(*b*) section 95 to the extent that section is applied for the purposes of the provisions referred to in paragraph (*a*);

(*c*) any regulations made for the purposes of the provisions referred to in paragraph (*a*); and

(*d*) paragraph 95(2)(*g.04*), subsection 95(2.2) and section 126.

(13) Subsection (6) applies to dividends received after November 1999.

(14) Subsection (7) and subsection 93.1(4) of the Act, as enacted by subsection (8), apply in respect of taxation years of a foreign affiliate of a taxpayer that end after ANNOUNCEMENT DATE.

(15) Subsections 93.1(5) and (6) of the Act, as enacted by subsection (8), apply in respect of taxation years of foreign affiliates of a taxpayer that end after ANNOUNCEMENT DATE. However, if the taxpayer elects in writing under this subsection in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, then

(*a*) subsections 93.1(5) and (6) of the Act, as enacted by subsection (8), apply in respect of taxation years of all foreign affiliates of the taxpayer that end after 2010; and

(*b*) subsection 93.1(6) of the Act, as enacted by subsection (8), is, in respect of taxation years of those foreign affiliates that end on or before ANNOUNCEMENT DATE, to be read without reference to its paragraph (*d*).

6. (1) The Act is amended by adding the following after section 93.1:

Australian trust

93.2 (1) In this section, "Australian trust", at any time, means a trust in respect of which the following apply at that time:

(*a*) in the absence of subsection (3), the trust would be described in paragraph (*h*) of the definition "exempt foreign trust" in subsection 94(1);

(*b*) section 94.2 would, in the absence of this section and if paragraph 94.2(1)(*b*) were read without reference to its subparagraph (ii), apply to a corporation resident in Canada in respect of the trust;

(*c*) the trust is resident in Australia;

(*d*) the interest of each beneficiary under the trust is described by reference to units of the trust; and

(*e*) the liability of each beneficiary under the trust is limited by the operation of any law governing the trust.

Conditions for subsection (3)

(2) Subsection (3) applies at any time to a corporation resident in Canada in respect of a trust if

(*a*) a non-resident corporation is at that time beneficially interested in the trust

(*b*) the non-resident corporation is at that time a controlled foreign affiliate (for the purposes of section 17) of the corporation;

(*c*) the trust is at that time an Australian trust; and

(*d*) unless the non-resident corporation first acquires a beneficial interest in the trust at that time, immediately before that time subsection (3) applied

(i) to the corporation in respect of the trust, or

(ii) to another corporation resident in Canada, that is at that time related to the corporation, in respect of the trust.

Australian trusts

(3) If this subsection applies at any time to a corporation resident in Canada in respect of a trust, the following rules apply at that time for the specified purposes:

(*a*) the trust is deemed to be a non-resident corporation that is resident in Australia and not to be a trust;

(*b*) each particular class of fixed interests (as defined in subsection 94(1)) in the trust is deemed to be a separate class of 100 issued shares, of the capital stock of the non-resident corporation, that have the same attributes as the interests of the particular class;

(*c*) each beneficiary under the trust is deemed to hold the number of shares of each separate class described in paragraph (*b*) equal to the proportion of 100 that the fair market value at that time of that beneficiary's fixed interests in the corresponding particular class

of fixed interests in the trust is of the fair market value at that time of all fixed interests in the particular class;

(*d*) the non-resident corporation is deemed to be controlled by the corporation resident in Canada — the controlled foreign affiliate of which is beneficially interested in the trust — that has the greatest equity percentage in the non-resident corporation; and

(*e*) section 94.2 does not apply to the corporation in respect of the trust.

Specified purposes

(4) For the purposes of subsection (3), the specified purposes are

(*a*) the determination of the Canadian tax results (as defined in subsection 261(1)) of the corporation resident in Canada referred to in subsection (3) for a taxation year in respect of shares of the capital stock of

(i) a controlled foreign affiliate, referred to in paragraph (2)(*b*), of the corporation, or

(ii) another controlled foreign affiliate of the corporation that has an equity percentage in the controlled foreign affiliate;

(*b*) the filing obligations of the corporation under section 233.4; and

(*c*) the application of section 212.3 in respect of an investment (as defined in subsection 212.3(10)) by the corporation.

Mergers

(5) For the purposes of this section,

(*a*) if there has been an amalgamation to which subsection 87(1) applies, the new corporation referred to in that subsection is deemed to be the same corporation as, and a continuation of, each predecessor corporation referred to in that subsection; and

(*b*) if there has been a winding-up to which subsection 88(1) applies, the parent referred to in that subsection is deemed to be the same corporation as, and a continuation of, the subsidiary referred to in that subsection.

Definitions

93.3 (1) The definitions in this subsection apply in this section.

“equity interest” « *participation* »

“equity interest”, in a non-resident corporation without share capital, means any right, whether absolute or contingent, conferred by the non-resident corporation to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, revenue or income of the non-resident corporation, but does not include a right as creditor.

“non-resident corporation without share capital” « *société non-résidente sans capital-actions* »

“non-resident corporation without share capital” means a non-resident corporation that, determined without reference to this section, does not have capital divided into shares.

Non-resident corporation without share capital

(2) For the purposes of this Act,

(*a*) equity interests in a non-resident corporation without share capital that have identical rights and obligations, determined without reference to proportionate differences in all of those rights and obligations, are deemed to be shares of a separate class of the capital stock of the corporation;

(*b*) the corporation is deemed to have 100 issued and outstanding shares of each class of its capital stock;

(*c*) each person or partnership that holds, at any time, an equity interest in a particular class of the capital stock of the corporation is deemed to own, at that time, that number of shares of the particular class that is equal to the proportion of 100 that

(i) the fair market value, at that time, of all the equity interests of the particular class held by the person or partnership

is of

(ii) the fair market value, at that time, of all the equity interests of the particular class; and

(*d*) shares of a particular class of the capital stock of the corporation are deemed to have rights and obligations that are the same as those of the corresponding equity interests.

