Explanatory Notes to Legislative Proposals Relating to Income Tax, Excise Duties and Sales Tax

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

These explanatory notes are provided to assist in an understanding of legislative proposals relating to income tax, excise duties and sales tax. These explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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

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Part 1

Income Tax

Please note that these draft legislative proposals have been prepared taking into account draft legislative proposals previously released by the Department of Finance and legislation currently before Parliament.

Income Tax Act

Clause 1

Amount Owing by Non-Resident

ITA
17(1)

Subsection 17(1) of the *Income Tax Act* (the Act) generally applies where: a non-resident owes an amount to a corporation resident in Canada at any time in a particular taxation year of the corporation; the amount owing remains outstanding for more than one year; and the corporation does not include, in computing its income for the particular year, interest, computed at a reasonable rate, on the amount for the period in the particular year during which the amount was owing to the corporation. If subsection 17(1) applies, the corporation is treated as having received interest, computed by reference to a prescribed rate, on the amount owing for the period in the particular year during which the amount was owing to the corporation.

Subsection 17(1) is amended in three respects:

- First, it is restructured in order to improve its readability, by converting its paragraphs (*a*) and (*b*) into formula descriptions A and B, and by moving the conditions for its application into new subsection 17(1.1). For further information, please see the commentary on subsection 17(1.1).
- Second, it is amended to correct an ambiguity in existing subparagraph 17(1)(*b*)(iii) (new paragraph (*c*) of the description B in amended subsection 17(1)), which is the rule that generally reduces the interest income imputed to a taxpayer under subsection 17(1) by an amount that is included in computing the taxpayer's income under subsection 91(1) and is in respect of interest on a debt that is related to the amount owing to which subsection 17(1) applies. This amendment, described more fully below, ensures that this rule provides an appropriate reduction in calculating the imputed income under subsection 17(1) where interest income is included in the foreign accrual property income (FAPI) of a controlled foreign affiliate (CFA) of the taxpayer.
- Third, subsection 17(1) is amended to clarify that existing subparagraph 17(1)(*b*)(iii) (i.e., new paragraph (*c*) of the description B in amended subsection 17(1)) may apply to reduce the imputed income under subsection 17(1) by the amount of interest on a portion of a debt where only that portion, and not the whole debt, is indirectly funded by a loan or transfer of property from the Canadian taxpayer. This amendment is consequential on the proposed amendment to subsection 17(2). For further information, please see the commentary on that subsection.

With regard to the second amendment described above, subparagraph 17(1)(*b*)(iii) is intended to provide for a reduction in the income inclusion under subsection 17(1) in situations where subsection 17(1) applies to a corporation resident in Canada (Canco) in respect of an amount equal to an amount owing to a CFA of Canco by a non-resident person because the latter amount is deemed under subsection 17(2) to be an amount owing to Canco by the non-resident person. The reduction under subparagraph 17(1)(*b*)(iii) is intended to equal the amount of FAPI of CFA included in Canco's income for the particular year or a subsequent year under subsection 91(1) that can reasonably be attributed to the interest income of CFA derived from the amount owing to CFA by the non-resident person for the period in the particular year of Canco during which that amount was so owing to CFA and during which an amount equal to that amount owing to CFA was deemed to be owing to Canco by the non-resident person.

The second amendment to subsection 17(1) is meant to correct an ambiguity identified in a comfort letter dated September 3, 2002, and thus ensure that it provides the intended reduction to the income inclusion under subsection 17(1). Subparagraph 17(1)(*b*)(iii) provides relief only in respect of FAPI amounts that can reasonably be attributed to interest on "the amount owing" by the non-resident person referred to in subsection 17(1) to the corporation resident in Canada. However, in cases where the indirect loan rule in subsection 17(2) applies, and the particular person referred to in that subsection is a CFA of the Canadian-resident corporation and is the creditor in respect of an interest-bearing loan, the amount deemed by subsection 17(2) to be owing by the non-resident person to the corporation resident in Canada, to which subsection 17(1) applies, is not the actual amount owing by the non-resident person to the CFA, but rather an amount equal to the actual amount owing.

Since it is the interest on that actual amount owing by the non-resident to the CFA that is included in the affiliate's FAPI, there is ambiguity as to whether such FAPI can reasonably be attributed to interest on the amount deemed under subsection 17(2) to be owing by the non-resident person to the Canadian-resident corporation, as required in order to claim the reduction under the current version of paragraph 17(1)(*b*)(iii).

A similar issue can arise in certain circumstances where the back-to-back loan rule in subsection 17(11.2) applies to deem a loan to have been made by the "initial lender" to the "intended borrower" referred to in that subsection. Subsection 17(2) in turn applies to deem an amount equal to the deemed loan under subsection 17(11.2) to be owing by the intended borrower to a corporation resident in Canada. In that case, if the initial lender is a CFA of the corporation resident in Canada and has made an interest-bearing loan to the "intermediate lender" referred to in subsection 17(11.2), it is the interest on this actual loan that is included in the initial lender's FAPI. Consequently, ambiguity exists as to whether such FAPI can reasonably be attributed to interest on the amount deemed under subsection 17(2) to be owing by the intended borrower to the Canadian-resident corporation, as required under existing paragraph 17(1)(*b*)(iii).

The amendments to subparagraph 17(1)(*b*)(iii) are intended to resolve these ambiguities. First, the terms "debt" and "original debt" are introduced. The "debt" refers to the amount deemed by subsection 17(2) to be owing by the non-resident to the Canadian-resident corporation. The "original debt" refers to an actual amount owing (as opposed to a deemed amount). Where the conditions in subparagraphs (*c*)(i) to (iii) in the description B in subsection 17(1) are satisfied, the amendments allow the income imputed to the taxpayer under that subsection to be reduced by an amount included in computing the taxpayer's income under subsection 91(1) that can reasonably be attributed to interest on an original debt – or, if the original debt exceeds the amount of the debt, a portion of the original debt equal to the amount of the debt – to the extent that such interest is paid or payable for the period in the year during which the debt (i.e., the deemed amount owing under subsection 17(2)) was outstanding. The conditions in subparagraphs (*c*)(i) to (iii) in the description B are as follows:

- Without the existence of the original debt, subsection 17(2) would not have deemed the debt to be owed to the Canadian-resident corporation by the non-resident person referred to in new paragraph 17(1.1)(*a*). This condition is generally satisfied where the original debt is the amount owing by a non-resident person to a particular person or partnership described in paragraph 17(2)(*a*) or, where subsection 17(11.2) applies in respect of the original debt, the amount owing by the initial lender to the intermediate lender or by the intermediate lender to the intended borrower referred to in subsection 17(11.2).
- The original debt was owed by a non-resident person or a partnership each member of which is a non-resident person. This ensures that interest on any amount owing to CFA by a Canadian resident does not qualify for the relief under this provision.
- If subsection 17(11.2) applies to the original debt, an amount determined under that subsection in respect of the original debt must be an amount referred to in paragraph 17(2)(*a*) as owing by a

non-resident person to a particular person or partnership, and it must also be the case that, because of that amount owing, subsection 17(2) applies to deem the debt to be owed by the non-resident person referred to in paragraph 17(1.1)(*a*). These conditions are met where the original debt is owing by an intermediate lender to an initial lender, or by an intended borrower to an intermediate lender (within the meanings assigned by subsection 17(11.2)), and paragraph 17(11.2)(*a*) applies to deem a loan to have been made by the initial lender to the intended borrower. The conditions are also met where paragraph 17(11.2)(*b*) applies to reduce the amount of the loan made by the initial lender to the intermediate lender by the amount of the deemed loan under paragraph 17(11.2)(*a*), and the loan so reduced is an amount referred to in paragraph 17(2)(*a*), with the result that subsection 17(2) applies to deem the intermediate lender to owe an amount to a corporation resident in Canada equal to all or a portion of the loan.