(2) Section 93.2 of the Act, as enacted by subsection (1), is deemed to have come into force on ANNOUNCEMENT DATE. However, if a corporation resident in Canada and each other corporation resident in Canada that, at any time after 2005 and before ANNOUNCEMENT DATE, was both related to the corporation and had a controlled foreign affiliate (determined as if the reference in paragraph (*b*) of the definition "equity percentage" in subsection 95(4) of the Act to "any corporation" were "any corporation other than a corporation resident in Canada") that was beneficially interested in an Australian trust (as defined in subsection 93.2(1) of the Act, as enacted by subsection (1)), jointly elect in writing under this subsection and file the election with the Minister of National Revenue on or before the day that is one year after the day on which this Act receives royal assent, then in respect of each corporation that has elected under this subsection

(*a*) section 93.2 of the Act, as enacted by subsection (1), is deemed to have come into force on January 1, 2006; and

(*b*) paragraph (*b*) of the definition "Australian trust" in subsection 93.2(1) of the Act, as enacted by subsection (1), is, in respect of taxation years that end before March 5, 2010, to be read as follows:

(*b*) section 94.2 would, in the absence of this section, apply to a corporation resident in Canada in respect of the trust.

(3) Section 93.3 of the Act, as enacted by subsection (1), applies in respect of taxation years of non-resident corporations that end after 1994. However, if a taxpayer elects in writing under this subsection and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, then section 93.3 of the Act, as enacted by subsection (1), applies, in respect of the taxpayer, in respect of taxation years of non-resident corporations that end after ANNOUNCEMENT DATE.

7. (1) Paragraph (*a*) of the description of H in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

(*a*) if the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that would be, if the reference in subsection 93.1(1) to "corporation resident in Canada" were "taxpayer resident in Canada", a foreign affiliate of the taxpayer for the purposes of sections 93 and 113 at that particular time, then the portion of the amount of that dividend that is included in the value of A in respect of the affiliate for the year and that would be, if the reference in subsection 93.1(2) to "corporation resident in Canada" were "taxpayer resident in Canada", deemed by paragraph 93.1(2)(*a*) to have been received by the affiliate for the purposes of sections 93 and 113, and

(2) The definition "foreign accrual tax" in subsection 95(1) of the Act is replaced by the following:

"foreign accrual tax" « *impôt étranger accumulé* »

"foreign accrual tax" applicable to any amount included under subsection 91(1) in computing a taxpayer's income for a taxation year of the taxpayer in respect of a particular foreign affiliate of the taxpayer means, subject to subsection 91(4.1),

(*a*) the portion of any income or profits tax that may reasonably be regarded as applicable to that amount and that is paid by

(i) the particular affiliate,

(ii) another foreign affiliate (in paragraph (*b*) referred to as the "shareholder affiliate") of the taxpayer where

(A) the other affiliate has an equity percentage in the particular affiliate,

(B) the income or profits tax is paid to a country other than Canada,

(C) the other affiliate, and not the particular affiliate, is liable for that tax under the laws of that country, and

(D) neither the particular affiliate, nor any foreign affiliate of the taxpayer in which the other affiliate has an equity percentage and that has an equity percentage in the particular affiliate, has more than five members or shareholders, or

(iii) another foreign affiliate of the taxpayer in respect of a dividend received, directly or indirectly, from the particular affiliate, if that other affiliate has an equity percentage in the particular affiliate, and

(*b*) any amount prescribed in respect of the particular affiliate or the shareholder affiliate, as the case may be, to be foreign accrual tax applicable to that amount;

(3) Subparagraph 95(2)(*a*)(i) of the Act is replaced by the following:

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities of the particular foreign affiliate, or of a partnership of which the particular foreign affiliate is a qualifying member throughout each fiscal period of the partnership that ends in the year, that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year,

(II) a life insurance corporation that is resident in Canada throughout the year and that is

1. the taxpayer,
2. a person who controls the taxpayer,
3. a person controlled by the taxpayer, or
4. a person controlled by a person who controls the taxpayer,

(III) the particular foreign affiliate or a partnership of which the particular foreign affiliate is a qualifying member throughout each fiscal period of the partnership that ends in the year, or

(IV) a partnership of which another foreign affiliate of the taxpayer, in respect of which the taxpayer has a qualifying interest throughout the year, is a qualifying member throughout each fiscal period of the partnership that ends in the year, and

(B) if any of subclauses (A)(I), (II) and (IV) applies, would be included in computing the amount prescribed to be the earnings or loss, from an active business carried on in a country other than Canada, of

(I) that other foreign affiliate referred to in subclause (A)(I) or (IV), if the income were earned by it, or

(II) the life insurance corporation referred to in subclause (A)(II) if that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it,

(4) Clause 95(2)(*a*)(ii)(D) of the Act is amended by adding "and" at the end of subclause (III) and by replacing subclauses (IV) and (V) by the following:

(IV) in respect of each of the second affiliate and the third affiliate, for each of their taxation years (each of which is referred to in this subclause as a "relevant taxation year") that end in the year, either

1. that affiliate is subject to income taxation in a country other than Canada in that relevant taxation year, or

2. the members or shareholders of that affiliate (which, for the purposes of this sub-subclause, includes a person that has, directly or indirectly, an interest, or for civil law a right, in a share of the capital stock of, or in an equity interest in, the affiliate) at the end of that relevant taxation year are subject to income taxation in a country other than Canada on, in aggregate, all or substantially all of the income of that affiliate for that relevant taxation year in their taxation years in which that relevant taxation year ends,

(5) The portion of clause 95(2)(*b*)(ii)(B) of the Act before subclause (I) is replaced by the following:

(B) a relevant person who does not deal at arm's length with

(6) The portion of paragraph 95(2)(*n*) of the Act before subparagraph (i) is replaced by the following:

(*n*) in applying paragraphs (*a*) and (*g*), paragraph (*b*) of the description of A in the formula in the definition "foreign accrual property income" in subsection (1), subsections (2.2), (2.21) and 93.1(5) and paragraph (*d*) of the definition "exempt earnings", and paragraph (*c*) of the definition "exempt loss", in subsection 5907(1) of the *Income Tax Regulations*, a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada, and a foreign affiliate of the particular corporation in respect of which the particular corporation has a qualifying interest, if at that time

(7) Subparagraph 95(2)(*u*)(i) of the Act, as it read immediately before it was repealed by subsection 20(21) of the *Technical Tax Amendments Act, 2012*, is replaced by the following:

(i) the entity is deemed to be a member of the other partnership for the purposes of

(A) subparagraph (ii),

(B) applying the reference, in paragraph (*a*), to "a member" of a partnership,

(C) paragraphs (*a.1*) to (*b*), (*g.03*), (*j.1*) to (*k.1*) and (*o*),

(D) paragraphs (*b*) and (*c*) of the definition "investment business" in subsection (1),

(E) the definition "taxable Canadian business" in subsection (1), and

(F) subsection 93.1(2), and

(8) Paragraph 95(2)(*u*) of the Act, as amended by subsection (7), is repealed.