The restructuring of subsection 17(1) and the amendments to clarify the operation of existing subparagraph 17(1)(*b*)(iii) apply to taxation years that begin after February 23, 1998.

The amendment to clarify the operation of subsection 17(1) where only a portion of a debt is indirectly funded by a loan or transfer of property applies to taxation years that begin after Announcement Date.

ITA
17(1.1)

New subsection 17(1.1) of the Act sets out the conditions for the application of subsection 17(1). These conditions are currently in subsection 17(1) but are being moved to subsection 17(1.1) in order to improve readability.

Subsection 17(1.1) provides that subsection (1) applies to a corporation resident in Canada in respect of an amount owing to the corporation if all the following conditions are satisfied:

- A non-resident person owes the amount to the corporation.
- The amount has been or remains outstanding for more than a year.
- The amount that would be determined under B in subsection 17(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.

New subsection 17(1.1) applies to taxation years that begin after February 23, 1998.

Indirect Loan

ITA
17(2)

Subsection 17(2) of the Act is an anti-avoidance rule intended to prevent the use of indirect arrangements to circumvent the application of subsection 17(1). Subsection 17(2) generally provides that – where a corporation resident in Canada (Canco) makes a loan or transfers property and, because of that loan or transfer, a loan or transfer of property is made to a non-resident person (the final debtor) – the final debtor is treated for the purposes of section 17 as if it owes to Canco an amount equal to the amount owing by the final debtor.

Subsection 17(2) is amended to modernize its language and to ensure that it applies appropriately where only a portion of the amount loaned or property transferred to the final debtor is loaned or transferred because of the loan or transfer of property by Canco. In that situation, the amount deemed by subsection 17(2) to be owed by the final debtor to Canco is equal to that portion.

This amendment applies to taxation years that begin after Announcement Date.

Clause 2

Ship or Aircraft of Non-Residents

ITA
81(1)(*c*)

Certain income of non-resident persons earned in Canada from the operation of ships and aircraft is not included in computing their income. Paragraph 81(1)(*c*) of the Act is amended to incorporate the new defined term “international shipping”, which is defined in subsection 248(1). For further information, please see the commentary on the definition “international shipping” in subsection 248(1).

This amendment applies to taxation years that begin after Announcement Date.

Clause 3

Anti-Avoidance

ITA
87(8.3)

New subsection 87(8.3) of the Act is added to prevent the use of certain structures aimed at circumventing the anti-avoidance rule in subsection 85.1(4). Subsection 85.1(3) generally allows a taxpayer to transfer shares of one of its foreign affiliates to another of its foreign affiliates on a tax-deferred basis if the consideration for the transfer includes shares of the transferee foreign affiliate. Subsection 85.1(4) provides that subsection 85.1(3) does not apply if all or substantially all the property of the transferred foreign affiliate is excluded property (as defined in subsection 95(1)) of that affiliate and the transfer is part of a series of transactions or events for the purpose of disposing of the shares to an arm’s length person or partnership.

Subsection 87(8.3) is intended to ensure that certain foreign merger transactions cannot be used to effectively transfer shares of a foreign affiliate (all or substantially all of whose property is excluded property of the affiliate) to an arm’s length person in a manner that is inconsistent with subsection 85.1(4). Subsection 87(8.3) provides that subsection 87(8), which allows certain foreign mergers to qualify for the tax-deferred amalgamation provisions in subsections 87(4) and (5), does not apply in respect of a taxpayer’s shares of a predecessor foreign corporation (as defined in subsection 87(8.1)) in the context of a foreign merger (as defined in subsection 87(8.1)) if all the following conditions are met:

- The new foreign corporation (as defined in subsection 87(8.1)) is, immediately after the foreign merger, a foreign affiliate of the taxpayer (paragraph 87(8.3)(*a*)).
- The shares of the new foreign corporation are, immediately after the foreign merger, excluded property of another foreign affiliate of the taxpayer (paragraph 87(8.3)(*b*)).
- The foreign merger is part of a transaction or event or a series of transactions or events that includes a disposition of the shares of the new foreign corporation (or substituted property) to a person with whom the taxpayer was dealing at arm’s length immediately after the transaction, event or series, or to a partnership of which such a person is a member (paragraph 87(8.3)(*c*)).

Where subsection 87(8.3) applies to a foreign merger, the disposition by the taxpayer of shares of a predecessor foreign corporation on the foreign merger will generally occur on a taxable basis.

The new subsection applies to foreign mergers that occur after Announcement Date.

Clause 4

Stub Period FAPI

ITA
91(1.1) and (1.2)

New subsections 91(1.1) and (1.2) of the Act are introduced to ensure that “stub period” foreign accrual property income (FAPI) is included in the income of a taxpayer for the taxation year in which the taxpayer disposes of, or reduces, its interest in a foreign affiliate.

Subsection 91(1.1) provides that, for the purposes of section 91, when a Canadian-resident taxpayer’s surplus entitlement percentage (defined in subsection 95(1) by reference to subsection 5905(13) of the *Income Tax Regulations*) in respect of a controlled foreign affiliate of the taxpayer decreases (whether as a result of a disposition by the taxpayer of shares of the foreign affiliate or otherwise) at a particular time, the affiliate’s taxation year that would otherwise have included the particular time is deemed to have ended immediately before the particular time. This means that the taxpayer’s proportionate share of the affiliate’s FAPI for the period before the decrease in the taxpayer’s surplus entitlement percentage is included in computing the taxpayer’s income under subsection 91(1), since that subsection requires a separate income inclusion computation for each taxation year of the affiliate that ends in the taxpayer’s taxation year.

Subsection 91(1.2) provides that subsection 91(1.1) will not apply to certain transactions within a corporate group where the disposition of shares of a controlled foreign affiliate by one group member does not result in a decrease in the overall surplus entitlement percentage of the group in that affiliate. In such cases, the reduction in the surplus entitlement percentage of one group member does not allow the group to avoid an income inclusion in respect of FAPI. Specifically, subsection 91(1.2) provides that subsection 91(1.1) does not apply to a taxpayer whose surplus entitlement percentage in a controlled foreign affiliate has decreased at a particular time if the surplus entitlement percentage in the affiliate of another Canadian-resident taxpayer that is connected to the first taxpayer has, at the particular time, increased by the same amount. For these purposes, taxpayers are considered to be connected if

- one holds, directly or indirectly, at the particular time 90% or more of each class of shares of the other taxpayer, or
- a Canadian-resident taxpayer holds, directly or indirectly, at the particular time 90% or more of each class of shares of each of the taxpayers.

These subsections come into force on Announcement Date.

Clause 5

Partnerships

ITA
93.1

Section 93.1 of the Act provides rules that deal with partnerships owning shares of foreign affiliates. Several amendments are made to existing provisions in section 93.1 and new provisions are added to the section, in order to allow various foreign affiliate rules to apply to structures that include partnerships.

Shares Held by Partnership

ITA
93.1(1) and (1.1)

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

Subsection 93.1(1) is split into two subsections in order to improve readability. New subsection 93.1(1.1) lists the provisions for which the look-through rule in subsection 93.1(1) applies, including all the provisions currently listed in subsection 93.1(1) and three new ones: subsections 93.1(5) and 95(2.2), and section 233.4. The addition of subsection 93.1(5) to the list of provisions is consequential on the introduction of new subsections 93.1(5) and (6), which, as discussed below, require the determination of foreign affiliate status through a partnership.

The addition of subsection 95(2.2) is made to address a concern identified in a comfort letter, dated April 19, 2006, issued by the Department of Finance. The concern dealt with in the letter was the application of subsection 95(2.2) in situations where the shares of a non-resident corporation are acquired by a partnership. If it applies, subsection 95(2.2) deems a non-resident corporation to be a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a year, for the purposes of paragraphs 95(2)(*a*) and (*g*). Subsection 95(2.2) applies where

- as a result of a person or partnership having acquired or disposed of its shares of the non-resident corporation (or the shares of any other corporation), the non-resident corporation either became or ceased to be a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest in the taxation year, and
- the non-resident corporation was, at the beginning of the year or at the end of the year, a foreign affiliate of the taxpayer in respect of which the taxpayer had a qualifying interest.

The reference to an acquisition by a "partnership" was previously added to subsection 95(2.2) in response to the above-noted comfort letter. In certain cases subsection 95(2.2) requires the determination of foreign affiliate status through a partnership. Subsection 93.1(1) is therefore amended to add subsection 95(2.2) to the list of provisions for which subsection 93.1(1) applies.

A reference to section 233.4 is added so that the partnership look-through rule in subsection 93.1(1) applies for the purpose of determining whether a non-resident corporation or trust is a foreign affiliate of a taxpayer or partnership for the purposes of the reporting requirements in subsection 233.4(4).

The amendments to subsection 93.1(1) and new subsection 93.1(1.1) come into force on Announcement Date, subject to an election to have them come into force on January 1, 2010, except that the addition of a reference to subsection 95(2.2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 1999.

Where Dividends Received by a Partnership

ITA
93.1(2)

Subsection 93.1(2) of the Act provides look-through treatment, for the purposes of sections 93 and 113 and related regulations, of dividends paid by a foreign affiliate to a partnership of which either a corporation resident in Canada or another foreign affiliate is a member.

Subsection 93.1(2) is amended in two respects. First, it is amended to allow for tiered partnership structures. Although subsection 93.1(3) provides rules for membership status through a tiered partnership structure, the current version of subsection 93.1(2) does not clearly allocate dividends through such a structure. The amendments to paragraph 93.1(2)(*a*) are made to allocate a dividend to a member based on the proportion of the fair market value of the member's "direct or indirect interests" in the partnership to the fair market value of all the "direct" interests held by members in the partnership. The specific parenthetical carve-out for members of the partnership that are themselves partnerships is made to ensure that the full amount of the partnership dividend, but no more than that amount, is allocated to the partnership's direct and indirect members.

This amendment applies to dividends received after November 1999.

Tiered Partnerships

ITA
93.1(3)

Subsection 93.1(3) of the Act provides look-through rules for tiered partnerships that apply for the purposes of certain provisions of the Act. Subsection 93.1(3) is amended to add a reference to new subsection 87(8.3). For further information on subsection 87(8.3), please see the commentary on that subsection.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

Partnership Deemed to be Corporation

ITA
93.1(4)

New subsection 93.1(4) of the Act is introduced to deem, in certain circumstances, a partnership to be a corporation and to be resident in a particular country for the purposes of clause 95(2)(*a*)(ii)(D). This is meant to allow the recharacterization of interest and other deductible payments received by a financing affiliate from a partnership as income from an active business if the partnership is the owner of the "third affiliate" contemplated in clause 95(2)(*a*)(ii)(D).

Paragraph 93.1(4)(*a*) provides that where all the members of a partnership are foreign affiliates of a taxpayer, the partnership is deemed to be a non-resident corporation without share capital and the membership interests in the partnership are deemed to be equity interests in the corporation. In conjunction with the new rule in section 93.3 for non-resident corporations without share capital (described in the commentary on that section), this allows the corporation to be considered a "foreign affiliate" of the taxpayer (as defined in subsection 95(1)) if the relevant equity holding thresholds are met. In particular, subsection 93.1(4) and section 93.3 together allow for the application of the "equity percentage" and "direct equity percentage" concepts in subsection 95(4).

In addition, paragraph 93.1(4)(*b*) deems a partnership to be resident in a particular country if all the members of the partnership are resident in that country and the partnership carries on business only in that country. If this results in the partnership being resident in a designated treaty country, this can potentially allow an amount paid or payable by the partnership that is deemed active business income of the payee foreign affiliate because of clause 95(2)(*a*)(ii)(D) to be included in the exempt earnings (as defined in subsection 5907(1) of the *Income Tax Regulations*) of the payee foreign affiliate.

New subsection 93.1(4) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

Rules for Computing FAPI in Respect of Partnership

ITA
93.1(5) and (6)

New subsections 93.1(5) and (6) of the Act are added to deal with certain applications of the foreign affiliate rules in the context of corporate structures that include partnerships. Subsection 93.1(5) is the operative rule, and subsection 93.1(6) enumerates both the relevant provisions for the purposes of which subsection 93.1(5) applies and the relevant assumptions that are to be made in applying subsection

93.1(5). Like subsection 93.1(4), subsection 93.1(5) hypothesizes that a partnership is a corporation for certain purposes in order to solve issues arising from the application of the foreign affiliate rules to structures involving partnerships.

Subsection 93.1(5) provides a rule in the partnership context that is similar to the one provided by paragraph 95(2)(*n*) in the context of corporate structures. Subsection 93.1(5) deems a non-resident corporation to have the same foreign affiliate and qualifying interest foreign affiliate status in respect of the partnership that the non-resident corporation has in respect of a Canadian-resident corporate member of the partnership that would be related to the partnership if the partnership were a corporation and the other assumptions in paragraph 93.1(6)(*b*) applied.

Subsection 93.1(5) provides deeming rules for the purpose of applying a "relevant provision" in respect of a foreign affiliate of a Canadian-resident taxpayer. These deeming rules apply where all the following conditions are met:

- The relevant taxpayer is a partnership. This may be the case because paragraph 96(1)(*a*) requires certain calculations to be made as if a partnership were a person resident in Canada.
- Either a particular Canadian-resident corporation, or a foreign affiliate of a particular Canadian-resident corporation, is a member of the taxpayer partnership.
- Based on the "relevant assumptions" (set out in paragraph 93.1(6)(*b*)), the particular Canadian-resident corporation and the taxpayer would be related. The relevant assumptions, which hypothesize that the partnership is a corporation, are needed because the definition "related persons" in subsection 251(2) does not contemplate a partnership being related to a person.

More specifically, paragraph 93.1(6)(*b*) provides that the relevant assumptions for the purposes of subsection 93.1(5) are that:

- The taxpayer partnership is a non-resident corporation with a single class of shares, divided into 100 shares each of which has full voting rights.
- Each member of the taxpayer partnership (other than another partnership) owns the proportion of the issued shares of that class that the fair market value of the member's interest (held directly and indirectly through other partnerships) in the partnership is of the fair market value of all the direct interests in the partnership. The exclusion for members of the partnership that are themselves partnerships is made to ensure that all 100 shares of the class, but no more than that number, are allocated to the partnership's direct and indirect members.

If the above conditions are satisfied, then each non-resident corporation that is a foreign affiliate of the particular Canadian-resident corporation is deemed to be a foreign affiliate of the taxpayer (paragraph 93.1(5)(*a*)). As well, if the particular Canadian-resident corporation has a qualifying interest in respect of the affiliate (paragraph 93.1(5)(*b*)), the taxpayer is deemed to have a qualifying interest in respect of that foreign affiliate.