(9) Paragraph (*b*) of the definition "excluded income" and "excluded revenue" in subsection 95(2.5) of the Act is replaced by the following:

(*b*) derived directly or indirectly from a lease obligation of a person (other than the taxpayer or a person that does not deal at arm's length with the taxpayer) resident in Canada relating to property used by the person in the course of carrying on a business through a permanent establishment outside Canada,

(10) The definition "excluded income" and "excluded revenue" in subsection 95(2.5) of the Act is amended by striking out "or" at the end of paragraph (*b*), by adding "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) included in computing the affiliate's income or loss from an active business for the year because of subparagraph (2)(*a*)(ii);

(11) Section 95 of the Act is amended by adding the following after subsection (3.01):

Rules for clause (2)(*b*)(ii)(B)

(3.02) For the purposes of clause (2)(*b*)(ii)(B),

(*a*) a relevant person is

(i) a person resident in Canada, or

(ii) a non-resident person if the non-resident person performs the services referred to in subparagraph (2)(*b*)(ii) in the course of a business (other than a treaty-protected business) carried on in Canada; and

(*b*) any portion of a business carried on by a non-resident person that is carried on in Canada is deemed to be a business that is separate from any other portion of the business carried on by the person.

(12) Section 95 of the Act is amended by adding the following after subsection (3.1):

Contract manufacturing

(3.2) For the purposes of clause (2)(*a.1*)(ii)(A), property of a particular foreign affiliate of a taxpayer is deemed to have been manufactured by the particular affiliate in a particular country if the property is

(*a*) developed and designed by the particular affiliate in the particular country in the course of an active business carried on by the particular affiliate in the particular country; and

(*b*) manufactured, produced or processed outside the particular country by another foreign affiliate of the taxpayer, during a period throughout which the taxpayer has a qualifying interest in the other affiliate,

(i) under a contract between the particular affiliate and the other affiliate, and

(ii) in accordance with specifications provided by the particular affiliate.

(13) Subsection (1) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2006.

(14) Subsection (2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010.

(15) Subsection (3) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE. However, if the taxpayer elects in writing under this subsection in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent,

(*a*) subsection (3) applies in respect of taxation years of all foreign affiliates of the taxpayer that end after 2007; and

(*b*) subparagraph 95(2)(*a*)(i) of the Act, as enacted by subsection (3), is to be read as follows in respect of taxation years of foreign affiliates of the taxpayer that end after 2007 and begin before 2009:

(i) the income or loss

(A) is derived by the particular foreign affiliate from activities of the particular foreign affiliate, or of a partnership of which the particular foreign affiliate is a qualifying member throughout each fiscal period of the partnership that ends in the year, that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by

(I) another corporation

1. that is a non-resident corporation to which the particular foreign affiliate and the taxpayer are related throughout the year, or

2. that is another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year,

(II) a life insurance corporation that is resident in Canada throughout the year and that is

1. the taxpayer,

2. a person who controls the taxpayer,

3. a person controlled by the taxpayer, or

4. a person controlled by a person who controls the taxpayer,

(III) the particular foreign affiliate or a partnership of which the particular foreign affiliate is a qualifying member throughout each fiscal period of the partnership that ends in the year, or

(IV) a partnership of which another foreign affiliate of the taxpayer, in respect of which the taxpayer has a qualifying interest throughout the year, is a qualifying member throughout each fiscal period of the partnership that ends in the year, and

(B) if any of subclauses (A)(I), (II) and (IV) applies, would be included in computing the amount prescribed to be the earnings or loss, from an active business carried on in a country other than Canada, of

(I) that other foreign affiliate referred to in sub-subclause (A)(I)2 or subclause (A)(IV), if the income were earned by it, or

(II) the non-resident corporation referred to in sub-subclause (A)(I)1 or the life insurance corporation referred to in subclause (A)(II), if that non-resident corporation or that life insurance corporation were a foreign affiliate of the taxpayer and the income were earned by it,

(16) Subsection (4) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after ANNOUNCEMENT DATE.

(17) Subsections (5) and (11) apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE. However, if a taxpayer elects in writing under this subsection in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, then subsections (5) and (11) apply in respect of taxation years of all foreign affiliates of the taxpayer that begin after February 27, 2004.

(18) Subsection (6) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after ANNOUNCEMENT DATE. However, if a taxpayer elects under subsection 5(15), subsection (6) applies in respect of taxation years of all foreign affiliates of the taxpayer that end after 2010.

(19) Subsection (7) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 1999. However, if a taxpayer has not elected under paragraph 70(29)(*b*) of the *Technical Tax Amendments Act, 2012*, then subparagraph 95(2)(*u*)(i) of the Act, as enacted by subsection (7), is to be read as follows in respect of taxation years of the foreign affiliate that end after 1999 and begin before December 21, 2002:

(i) the entity is deemed to be a member of the other partnership for the purposes of

(A) subparagraph (ii),

(B) applying the reference, in paragraph (*a*), to "a member" of a partnership,

(C) paragraphs (*a.1*) to (*b*), (*g.03*) and (*o*),

(D) paragraphs (*b*) and (*c*) of the definition "investment business" in subsection (1), and

(E) subsection 93.1(2), and

(20) Subsection (8) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after August 19, 2011.

(21) Subsection (9) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE. However, if a taxpayer elects in writing under this subsection in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on

which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, then subsection (9) applies in respect of taxation years of foreign affiliates of the taxpayer,

(*a*) if the taxpayer has elected under subsection 73(17) of the *Income Tax Amendments Act, 2000*, that begin after 1994, or

(*b*) in any other case, that begin after 1999.

(22) Subsection (10) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after February 27, 2004.

(23) Subsection (12) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2008.

8. Section 241 of the Act is amended by adding the following after subsection (9.4):

Serious offences

(9.5) An official may provide to a law enforcement officer of an appropriate police organization

(*a*) taxpayer information, if the official has reasonable grounds to believe that the information will afford evidence of an act or omission in or outside of Canada that if committed in Canada would be

(i) an offence under any of

(A) section 3 of the *Corruption of Foreign Public Officials Act*,

(B) sections 119 to 121, 123 to 125 and 426 of the *Criminal Code*,

(C) section 465 of the *Criminal Code* as it relates to an offence described in clause (B), and

(D) sections 144, 264, 271, 279, 279.02, 281 and 333.1, paragraphs 334(*a*) and 348(1)(*e*) and sections 349, 435 and 462.31 of the *Criminal Code*,

(ii) a terrorism offence or a criminal organization offence, as those terms are defined in section 2 of the *Criminal Code*, for which the maximum term of imprisonment is 10 years or more, or

(iii) an offence

(A) that is punishable by a minimum term of imprisonment,

(B) for which the maximum term of imprisonment is 14 years or life, or

(C) for which the maximum term of imprisonment is 10 years and that

(I) resulted in bodily harm,

(II) involved the import, export, trafficking or production of drugs, or

(III) involved the use of a weapon; and

(*b*) information setting out the reasonable grounds referred to in paragraph (*a*), to the extent that any such grounds rely on information referred to in that paragraph.

9. (1) The portion of the definition "international traffic" in subsection 248(1) of the Act before paragraph (*a*) is replaced by the following:

"international traffic"
« *transport international* »

"international traffic" means, in respect of a person or partnership carrying on the business of transporting passengers or goods, a voyage made in the course of that business if the principal purpose of the voyage is to transport passengers or goods

(2) Subparagraph (*e*)(i) of the definition "taxable Canadian property" in subsection 248(1) of the Act is amended by striking out "and" at the end of clause (A) and by adding the following after clause (B):

(C) partnerships in which the taxpayer or a person referred to in clause (B) holds a membership interest directly or indirectly through one or more partnerships, and

(3) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

"international shipping"
« *transport maritime international* »

"international shipping" means the operation of ships owned or leased by a person or partnership that are used, either directly or as part of a pooling arrangement, primarily in transporting passengers or goods in international traffic — determined as if, except where paragraph (*c*) of the definition "international traffic" in this subsection applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada — including activities incident to or pertaining to the operation of those ships, but does not include

(*a*) the offshore storing or processing of goods,

(*b*) fishing,

(*c*) laying cable,

(*d*) salvaging,

(*e*) towing,

(*f*) tug-boating,

(*g*) offshore oil and gas activities, including exploration and drilling activities,

(*h*) dredging, or

(*i*) leasing a ship by a lessor to a lessee that has complete possession, control and command of the ship, unless the lessor or a corporation, trust or partnership affiliated with the lessor has an eligible interest (as defined in subsection 250(6.03)) in the lessee;

(4) Subsections (1) and (3) apply to taxation years that begin after ANNOUNCEMENT DATE.

(5) Subsection (2) applies in determining on or after ANNOUNCEMENT DATE whether a property is taxable Canadian property of a taxpayer.

10. (1) The portion of subsection 250(6) of the Act before paragraph (*c*) is replaced by the following:

Residence of international shipping corporation

(6) For the purposes of this Act, a corporation that was incorporated or otherwise formed under the laws of a country other than Canada or of a state, province or other political subdivision of such a country is deemed to be resident in that country throughout a taxation year and not to be resident in Canada at any time in the year, if

(*a*) the corporation

(i) has international shipping as its principal business in the year, or

(ii) holds eligible interests in one or more eligible entities throughout the year and at no time in the year is the total of the cost amounts to it of all those eligible interests less than 50% of the total of the cost amounts to it of all its property;

(*b*) all or substantially all the corporation's gross revenue for the year consists of any combination of

(i) gross revenue from international shipping,

(ii) gross revenue from an eligible interest held by it in an eligible entity, and

(iii) interest on a debt owing by an eligible entity in which an eligible interest is held by it; and

(2) Section 250 of the Act is amended by adding the following after subsection (6):

Partner's gross revenue

(6.01) For the purposes of paragraph (6)(*b*), an amount of profit allocated from a partnership to a member of the partnership for a taxation year is deemed to be gross revenue of the member from member's interest in the partnership for the year.

Service providers

(6.02) Subsection (6.03) applies to a corporation, trust or partnership (in this subsection and subsection (6.03) referred to as the "relevant entity") for a taxation year if

(*a*) the relevant entity does not satisfy the condition in subparagraph (6)(*a*)(i), determined without reference to subsection (6.03);

(*b*) all or substantially all the gross revenue of the relevant entity for the year is from the provision of services to one or more eligible entities, other than services described in paragraphs (*a*) to (*h*) of the definition "international shipping" in subsection 248(1);

(*c*) an eligible interest in each eligible entity referred to in paragraph (*b*) is held throughout the year by

(i) the relevant entity,

(ii) one or more persons related to the relevant entity, or

(iii) any combination of the relevant entity and persons related to the relevant entity; and

(*d*) all or substantially all the shares of the capital stock of, or interests in, the relevant entity are held throughout the year by one or more corporations, trusts or partnerships that would be eligible entities if they did not own shares of, or interests in, the relevant entity.

Service providers

(6.03) If this subsection applies for a taxation year, then for the purposes of subsection (6) and paragraph 81(1)(*c*),

(*a*) the relevant entity is deemed to have international shipping as its principal business in the year; and

(*b*) the gross revenue described in paragraph (6.02)(*b*) is deemed to be gross revenue from international shipping.

Definitions

(6.04) The following definitions apply in this subsection and subsections (6) to (6.03).

"eligible interest" « *participation admissible* »

"eligible interest" means

(*a*) in respect of a corporation, shares of the capital stock of the corporation that

(i) give the holders thereof not less than 25% of the votes that could be cast at an annual meeting of the shareholders of the corporation, and

(ii) have a fair market value that is not less than 25% of the fair market value of all the issued and outstanding shares of the capital stock of the corporation;

(*b*) in respect of a trust, an interest as a beneficiary (as defined in subsection 108(1)) under the trust with a fair market value that is not less than 25% of the fair market value of all the interests of all beneficiaries under the trust; and

(*c*) in respect of a partnership, an interest as a member of the partnership with a fair market value that is not less than 25% of the fair market value of all the membership interests in the partnership.