Paragraph 93.1(6)(*a*) enumerates the "relevant provisions" for the purposes of which the deeming rules in subsection 93.1(5) apply. The relevant provisions are as follows:

- the inter-affiliate dividend exclusion from FAPI in paragraph (*b*) of the description of A in the definition "foreign accrual property income" in subsection 95(1);
- the description of B in the definition "foreign accrual property income" in subsection 95(1), in determining whether a property of a foreign affiliate of a taxpayer is excluded property of the affiliate;
- the rules in subparagraph 95(2)(*a*)(ii) that recharacterize, as active business income, property income that would otherwise be FAPI; and

- paragraph 95(2)(*g*), which is a provision that deems certain foreign exchange gains and losses of a foreign affiliate to be nil.

Subsections 93.1(5) and (6) address issues identified in a Department of Finance comfort letter dated May 26, 2011. In particular, they are intended to address the following situation:

Example

Assumptions

1. *FA1, FA2 and FA3 are all non-resident, wholly-owned indirect subsidiaries, and thus foreign affiliates, of a Canadian publicly traded company (Canco);*
2. *FA1 is the general partner of a limited partnership (LP) and has 100% of the voting rights in respect of LP but only a nominal (less than 1%) interest in the profits of LP;*
3. *FA2 and FA3 are limited partners of LP and have a combined interest in LP's profits of 98.2%;*
4. *Arm's length parties own the remaining limited partner interests in LP;*
5. *LP owns 100% of the shares of FA4, which in turn owns 9% of the shares of a non-resident corporation (Forco); and*
6. *FA5, another non-resident wholly-owned indirect subsidiary of Canco that is a sister company of FA1, FA2 and FA3, directly owns 11% of the shares of Forco.*
7. *Forco pays a dividend to FA4.*
8. *FA4 sells the shares it owns of Forco to a third party purchaser and has a capital gain.*

Analysis

As noted in the comfort letter, because LP is the relevant Canadian taxpayer for purposes of determining Forco's FAPI with respect to the 9% equity interest in Forco held by FA4, and there are no rules in the Act to make LP related to any corporate group members (other than FA4), in the absence of new subsections 93.1(5) and (6), Forco would not be considered a foreign affiliate of LP. As a result, the dividend received by FA4 from Forco would be included in computing the FAPI of FA4 as income from property, and ½ of the capital gain on the sale of the Forco shares by FA4 would be included in computing FA4's FAPI.

However, new paragraph 93.1(5)(a) would apply in this case to cause Forco to be a foreign affiliate of LP for the purposes of the provisions enumerated in subsection 93.1(6). This is because all the relevant conditions in subsection 93.1(5) would be met as follows:

- *By virtue of paragraph 96(1)(a), LP is treated as the relevant taxpayer for FAPI purposes in this case.*
- *All the members of LP (i.e., the taxpayer) are foreign affiliates of Canco, a Canadian-resident corporation.*
- *If LP were a corporation with a single class of shares, divided into 100 shares each with full voting rights, then Canco would own, indirectly through FA2 and FA3, over 98% of those shares, and would be related to LP under paragraph 251(2)(b).*
- *Forco is a foreign affiliate of Canco.*

In addition, paragraph 93.1(5)(b) applies to cause Forco to be a foreign affiliate of LP in respect of which LP has a qualifying interest, since Canco has a qualifying interest (as defined in paragraph 95(2)(m)) in respect of Forco by virtue of holding, indirectly through FA5, shares of Forco having more than 10% of votes and value of Forco.

As a result of subsection 93.1(5) applying to make Forco a foreign affiliate of LP in which LP has a qualifying interest in this case,

- *the dividend paid by Forco to FA4 is excluded from FA4's FAPI because of paragraph (b) of the description of A in the definition "foreign accrual property income" in subsection 95(1), and*
- *FA4's capital gain on its disposition of the shares of Forco is not included in FA4's FAPI because the Forco shares are excluded property of FA4 for purposes of the description of B in the definition "foreign accrual property income" in subsection 95(1).*

Subsections 93.1(5) and (6) of the Act apply in respect of taxation years of foreign affiliates of a taxpayer that end after Announcement Date, subject to an election to have the subsections apply in respect of taxation years of all foreign affiliates of the taxpayer that end after 2010.

Clause 6

Australian Trusts

ITA
93.2

New section 93.2 of the Act provides a special regime for certain trusts resident in Australia in which a controlled foreign affiliate of a corporation resident in Canada has a beneficial interest. Where the required conditions set out in the section are met, the Australian trust will be deemed, for the purpose of determining the Canadian tax results of the Canadian corporation in respect of the shares of the beneficiary controlled foreign affiliate, and for the purpose of applying the foreign affiliate dumping rules in section 212.3 to a non-resident corporation that controls the Canadian corporation, not to be a trust and to instead be a non-resident corporation.

The main objective of this regime is to allow, where the application of these rules results in an Australian trust being treated as a foreign affiliate, distributions from the Australian trust to the controlled foreign affiliate of the Canadian corporation to be treated as inter-affiliate dividends. In the absence of this regime, distributions from such a trust would be included in the foreign accrual property income (FAPI) of a controlled foreign affiliate that is a beneficiary of the trust even if the earnings out of which the distributions were sourced were attributable to active business profits of the trust. Where applicable, however, these rules generally also result in the trust being treated as a controlled foreign affiliate of the Canadian corporation, with the consequence that the trust's FAPI is generally attributed to the Canadian corporation under subsection 91(1). This special regime is limited to Australian trusts as that country has unique tax and commercial law rules that make commercial trusts the preferred entity to carry on certain types of active business activities.

New section 93.2 comes into force on Announcement Date, and on an elective basis will come into force on January 1, 2006.

Australian trust

ITA
93.2(1)

New subsection 93.2(1) of the Act defines an "Australian trust" for the purposes of new section 93.2. An Australian trust is a trust in respect of which all the following conditions are satisfied:

- The trust would, in the absence of subsection 93.2(3), be an "exempt foreign trust" under paragraph (*h*) of that definition in subsection 94(1). This is, essentially, a non-discretionary commercial trust.
- Section 94.2, which deems a non-resident trust to be a controlled foreign affiliate of a Canadian-resident corporation in certain circumstances, would – in the absence of section 93.2 and if

paragraph 94.2(1)(*b*) were read without reference to its subparagraph 94.2(1)(*b*)(ii) – apply to a corporation resident in Canada in respect of the trust. In effect, this requires that

    - a controlled foreign affiliate of the corporation resident in Canada be a beneficiary under the trust; and
    - the total fair market value of all fixed interests (as defined in subsection 94(1)) of a particular class of interests in the trust that are held by that controlled foreign affiliate, any person or partnership that does not deal at arm's length with the controlled foreign affiliate, and any person or partnership that acquired an interest in the trust in exchange for consideration given to the trust by the controlled foreign affiliate be at least 10% of the total fair market value of all fixed interests in the particular class.

- Under Canadian common law principles, the trust is resident in Australia.
- All beneficial interests in the trust are represented by units.
- All beneficiaries under the trust have limited liability in respect of the trust's activities.

These conditions are meant to identify trusts that are essentially equivalent to Australian-resident corporations.

Conditions for Subsection (3)

ITA
93.2(2)

New subsection 93.2(2) of the Act sets out the conditions for the application, at any time, of subsection 93.2(3) to a corporation resident in Canada in respect of a trust. The conditions in subsection 93.2(2) are as follows:

- A non-resident corporation is at that time beneficially interested in the trust.
- The non-resident corporation is at that time a controlled foreign affiliate (for purposes of section 17) of the Canadian corporation.
- The trust is at that time an Australian trust.
- Unless the non-resident corporation first acquired a beneficial interest in the trust at that time, subsection 93.2(3) must have applied, immediately before that time
    - to the Canadian corporation in respect of the trust, or
    - to another corporation resident in Canada, that is at that time related to the corporation, in respect of the trust.