"eligible entity" « *entité admissible* »

"eligible entity", for a taxation year, means

(*a*) a corporation that is deemed by subsection (6) to be resident in a country other than Canada for the year; or

(*b*) a partnership or trust, if

(i) it satisfies the conditions in subparagraph (6)(*a*)(i) or (ii), and

(ii) all or substantially all its gross revenue for the year consists of any combination of amounts described in any of subparagraphs (6)(*b*)(i) to (iii).

(3) Subsections (1) and (2) apply to taxation years that begin after ANNOUNCEMENT DATE.

11. (1) Paragraph 261(3)(*b*) of the Act is replaced by the following:

(*b*) the taxpayer has elected that subsection (5) apply to the taxpayer and has filed that election with the Minister in prescribed form and manner on or before the day that is 60 days after the first day of the particular taxation year;

(2) Subparagraph 261(6)(*a*)(iii) of the Act is replaced by the following:

(iii) begins on or after the day that is 60 days after the first day of the particular taxpayer's first functional currency year;

(3) Clause 261(6.1)(*a*)(i)(C) of the Act is replaced by the following:

(C) begins on or after the day that is 60 days after the first day of the particular taxpayer's first functional currency year,

(4) Clause 261(11)(*b*)(i)(A) of the Act is replaced by the following:

(A) the total of the taxes payable by the taxpayer under Parts I, VI, VI.1 and XIII.1 for the particular taxation year, as determined in the taxpayer's elected functional currency

(5) The portion of paragraph 261(11)(*c*) of the Act before subparagraph (i) is replaced by the following:

(*c*) for the purposes of determining any amount (other than tax) that is payable by the taxpayer under Part I, VI, VI.1 or XIII.1 for the particular taxation year, the taxpayer's tax payable under the Part for the particular taxation year is deemed to be equal to the total of

(6) Paragraph 261(11)(*d*) of the Act is replaced by the following:

(*d*) amounts of tax that are payable under this Act (except under Parts I, VI, VI.1 and XIII.1) by the taxpayer for the particular taxation year are to be determined by converting those amounts, as determined in the taxpayer's elected functional currency, to Canadian currency using the relevant spot rate for the day on which those amounts are due;

(7) Section 261 of the Act is amended by adding the following after subsection (17):

Amalgamation — deemed application of subsection (5)

(17.1) Notwithstanding subsection (3), if each predecessor corporation in respect of an amalgamation (within the meaning assigned by subsection 87(1)) has the same elected functional currency for its last taxation year, then, unless a predecessor corporation has filed a notice of revocation under subsection (4) on or before the day that is six months before the end of its last taxation year,

(*a*) the new corporation formed as a result of the amalgamation is deemed to have made an election under paragraph (3)(*b*) and to have filed that election on the first day of its first taxation year; and

(*b*) that elected functional currency is deemed to be the new corporation's functional currency for its first taxation year.

(8) Subsections (1) to (3) apply to taxation years that begin after ANNOUNCEMENT DATE.

(9) Subsections (4) to (6) apply to taxation years that begin after December 13, 2007.

(10) Subsection (7) applies in respect of amalgamations that occur after ANNOUNCEMENT DATE.

Income Tax Regulations

12. (1) Subsection 102(6) of the *Income Tax Regulations* and the heading before it are replaced by the following:

(6) Despite subsection (1), no amount shall be deducted or withheld in the year by an employer from an amount determined in accordance with subparagraph 110(1)(*f*)(iii), (iv) or (v) of the Act.

(2) Subsection (1) applies to amounts paid on or after ANNOUNCEMENT DATE.

13. (1) Subparagraph (*a*)(iii) of the definition “earnings” in subsection 5907(1) of the Regulations is replaced by the following:

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 18(4), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

(2) The portion of paragraph (*a*) of the definition “exempt earnings” in subsection 5907(1) of the Regulations after subparagraph (iii) is repealed.

(3) Clause (*d*)(ii)(A) of the definition “exempt earnings” in subsection 5907(1) of the Regulations is replaced by the following:

(A) income that is required to be included in computing the particular affiliate’s income or loss from an active business for the year under subparagraph 95(2)(*a*)(i) of the Act and that would

(I) if earned by the other foreign affiliate referred to in subclause 95(2)(*a*)(i)(A)(I) or (IV) of the Act, be included in computing the exempt earnings or exempt loss of the other foreign affiliate for a taxation year,

(II) if earned by the life insurance corporation referred to in subclause 95(2)(*a*)(i)(A)(II) of the Act and based on the assumptions contained in subclause 95(2)(*a*)(i)(B)(II) of the Act, be included in computing the exempt earnings or exempt loss of the life insurance corporation for a taxation year, or

(III) if earned from the active business activities carried on by the particular affiliate, or the partnership referred to in subclause 95(2)(*a*)(i)(A)(III), be included in computing the exempt earnings or exempt loss of the particular affiliate for a taxation year,

(4) Subclause (*d*)(ii)(E)(I) of the definition “exempt earnings” in subsection 5907(1) of the Regulations is replaced by the following:

(I) the second and third affiliates referred to in subclause 95(2)(*a*)(ii)(D)(IV) of the Act are each resident in a designated treaty country throughout their relevant taxation years (within the meaning assigned by that subclause), and

(5) Subparagraph (vi) of the description of A in the definition “exempt surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(vi) an amount added to the exempt surplus of the subject affiliate or deducted from its exempt deficit in the period and before the particular time under subsection (1.092), (1.1) or (1.2), or

(6) Subparagraph (vi) of the description of B in the definition “exempt surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(vi) an amount, in the period and before the particular time, deducted from the exempt surplus of the subject affiliate or added to its exempt deficit under subsection (1.092), (1.1) or (1.2); (*surplus exonéré*)

(7) Subparagraph (v) of the description of A in the definition “hybrid surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(v) an amount added to the hybrid surplus of the subject affiliate or deducted from its hybrid deficit in the period and before the particular time under subsection (1.092), (1.1) or (1.2), and

(8) Subparagraph (vii) of the description of B in the definition “hybrid surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(vii) an amount deducted from the hybrid surplus of the subject affiliate or added to its hybrid deficit in the period and before the particular time under subsection (1.092), (1.1) or (1.2); (*surplus hybride*)

(9) Subparagraph (iv) of the description of A in the definition “hybrid underlying tax” in subsection 5907(1) of the Regulations is replaced by the following:

(iv) the amount by which the subject affiliate’s hybrid underlying tax is required to be increased in the period and before the particular time under subsection (1.092), (1.1) or (1.2),

(10) Subparagraph (iv) of the description of B in the definition “hybrid underlying tax” in subsection 5907(1) of the Regulations is replaced by the following:

(iv) the amount by which the subject affiliate’s hybrid underlying tax is required to be decreased in the period and before the particular time under subsection (1.092), (1.1) or (1.2); (*montant intrinsèque d’impôt hybride*)

(11) Subparagraph (iv) of the description of A in the definition “taxable surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(iv) an amount added to the taxable surplus of the subject affiliate or deducted from its taxable deficit in the period and before the particular time under subsection (1.092), (1.1) or (1.2),

(12) Subparagraph (vi) of the description of B in the definition “taxable surplus” in subsection 5907(1) of the Regulations is replaced by the following:

(vi) an amount, in the period and before the particular time, deducted from the taxable surplus of the subject affiliate or added to its taxable deficit under subsection (1.092), (1.1) or (1.2); (*surplus imposable*)

(13) Subparagraph (v) of the description of A in the definition “underlying foreign tax” in subsection 5907(1) of the Regulations is replaced by the following:

(v) the amount by which the subject affiliate's underlying foreign tax is required to be increased in the period and before the particular time under subsection (1.092), (1.1) or (1.2),

(14) Subparagraph (iv) of the description of B in the definition "underlying foreign tax" in subsection 5907(1) of the Regulations is replaced by the following:

(iv) the amount by which the subject affiliate's underlying foreign tax is required to be decreased in the period and before the particular time under subsection (1.092), (1.1) or (1.2); (*montant intrinsèque d'impôt étranger*)

(15) The portion of subsection 5907(1.03) of the Regulations before paragraph (*a*) is replaced by the following:

(1.03) For the purposes of the description of A in the definition "underlying foreign tax" in subsection (1), income or profits tax paid in respect of the taxable earnings of a particular foreign affiliate of a particular corporation or in respect of a dividend received by the particular affiliate from another foreign affiliate of the particular corporation, and amounts by which the underlying foreign tax of the particular affiliate or any other foreign affiliate of the particular corporation is required under any of subsections (1.092), (1.1) and (1.2) to be increased, is not to include any income or profits tax paid, or amounts by which the underlying foreign tax would otherwise be so required to be increased, as the case may be, in respect of the foreign accrual property income of the particular affiliate for a taxation year of the particular affiliate if, at any time in the year, a specified owner in respect of the particular corporation is considered,

(16) Section 5907 of the Regulations is amended by adding the following after subsection (1.09):

(1.091) Subsection (1.092) applies in respect of income or profits tax paid by, or refunded to, a foreign affiliate (in this subsection and subsection (1.092) referred to as the "shareholder affiliate") of a taxpayer for a taxation year of the shareholder affiliate in respect of the income or profits, or loss, as the case may be, for the year of another foreign affiliate (in this subsection and subsection (1.092) referred to as the "transparent affiliate") of the taxpayer if

(*a*) the shareholder affiliate has an equity percentage in the transparent affiliate;

(*b*) the income or profits tax is paid to, or refunded by, a country other than Canada; and

(*c*) the shareholder affiliate, and not the transparent affiliate, is liable for that tax, or entitled to that refund, for that year under the laws of that country.

(1.092) If this subsection applies, then for the purposes of this Part,

(*a*) any income or profits tax described in subsection (1.091) that is paid by, or refunded to, the shareholder affiliate for the year is deemed not to have been so paid or refunded, as the case may be,

(*b*) any income or profits tax that would have been payable by the transparent affiliate for the year — if the transparent affiliate had no other taxation year and had, instead of the shareholder affiliate, been liable for the tax — is at the end of the year,

(i) to the extent that the tax would otherwise have reduced the net earnings included in the exempt earnings of the transparent affiliate, to be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the shareholder affiliate,

(ii) to the extent that the tax would otherwise have reduced the hybrid surplus or increased the hybrid deficit, as the case may be, of the transparent affiliate, to be

(A) deducted from the hybrid surplus or added to the hybrid deficit, as the case may be, of the shareholder affiliate, and

(B) added to the hybrid underlying tax of the shareholder affiliate, and

(iii) to the extent that the tax would otherwise have reduced the net earnings included in the taxable earnings of the transparent affiliate, to be

(A) deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the shareholder affiliate, and

(B) added to the underlying foreign tax of the shareholder affiliate;

(*c*) any income or profits tax that would have been refunded to the transparent affiliate for the year — if the transparent affiliate had no other taxation year and had, instead of the shareholder affiliate, been entitled to the refund — is at the end of the year,

(i) to the extent that the refund would otherwise have increased the net earnings included in the exempt earnings of the transparent affiliate, to be added to the exempt surplus or deducted from the exempt deficit, as the case may be, of the shareholder affiliate,

(ii) to the extent that the refund would otherwise have increased the hybrid surplus or reduced the hybrid deficit, as the case may be, of the transparent affiliate, to be

(A) added to the hybrid surplus or deducted from the hybrid deficit, as the case may be, of the shareholder affiliate, and

(B) deducted from the hybrid underlying tax of the shareholder affiliate, and

(iii) to the extent that the refund would otherwise have increased the net earnings included in the taxable earnings of the transparent affiliate, to be

(A) added to the taxable surplus or deducted from the taxable deficit, as the case may be, of the shareholder affiliate, and

(B) deducted from the underlying foreign tax of the shareholder affiliate.

(17) The portion of subsection 5907(1.1) of the Regulations before paragraph (*a*) is replaced by the following:

(1.1) For the purposes of this Part, if, under the income tax laws of a country other than Canada, a group (in this subsection referred to as the “consolidated group”) of two or more foreign affiliates of a corporation resident in Canada determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis and one of the affiliates (in this subsection referred to as the “primary affiliate”) is responsible for paying, or claiming a refund of, such tax on behalf of itself and

the other affiliates (in this subsection referred to as the “secondary affiliates”) that are members of the consolidated group, the following rules apply:

(18) Section 5907 of the Regulations is amended by adding the following after subsection (1.1):

(1.11) For the purposes of subsection (1.1), a non-resident corporation is deemed to be, at any time, a foreign affiliate of a particular corporation resident in Canada if at that time the non-resident corporation is a foreign affiliate of another corporation that is resident in Canada and is related (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) to the particular corporation.