This last condition, in paragraph 93.2(2)(*d*), ensures that, where all the other conditions in subsection 93.2(2) are satisfied, subsection 93.2(3) applies from the time the controlled foreign affiliate of the corporation first becomes beneficially interested in the trust to the first time when the conditions in subsection 93.2(2) cease to be satisfied. If a corporation ceases to satisfy the conditions at a particular time and then satisfies the conditions once again at a subsequent time, subsection 93.2(3) will not apply at the subsequent time.

By virtue of paragraph 248(25)(*a*), subsection 93.2(2) will also apply in respect of "stacked" or tiered trusts since the rule in that paragraph results in a controlled foreign affiliate being considered to be beneficially interested in a "lower-tier" trust when the affiliate has a right as a beneficiary under a trust to receive any income or capital of that lower-tier trust indirectly through one or more other trusts.

Australian Trusts

ITA
93.2(3)

New subsection 93.2(3) of the Act provides the substantive rules for the elective regime in respect of Australian trusts. Where the conditions in subsection 93.2(2) are satisfied, subsection 93.2(3) deems, for the specified purposes set out in subsection 93.2(4), the following:

- Paragraph 93.2(3)(*a*) deems the trust to be a non-resident corporation resident in Australia, and not to be a trust.
- Paragraph 93.2(3)(*b*) deems each particular class of "fixed interests" (as defined in subsection 94(1)) in the trust 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. The shares of a particular class of the non-resident corporation are deemed to have the same rights and obligations as the corresponding class of trust units.
- Paragraph 93.2(3)(*c*) deems each beneficiary under the trust to hold the number of shares of each separate class described in paragraph 93.2(3)(*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. This rule is analogous to the rule in subsection 94.2(2).
- Paragraph 93.2(3)(*d*) deems the trust to be controlled by the corporation resident in Canada that has the greatest equity percentage in the trust and a controlled foreign affiliate of which is beneficially interested in the trust.
- Paragraph 93.2(3)(*e*) provides that section 94.2 does not apply to the corporation resident in Canada (whose controlled foreign affiliate is beneficially interested in the trust) in respect of the trust.

In order to ensure that such trusts do not escape the anti-deferral regimes applicable to foreign entities, any Australian trust, in respect of which subsection 93.2(3) applies, that is not a controlled foreign affiliate in respect of any corporation resident in Canada and therefore not subject to the FAPI regime, will remain subject to the offshore investment fund rules of section 94.1 and the rules in section 94.2.

Specified Purposes

ITA
93.2(4)

New subsection 93.2(4) of the Act sets out the "specified purposes" for which the deeming rules in subsection 93.2(3) apply. By virtue of paragraph 93.2(4)(*a*), those rules apply for the purpose of determining the Canadian tax results (as defined in subsection 261(1)) of a corporation resident in Canada in respect of shares of a controlled foreign affiliate (referred to in paragraph 93.2(2)(*b*)) of the corporation and any other controlled foreign affiliate of the corporation that has an equity percentage in that controlled foreign affiliate. Thus, the trust is deemed to be a controlled foreign affiliate of the corporation for, among other purposes, determining the character of trust distributions to a controlled foreign affiliate of the corporation that is a beneficiary of the trust.

One of the consequences of these deeming rules is that actual distributions from the trust to the controlled foreign affiliate are subject to the rules of subsection 90(2) in determining whether distributions in respect of units of the trust are treated as dividends. In addition, the surplus regulations in Part LIX of the *Income Tax Regulations* apply in respect of the trust. In this regard, entitlements to trust distributions are intended to fit within the rules for determining "participating percentage" in section 5904 of the *Income Tax Regulations* and surplus entitlements under subsection 5905(10) of the *Income Tax Regulations*.

These rules do not allow a Canadian-resident corporation to directly receive exempt dividends from a trust; they are intended only to allow distributions to pass from a trust to a foreign affiliate (including a trust that is deemed to be a foreign affiliate under section 93.2) as inter-affiliate dividends, and thus to qualify for the deduction from FAPI for inter-affiliate dividends under paragraph (*b*) of the description of A in the definition of FAPI in subsection 95(1).

The rules allow the various other rules applicable in respect of foreign affiliates to apply for the purpose of determining the corporation's tax results in respect of the trust, including in particular the rules in paragraph 95(2)(*a*) that recharacterize FAPI as active business income.

In addition, where applicable, these rules generally result in the trust being treated as a controlled foreign affiliate of the Canadian corporation. Thus, the trust's FAPI is generally attributed to the corporation under subsection 91(1) in respect of the shares of a controlled foreign affiliate of the corporation that has a participating percentage in respect of the trust.

Paragraph 93.2(4)(*b*) ensures that the trust is considered a foreign affiliate for the purpose of determining the Canadian corporation's reporting obligations under section 233.4 in respect of its foreign affiliates.

Although these rules are primarily intended to affect the taxation of a Canadian corporation in respect of its indirect interest in the trust, paragraph 93.2(4)(*c*) provides that the deeming rules in subsection 93.2(3) also apply to treat the trust as a foreign affiliate for the purpose of determining the tax payable by a non-resident controller of the corporation under the foreign affiliate dumping rules in section 212.3. For example, one situation where this is relevant is where a foreign-controlled Canadian corporation injects equity into a "good" foreign affiliate (i.e., a foreign affiliate that meets the requirements of the exception in subsection 212.3(16)) that, in turn, uses the funds to acquire an Australian trust in a transaction to which subsection 212.3(2) would have applied had the investment in the Australian trust been made directly by the Canadian corporation. By virtue of the indirect investment rule in subsection 212.3(23) the acquisition of the Australian trust could give rise to consequences under subsection 212.3(2).

Mergers

ITA
93.2(5)

New subsection 93.2(5) of the Act provides continuity rules for the purposes of section 93.2 to ensure that the section continues to apply following an amalgamation or wind-up of a Canadian corporation. Paragraph 93.2(5)(*a*) provides that, in the case of an amalgamation to which subsection 87(1) applies, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation. Paragraph 93.2(5)(*b*) provides that, in the case of a wind-up to which subsection 88(1) applies, the parent is deemed to be the same corporation as the subsidiary that is wound up.

Example 1

Assumptions

1. *Canco is a corporation resident in Canada that owns all the shares of CFA, a non-resident corporation that is a controlled foreign affiliate of Canco.*
2. *CFA acquires all the units of a trust resident in Australia (Austrust) from arm's length parties.*
3. *Austrust carries on an active business in Australia directly and also holds all the units of five other trusts (the Subtrusts) resident in Australia that carry on active businesses in Australia.*

Analysis

If Austrust and the Subtrusts meet the definition of an Australian trust under subsection 93.2(1), Austrust and the Subtrusts (because of paragraph 248(25)(a)) will be treated as foreign affiliates and controlled *foreign affiliates of Canco for the specified purposes set out in subsection 93.2(4), with the result that, among other things:*

- *An amount will be included in Canco's income under subsection 91(1) in respect of the FAPI, if any, of the trusts.*
- *CFA will be eligible for the inter-affiliate dividend exemption from FAPI in respect of distributions from Austrust (as Austrust will be in respect of distributions it receives from the Subtrusts).*
- *Any active business profits earned in Australia by any of the trusts will be eligible for exempt surplus treatment and, to the extent distributions from CFA are sourced from such surplus of the trusts, such distributions will be deductible under section 113.*

Example 2

Assumptions

1. *Canco is a widely-held public corporation resident in Canada.*
2. *Canco acquires all the units of a trust resident in Australia (Austrust) from arm's length parties.*

Analysis

In this case, subsection 93.2(3) does not apply as there is no non-resident corporation that is beneficially interested in the trust. Even if some of the units of Austrust were held by a controlled foreign affiliate of Canco, the deeming rules in subsection 93.2(3) would, by virtue of paragraph 93.2(4)(a), only apply in respect of the units held by the controlled foreign affiliate. Canco could not claim deductions under section 113 in respect of direct distributions from Austrust.