(19) Paragraphs 5907(1.3)(*a*) and (*b*) of the Regulations are replaced by the following:

(*a*) if, under the income tax laws of the country in which the particular affiliate or a shareholder affiliate of the particular affiliate, as the case may be, referred to in that paragraph is resident, the particular affiliate, or shareholder affiliate, and one or more other corporations, each of which is resident in that country, determine their liabilities for income or profits tax payable to the government of that country for a taxation year on a consolidated or combined basis, then any amount paid by the particular affiliate, or shareholder affiliate, to any of those other corporations to the extent that the amount paid may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular affiliate, or shareholder affiliate, in respect of a particular amount that is included under subsection 91(1) of the Act in computing the taxpayer’s income for a taxation year of the taxpayer in respect of the particular affiliate, if the tax liability of the particular affiliate, or shareholder affiliate, and those other corporations had not been determined on a consolidated or combined basis, is prescribed to be foreign accrual tax applicable to the particular amount; and

(*b*) if, under the income tax laws of the country in which the particular affiliate or a shareholder affiliate of the particular affiliate, as the case may be, referred to in that paragraph is resident, the particular affiliate, or shareholder affiliate, deducts, in computing its income or profits subject to tax in that country for a taxation year, an amount in respect of a loss of another corporation resident in that country, then any amount paid by the particular affiliate, or shareholder affiliate, to that other corporation to the extent that the amount paid may reasonably be regarded as being in respect of income or profits tax that would otherwise have been payable by the particular affiliate, or shareholder affiliate, in respect of a particular amount that is included under subsection 91(1) of the Act in computing the taxpayer’s income for a taxation year of the taxpayer in respect of the particular affiliate, if the tax liability of the particular affiliate, or shareholder affiliate, had been determined without deducting the loss of the other corporation, is prescribed to be foreign accrual tax applicable to the particular amount.

(20) Subsections 5907(1.5) and (1.6) of the Regulations are replaced by the following:

(1.5) If subsection (1.4) applied to reduce an amount that would, in the absence of subsection (1.4), be prescribed by paragraph (1.3)(*a*) to be foreign accrual tax applicable to an

amount (referred to in this subsection as the "FAPI amount") included under subsection 91(1) of the Act in computing the taxpayer's income for a taxation year (referred to in subsection (1.6) as the "FAPI year") of the taxpayer in respect of the particular affiliate referred to in paragraph (1.3)(*a*), then an amount equal to that reduction is, for the purposes of paragraph (*b*) of the definition "foreign accrual tax" in subsection 95(1) of the Act, prescribed to be foreign accrual tax applicable to the FAPI amount in the taxpayer's taxation year that includes the last day of the designated taxation year, if any, of the particular affiliate or the shareholder affiliate referred to in paragraph (1.3)(*a*), as the case may be.

(1.6) For the purposes of subsection (1.5), the designated taxation year of the particular affiliate or the shareholder affiliate, as the case may be, is a particular taxation year of the particular affiliate, or the shareholder affiliate, if

(*a*) in the particular year, or in the taxation year of the particular affiliate or shareholder affiliate (referred to in this paragraph as the "PATY") ending in the FAPI year and one or more taxation years of the particular affiliate (or shareholder affiliate) each of which follows the PATY and the latest of which is the particular year, all losses of the particular affiliate (or shareholder affiliate) and the other corporations referred to in paragraph (1.3)(*a*) for their taxation years ending in the FAPI year would, on the assumption that the particular affiliate (or shareholder affiliate) and each of those other corporations had no foreign accrual property income for any taxation year, reasonably be considered to have been fully deducted (under the tax laws referred to in paragraph (1.3)(*a*)) against income (as determined under those tax laws) of the particular affiliate (or shareholder affiliate) or those other corporations;

(*b*) the taxpayer demonstrates that no other losses of the particular affiliate (or shareholder affiliate) or those other corporations for any taxation year were, or could reasonably have been, deducted under those tax laws against that income; and

(*c*) the last day of the particular year occurs in one of the five taxation years of the taxpayer that immediately follow the FAPI year.

(21) Subsection (1) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE. However,

(*a*) if a taxpayer elects in writing under this paragraph in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, subsection (1) applies in respect of taxation years of all foreign affiliates of the taxpayer that begin either after 1994 or after December 20, 2002, depending on which is specified by the taxpayer in the election;

(*b*) if a taxpayer elects in writing under this paragraph in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that

is one year after the day on which this Act receives royal assent, the amounts of exempt surplus, exempt deficit, taxable surplus, taxable deficit, underlying foreign tax and, if applicable, hybrid surplus, hybrid deficit and hybrid underlying tax, of all foreign affiliates of the taxpayer for applicable taxation years of the affiliates in which those amounts are relevant are to be determined as if subsection (1) applied in respect of taxation years of all foreign affiliates of the taxpayer that end after 1975; and

(*c*) for the purposes of paragraph (*b*), the applicable taxation years of the affiliates are

(i) if the taxpayer has not elected under paragraph (*a*), taxation years of all foreign affiliates of the taxpayer that begin after ANNOUNCEMENT DATE, and

(ii) if the taxpayer has elected under paragraph (*a*), taxation years of all foreign affiliates of the taxpayer that begin either after 1994 or after December 20, 2002, depending on which is specified in the election made under that paragraph.

(22) Subsection (2) applies in respect of dispositions after 2012.

(23) Subsection (3) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after ANNOUNCEMENT DATE. However, if the taxpayer elects under subsection 7(15),

(*a*) subsection (3) applies in respect of taxation years of all foreign affiliates of the taxpayer that end after 2007; and

(*b*) clause (*d*)(ii)(A) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (3), is to be read as follows in respect of taxation years of foreign affiliates of the taxpayer that end after 2007 and begin before 2009:

(A) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(i) of the Act and that would

(I) if earned by the non-resident corporation referred to in sub-subclause 95(2)(*a*)(i)(A)(I)1 of the Act and based on the assumptions contained in subclause 95(2)(*a*)(i)(B)(II) of the Act, be included in computing the exempt earnings or exempt loss of the non-resident corporation for a taxation year,

(II) if earned by the other foreign affiliate referred to in sub-subclause 95(2)(*a*)(i)(A)(I)2 or subclause 95(2)(*a*)(i)(A)(IV) of the Act, be included in computing the exempt earnings or exempt loss of the other foreign affiliate for a taxation year,

(III) if earned by the life insurance corporation referred to in subclause 95(2)(*a*)(i)(A)(II) of the Act and based on the assumptions contained in subclause 95(2)(*a*)(i)(B)(II) of the Act, be included in computing the exempt earnings or exempt loss of the life insurance corporation for a taxation year, or

(IV) if earned from the active business activities carried on by the particular affiliate, or the partnership referred to in subclause 95(2)(*a*)(i)(A)(III) of the Act, be included in computing the exempt earnings or exempt loss of the particular affiliate for a taxation year,

(24) Subsection (4) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after ANNOUNCEMENT DATE.

(25) Subsections (5), (6), (11) to (14), (16), (19) and (20) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010. However, if a taxpayer elects in writing under this subsection in respect of all its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act receives royal assent and the day that is one year after the day on which this Act receives royal assent, those subsections apply in respect of taxation years of all foreign affiliates of the taxpayer that end on or after ANNOUNCEMENT DATE.

(26) Subsections (7) to (10) are deemed to have come into force on August 20, 2011. However, if a taxpayer elects under subsection (25), subsections (7) to (10) are instead deemed to have come into force, in respect of the taxpayer, on ANNOUNCEMENT DATE.

(27) Subsection (15) applies to income or profits tax paid, amounts referred to in subsections 5907(1.1) and (1.2) of the Regulations and amounts referred to in subsection 5907(1.092) of the Regulations, as enacted by subsection (16), in respect of the income of a foreign affiliate of a corporation for taxation years of the foreign affiliate that end in taxation years of the corporation that end after March 4, 2010. However,

(*a*) if the taxpayer does not elect under subsection (25), for taxation years of the corporation that end before October 25, 2012, the portion of subsection 5907(1.03) of the Regulations before paragraph (*a*), as enacted by subsection (15), is to be read as follows:

(1.03) For the purposes of the description of A in the definition "underlying foreign tax" in subsection (1), income or profits tax paid in respect of the taxable earnings of a particular foreign affiliate of a corporation or in respect of a dividend received by the particular affiliate from another foreign affiliate of the corporation, and amounts by which the underlying foreign tax of the particular affiliate, or any other foreign affiliate of the corporation, is required under any of subsections (1.092), (1.1) and (1.2) to be increased, is not to include any income or profits tax paid, or amounts by which the underlying foreign tax would otherwise be so required to be increased, as the case may be, in respect of the foreign accrual property income of the particular affiliate that is earned during a period in which

(*b*) if the taxpayer elects under subsection (25), subsection (15) instead applies to income or profits tax paid, amounts referred to in subsections 5907(1.1) and (1.2) of the Regulations, and amounts referred to in subsection 5907(1.092) of the Regulations, as enacted by subsection (16), in respect of the income of a foreign affiliate of

a corporation for taxation years of the foreign affiliate that end in taxation years of the corporation that end on or after ANNOUNCEMENT DATE.

(28) Subsections (17) and (18) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after 2003.

14. Any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that ends before the day on which this Act receives royal assent that would, in the absence of this section, be precluded because of the time references in subsection 152(4) of the Act is to be made to the extent necessary to take into account sections 1, 5 to 7, and 11 to 13.

PART 2

EXCISE DUTIES AND SALES TAX

EXCISE ACT, 2001

15. Section 211 of the *Excise Act, 2001* is amended by adding the following after subsection (6.3):

Serious offences

(6.4) An official may provide to a law enforcement officer of an appropriate police organization

(*a*) confidential information, if the official has reasonable grounds to believe that the information will afford evidence of an act or omission in or outside of Canada that if committed in Canada would be

(i) an offence under any of

(A) section 3 of the *Corruption of Foreign Public Officials Act*,

(B) sections 119 to 121, 123 to 125 and 426 of the *Criminal Code*,

(C) section 465 of the *Criminal Code* as it relates to an offence described in clause (B), and

(D) sections 144, 264, 271, 279, 279.02, 281 and 333.1, paragraphs 334(*a*) and 348(1)(*e*) and sections 349, 435 and 462.31 of the *Criminal Code*,

(ii) a terrorism offence or a criminal organization offence, as those terms are defined in section 2 of the *Criminal Code*, for which the maximum term of imprisonment is 10 years or more, or

(iii) an offence

(A) that is punishable by minimum term of imprisonment,

(B) for which the maximum term of imprisonment is 14 years or life, or

(C) for which the maximum term of imprisonment is 10 years and that

(I) resulted in bodily harm,

(II) involved the import, export, trafficking or production of drugs, or

(III) involved the use of a weapon; and

(*b*) information setting out the reasonable grounds referred to in paragraph (*a*), to the extent that any such grounds rely on information referred to in that paragraph.

EXCISE TAX ACT

16. Section 295 of the *Excise Tax Act* is amended by adding the following after subsection (5.03):

Serious offences

(5.04) An official may provide to a law enforcement officer of an appropriate police organization

(*a*) confidential information, if the official has reasonable grounds to believe that the information will afford evidence of an act or omission in or outside of Canada that if committed in Canada would be

(i) an offence under any of

(A) section 3 of the *Corruption of Foreign Public Officials Act*,

(B) sections 119 to 121, 123 to 125 and 426 of the *Criminal Code*,

(C) section 465 of the *Criminal Code* as it relates to an offence described in clause (B), and

(D) sections 144, 264, 271, 279, 279.02, 281 and 333.1, paragraphs 334(*a*) and 348(1)(*e*) and sections 349, 435 and 462.31 of the *Criminal Code*,

(ii) a terrorism offence or a criminal organization offence, as those terms are defined in section 2 of the *Criminal Code*, for which the maximum term of imprisonment is 10 years or more, or

(iii) an offence

(A) that is punishable by a minimum term of imprisonment,

(B) for which the maximum term of imprisonment is 14 years or life, or

(C) for which the maximum term of imprisonment is 10 years and that

(I) resulted in bodily harm,

(II) involved the import, export, trafficking or production of drugs, or

(III) involved the use of a weapon; and

(*b*) information setting out the reasonable grounds referred to in paragraph (*a*), to the extent that any such grounds rely on information referred to in that paragraph.