Non-Resident Corporations without Share Capital

ITA
93.3

New section 93.3 of the Act addresses certain non-resident entities that are corporations for purposes of the Act but that do not have conventional share capital. A common example would be a U.S. limited liability company (LLC). These rules also facilitate the operation of the new deemed corporation rules for partnerships in subsection 93.1(4). For further information, please see the commentary on subsection 93.1(4).

Definitions

ITA
93.3(1)

New subsection 93.3(1) of the Act provides definitions that apply for the purposes of section 93.3.

"equity interest"

An equity interest in a non-resident corporation without share capital is defined to mean 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, of the revenue or of the income of the non-resident corporation. However, this does not include a right to receive an amount as creditor. For example, a contingent right, analogous to those of corporate shareholders, to receive a portion of an entity's income for the year, or a share of the entity's capital on its dissolution, would constitute an equity interest.

“non-resident corporation without share capital”

A “non-resident corporation without share capital” is a non-resident corporation that, in the absence of the deeming rules in new subsection 93.3(2), would not have capital divided into shares. For example, the members of a U.S. LLC have membership interests in the LLC and do not own shares of the LLC.

Non-Resident Corporation without Share Capital

ITA
93.3(2)

New subsection 93.3(2) of the Act provides the main rules for deeming a non-resident corporation without share capital to have share capital. First, paragraph 93.3(2)(*a*) deems equity interests in a non-resident corporation without share capital that have identical rights and obligations to be shares of a separate class of the corporation. For these purposes, equity interests are considered to have identical rights and obligations provided any differences in those rights and obligations are proportionate. For example, if one member of a U.S. LLC has, by virtue of its equity interest, a right to 30% of the LLC’s income and three votes at a meeting of the partnership’s members, and another member has a right to 40% of the LLC’s income and four votes at a members meeting, these differences as to income entitlements and votes would not preclude the members’ equity interests from being considered to have identical rights and obligations because in this case the differences in income entitlements are proportionate to the differences in number of votes.

Paragraphs 93.3(2)(*b*) and (*c*) together allocate the shares of each class of the corporation among the equity interest holders of that class. Paragraph 93.3(2)(*b*) first deems the corporation to have 100 issued and outstanding shares of each class. Paragraph 93.3(2)(*c*) then allocates, to each equity interest holder that is deemed by paragraph 93.3(2)(*a*) to have shares of a particular class of the corporation, a portion of the 100 shares of that class equal to the relative fair market value of that holder’s equity interest of that class.

Paragraph 93.3(2)(*d*) attributes to each share of a particular class that is deemed to exist under paragraph 93.3(2)(*a*) rights and obligations that are the same as those of the corresponding equity interest. For example, the voting rights attaching to the equity interest of a controlling member of a U.S. LLC would be attributed to the corresponding shares and, as a result, the controlling member would control the corporation for purposes of the Act.

New section 93.3 applies in respect of taxation years of non-resident corporations that end after 1994, but a taxpayer may elect to have the amendment apply after Announcement Date.

Clause 7

Foreign Affiliates

ITA
95

Section 95 of the Act defines a number of terms and provides rules relating to the taxation of shareholders of foreign affiliates.

Definitions

ITA
95(1)

Subsection 95(1) of the Act defines a number of terms for the purposes of subdivision i of Division B in Part I, which relates to shareholders of non-resident corporations.

The definitions “foreign accrual property income” and “foreign accrual tax” are amended.

“foreign accrual property income”

The definition “foreign accrual property income” (FAPI) is relevant for the purposes of section 91 and for determining the taxable surpluses and deficits of a foreign affiliate of a taxpayer. Section 91 provides rules for determining amounts that a taxpayer must include in computing their income for a particular taxation year as income from a share of a controlled foreign affiliate.

The description of H in the definition of FAPI in subsection 95(1) is relevant where a foreign affiliate of a taxpayer is a member of a partnership that receives a dividend from another foreign affiliate of the taxpayer. It provides that the dividend is not included in the FAPI of the affiliate that is the partnership member.

The description of H is amended in order to ensure that it applies appropriately in situations where a partnership is, because of paragraph 96(1)(*a*), the relevant taxpayer. This situation could arise, for example, where the shares of a foreign affiliate that is a member of a partnership that has received a dividend are owned by a second partnership whose members are Canadian-resident corporations and the second partnership is the relevant taxpayer. In that case, the partnership look-through rule in subsection 93.1(1) would not apply to make the dividend-paying corporation a foreign affiliate of the partnership that is the relevant taxpayer because the subsection only applies for the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada. Paragraph 93.1(2)(*a*) also would not apply to deem the dividend to have been received by the foreign affiliate that is a member of the partnership that received the dividend, since the paragraph applies only where the corporation that pays the dividend is a foreign affiliate of a corporation resident in Canada.

The description of H is amended to apply where

- the corporation that paid the dividend would be a foreign affiliate of the taxpayer for purposes of sections 93 and 113 if the reference to “corporation resident in Canada” in subsection 93.1(1) were “taxpayer resident in Canada”, and
- the dividend would be deemed by paragraph 93.1(2)(*a*) to have been received by the affiliate for purposes of sections 93 and 113 if the reference to “corporation resident in Canada” in subsection 93.1(2) were “taxpayer resident in Canada”.

This amendment applies to taxation years of a foreign affiliate of a taxpayer that end after 2006.

“foreign accrual tax”

The definition “foreign accrual tax” (FAT) in subsection 95(1) of the Act is relevant for determining the offsetting deduction that a taxpayer may claim under subsection 91(4) in respect of taxes paid or deemed to have been paid in respect of the FAPI of a controlled foreign affiliate of the taxpayer.

This definition is amended to address foreign affiliates that are fiscally transparent entities (FTEs) in certain foreign jurisdictions. A common example of an FTE is a limited liability company (LLC) formed under various U.S. state statutes. In recognition of the fact that, under certain foreign tax laws, the shareholder of a FTE, and not the FTE itself, is liable for and pays the income or profits tax in respect of income of the FTE, the FAT definition is amended by renumbering current subparagraph (*a*)(ii) as (*a*)(iii) and by adding a new subparagraph (*a*)(ii). New subparagraph (*a*)(ii) allows FAT to be claimed in certain circumstances in respect of income or profits taxes paid by another foreign affiliate that is a shareholder of the FTE (the shareholder affiliate).

In order for the foreign tax paid by the shareholder affiliate to qualify as FAT, in addition to meeting the general requirements in the FAT definition, subparagraph (*a*)(ii) requires that the shareholder affiliate be another foreign affiliate of the taxpayer and that all the following conditions in clauses (*a*)(ii)(A) to (D) be met:

- The shareholder affiliate must have an equity percentage in the FTE (the particular affiliate).

- The income or profits tax must be paid to a country other than Canada.
- Under the tax laws of the country to which the tax is paid, the shareholder affiliate, and not the particular affiliate, is subject to income taxation in respect of the amount included in the taxpayer's income as FAPI under subsection 91(1).
- Neither the particular affiliate, nor any other foreign affiliate of the taxpayer in which the shareholder affiliate has an equity percentage and that has an equity percentage in the particular affiliate, has more than five members or shareholders.

Related amendments are also made to paragraph (*b*) of the FAT definition, and to the regulations that prescribe certain amounts to be FAT, to allow certain amounts in respect of the shareholder affiliate to be prescribed as FAT. For further information, please see the commentary on subsections 5907(1.3) to (1.6) of the *Income Tax Regulations*.

In addition to the above changes, the newly renumbered subparagraph (*a*)(iii) (formerly subparagraph (*a*)(ii)) of the FAT definition, which is the rule that generally allows for FAT to be claimed in respect of foreign dividend withholding tax, is amended by adding a reference to the dividend being received by another foreign affiliate "directly or indirectly" from the particular affiliate, and by clarifying that the other affiliate (who pays the tax on the dividend received from the particular affiliate) must have an equity percentage in the particular affiliate.

These amendments apply in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010.

Active Business Income Recharacterization Rules

ITA
95(2)(*a*)(i)

Paragraph 95(2)(*a*) of the Act recharacterizes, in certain circumstances, amounts that would otherwise be income from property as income from an active business. More particularly, subparagraphs 95(2)(*a*)(i) to (iv) provide that particular income of a foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest throughout a taxation year of the affiliate, from sources in a country (other than Canada) that would otherwise be income from property of the affiliate for the year, are included in computing the income from an active business of the affiliate for the year.

In general terms, subparagraph 95(2)(*a*)(i) allows a particular foreign affiliate of a taxpayer, in respect of which the taxpayer has a qualifying interest, to include, in its income or loss from an active business, its income or loss from property if the following two conditions are met:

- The income or loss from property is derived by the particular foreign affiliate from activities that can reasonably be considered to be directly related to active business activities carried on in a country other than Canada by another foreign affiliate of the taxpayer (where certain criteria are met) or by a life insurance corporation (where certain other criteria are met).
- The income or loss 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 the other foreign affiliate or, where certain criteria are met, the life insurance corporation, if the income or loss had been that of the other foreign affiliate or the life insurance corporation, as the case may be.

Subparagraph 95(2)(*a*)(i) is amended to address structures that include partnerships. It is also amended to address situations where the relevant active business activities are carried on by the particular foreign affiliate referenced in paragraph 95(2)(*a*)(i).

To address partnerships, first, clause 95(2)(*a*)(i)(A) is amended so that the income or loss from property of a partnership has access to the recharacterization rule in subparagraph 95(2)(*a*)(i) to the same extent as income or loss from property of a foreign corporation, where a foreign affiliate of a taxpayer resident in Canada is a qualifying member (as defined in paragraph 95(2)(*o*)) of the partnership throughout each fiscal period of the partnership that ends in the affiliate's taxation year. Second, new subclause 95(2)(*a*)(i)(A)(IV) is added to allow the income or loss from property of the affiliate or the partnership to be recharacterized as an active business income or loss by reference to the active business activities of 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.

To address situations where the relevant active business activities are carried on by the particular foreign affiliate referred to in paragraph 95(2)(*a*)(i), new subclause 95(2)(*a*)(i)(A)(III) is added to allow the affiliate's property income or loss to be recharacterized as income or loss from an active business if the property income is derived from activities that are directly related to active business activities carried on by the affiliate or by a partnership of which the affiliate is a member.

Consequential changes are also made to the surplus regulations in Part LIX of the *Income Tax Regulations*, as described below.

These amendments apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date, but a taxpayer may elect to have the amendments apply in respect of taxation years of all foreign affiliates of the taxpayer that end after 2007.

ITA
95(2)(*a*)(ii)

Subparagraph 95(2)(*a*)(ii) of the Act sets out various rules that allow payments from one foreign affiliate to another foreign affiliate that would otherwise be income from property to the payee affiliate to be recharacterized as income from an active business.

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

One of the conditions in clause 95(2)(*a*)(ii)(D) is that the second and third foreign affiliates must be resident in the same country. Subclauses 95(2)(*a*)(ii)(D)(IV) and (V) are amended to remove that "same country" requirement, by deleting subclause (IV) and making consequential changes to subclause (V), which is renumbered as subclause (IV).

Consequential changes are also made to the surplus regulations in Part LIX of the *Income Tax Regulations*, as described below.

These amendments apply to taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

Base Erosion Rules for Income from Services

ITA
95(2)(*b*)

Paragraph 95(2)(*b*) of the Act is one of the "base erosion" rules. Subparagraph 95(2)(*b*)(ii) provides that the income from services of a foreign affiliate of a taxpayer is treated as income from a business other than an active business of the affiliate, and thus FAPI, if the services are performed by a person or partnership described in any of clauses 95(2)(*b*)(ii)(A) to (D). The person or partnership described in clause 95(2)(*b*)(ii)(B) is any other taxpayer who does not deal at arm's length with the affiliate or with any taxpayer of whom the affiliate is a foreign affiliate.

Clause 95(2)(*b*)(ii)(B) is amended to narrow the scope of its application and ensure that it does not cause FAPI to arise where the relevant services are performed outside of Canada by non-residents. This is accomplished by adding a reference to a "relevant person" who does not deal at arm's length with the affiliate, or any taxpayer of whom the affiliate is a foreign affiliate. "Relevant person" is defined for these purposes in new paragraph 95(3.02)(*a*), as discussed in the commentary on that paragraph.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date. A taxpayer may elect to have the amendment apply to taxation years of all the taxpayer's foreign affiliates that begin after February 27, 2004.

Qualifying Interest

ITA
95(2)(*n*)

Paragraph 95(2)(*n*) of the Act provides that, for the purposes of certain enumerated provisions, a non-resident corporation is – if the conditions in that paragraph are met – deemed to be a foreign affiliate of a particular corporation resident in Canada and a foreign affiliate in respect of which the particular corporation has a qualifying interest.

Paragraph 95(2)(*n*) is amended to add a reference to new subsection 93.1(5). For further information, please see the commentary on that subsection.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date, subject to an election to have the amendment applying in respect of taxation years of all foreign affiliates of the taxpayer that end after 2010.

Tiered Partnerships

ITA
95(2)(*u*)

Former paragraph 95(2)(*u*) of the Act contained two look-through rules to deal with cases where one partnership (i.e., an upper-tier partnership) was a member of another partnership (i.e., a lower-tier partnership). The first rule in paragraph 95(2)(*u*) deemed a member of an upper-tier partnership to be a member of a lower-tier partnership. The second rule deemed a member of an upper-tier partnership to have certain rights to the income and capital of the lower-tier partnership. This paragraph applied for purposes of enumerated provisions of the Act.

Paragraph 95(2)(*u*) was repealed and replaced by subsection 93.1(3), to the same effect, for foreign affiliate taxation years that end after August 19, 2011. However, the version of paragraph 95(2)(*u*) that existed immediately before its repeal is amended to add subsection 93.1(2) as one of the provisions for which paragraph 95(2)(*u*) applied. Subsection 93.1(2) is a partnership look-through rule that ensures a dividend received by a partnership is considered to be received by a foreign affiliate, or corporation resident in Canada, that is a member of the partnership. Subsection 93.1(2) is also one of the provisions for the purposes of which the new partnership look-through rule in subsection 93.1(3) applies.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 1999. Paragraph 95(2)(*u*) is repealed in respect of taxation years of a foreign affiliate of a taxpayer that end after August 19, 2011. After that time, subsection 93.1(3) will achieve the same result.

Excluded Income and Excluded Revenue

ITA
95(2.5)

Subsection 95(2.5) of the Act provides definitions for the purposes of the "base erosion" rule in paragraph 95(2)(*a.3*), which causes income of a foreign affiliate from certain indebtedness and lease obligations of persons resident in Canada, or in respect of businesses carried on in Canada, to be FAPI in certain circumstances. The terms "excluded income" and "excluded revenue" are among those defined in the subsection. Excluded income of a foreign affiliate is excepted from the application of paragraph 95(2)(*a.3*), and thus is not FAPI of the affiliate. Excluded revenue is not included in computing a foreign affiliate's gross revenue from indebtedness and lease obligations for purposes of the *de minimis* rule in paragraph 95(2)(*a.3*), which generally applies where more than 90% of the affiliate's gross revenue from indebtedness and lease obligations is from indebtedness and lease obligations of arm's length non-resident persons.

The definitions "excluded income" and "excluded revenue" are amended in two respects. First, paragraph (*b*) of the definitions is amended to narrow their scope and prevent an anomalous result from arising under the paragraph. Paragraph (*b*) provides that the income or revenue of a foreign affiliate of a taxpayer are excluded income or excluded revenue, respectively, where they are derived 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) relating to the use of property outside Canada. However, under the current version of paragraph (*b*), a taxpayer cannot rely on the *de minimis* rule in paragraph 95(2)(*a.3*) in respect of its foreign affiliate where more than 90% of the gross revenue of the affiliate from indebtedness or lease obligations is derived from lease obligations of non-resident persons with whom the affiliate deals at arm's length relating to the use (in the course of carrying on a business outside Canada) of property outside Canada.

In order to correct this anomaly and ensure that a taxpayer can rely on the *de minimis* rule in paragraph 95(2)(*a.3*) in the circumstances described above, paragraph (*b*) is amended to provide that, in order for income or revenue to be excluded income or revenue, respectively, it must be derived from the lease obligation of a person resident in Canada, and that lease obligation must relate to property that is used by the person in the course of carrying on a business through a permanent establishment outside Canada.

The second amendment to subsection 95(2.5) adds new paragraph (*d*) to the definitions "excluded income" and "excluded revenue". It provides that any income or revenue that is included in computing the income or loss from an active business for the year of a foreign affiliate because of subparagraph 95(2)(*a*)(ii) is excluded income or excluded revenue, respectively.

The amendment to paragraph (*b*) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date. A taxpayer may elect to have the amendment apply to taxation years of all the taxpayer's foreign affiliates that begin after 1994 or 1999.

New paragraph (*d*) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after February 27, 2004.

Rules for Clause 95(2)(*b*)(ii)(B)

ITA
95(3.02)

New subsection 95(3.02) of the Act applies for the purposes of clause 95(2)(*b*)(ii)(B) and is added to define, in paragraph 95(3.02)(*a*), a "relevant person", and to provide, in paragraph 95(3.02)(*b*), a deeming rule in respect of businesses carried on partly in Canada and partly outside of Canada.

Paragraph 95(3.02)(*a*) defines a relevant person as a person resident in Canada, or a non-resident person if the non-resident person performs the services referred to in subparagraph 95(2)(*b*)(ii) in the course of a business (other than a treaty-protected business as defined in subsection 248(1)) carried on in Canada.

This ensures that clause 95(2)(*b*)(ii)(B) does not cause income of a foreign affiliate from services to be FAPI where the services are performed by non-residents outside of Canada. For further information, please see the commentary on paragraph 95(2)(*b*).

Paragraph 95(3.02)(*b*) complements paragraph 95(3.02)(*a*) and, for purposes of clause 95(2)(*b*)(ii)(B), deems any portion of a business carried on by a non-resident person that is carried on in Canada to be a business that is separate from any other portion of the business that is not carried on in Canada.

New subsection 95(3.02) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date. A taxpayer may elect to have the amendment apply to taxation years of all the taxpayer's foreign affiliates that begin after February 27, 2004.

Contract Manufacturing

ITA
95(3.2)

New subsection 95(3.2) of the Act is a deeming rule that, where it applies, allows income of a foreign affiliate of a taxpayer from the sale of property to qualify for the contract manufacturing exception to the base erosion rule in paragraph 95(2)(*a.1*), and thus to not be FAPI of the foreign affiliate.

The contract manufacturing exception in clause 95(2)(*a.1*)(ii)(A) applies where, among other things, property was manufactured in the country under whose laws the foreign affiliate is governed and was formed, and in which the affiliate's business is principally carried on. Subsection 95(3.2) deems property of a particular foreign affiliate of a taxpayer to have been manufactured by the particular affiliate in a particular country if two requirements are met. First, paragraph 95(3.2)(*a*) requires that the property be 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 that country. Second, paragraph 95(3.2)(*b*) requires that the property be 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 – under a contract between the particular affiliate and the other affiliate and in accordance with the specifications provided by the particular affiliate. In general terms, subsection 95(3.2) allows a foreign affiliate's income to qualify for that exception where the affiliate that sells the property, and earns the relevant income, contracts with another foreign affiliate of the same taxpayer for the manufacture, production or processing of the property in a different country.

New subsection 95(3.2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2008.

Clause 8

Serious Offences

ITA
241(9.5)

Section 241 of the Act prohibits the use or communication of taxpayer information except as otherwise permitted in that section or in certain other provisions in the Act. In this regard, taxpayer information may be shared with law enforcement authorities in very limited circumstances. For example, officials of the Canada Revenue Agency (CRA) may share taxpayer information with the police when those officials are seeking information from the police that is relevant to the CRA's administration or enforcement of the Act. Information sharing with appropriate persons is also permitted where the taxpayer information relates to an imminent danger of death or physical injury to any individual.

The Act requires taxpayers to report certain information to the CRA (e.g., in annual income tax returns). The Act also allows the CRA to demand information from taxpayers, and inspect their books and records and other documents, for the purposes of administration and enforcement of the Act. The CRA is not generally permitted to use this authority for other purposes, such as to assist law enforcement authorities in the course of criminal investigations.

However, there are occasions when CRA officials, in the course of their ordinary duties, become aware of information that a reasonable person would believe is evidence of the commission of a crime. Section 241 currently prevents the CRA from, on its own initiative, communicating such evidence to law enforcement authorities.

New subsection 241(9.5) responds to the 14 October 2010 recommendation of the Council of Fiscal Affairs of the Organisation for Economic Co-operation and Development (OECD) that member countries, in accordance with their legal systems, establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of serious crimes arising out of the performance of their duties, to the appropriate domestic law enforcement authorities. More specifically, subsection 241(9.5) permits a government official to provide taxpayer information to a law enforcement officer (e.g., a police officer) of an appropriate police organization (domestic or foreign) when the official has reasonable grounds to believe that the information will afford evidence of a listed offence. This provision does not provide the CRA with a mandate to use the information-collection authorities in the Act to conduct, or assist in the conduct of, criminal investigations. Nor does it permit the sharing of information on the basis of mere suspicion of the commission of a criminal offence.

New clauses 241(9.5)(*a*)(i)(A), (B) and (C) relate to bribery and the corruption of government officials. New clause 241(9.5)(*a*)(i)(D) and subparagraphs 241(9.5)(*a*)(ii) and (iii) reflect legislation enacted in the *Safe Streets and Communities Act*, S.C. 2012, c.1, to restrict the imposition of conditional sentences for serious crimes.

The administration of these new measures will be closely controlled within the CRA.

This amendment comes into force on Royal Assent.

Clause 9

Definitions

ITA
248(1)

"international shipping"

A definition of international shipping is introduced in order to clarify the application of paragraph 81(1)(*c*) and subsection 250(6). The definition is based on the language previously found in subparagraph 250(6)(*a*)(i) and provides that international shipping:

- includes 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;
- includes activities, such as accounting or marketing activities, that are incident to or pertaining to the operation of the ships used in the shipping business; and
- specifically excludes offshore storing or processing of goods, fishing, laying cable, salvaging, towing, tug-boating, offshore oil and gas activities (including exploration and drilling activities), dredging and leasing of 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, which is defined in subsection 250(6.03), in the lessee).

In addition to the activities that are specifically excluded, the definition precludes activities that do not involve the operation of ships, such as bareboat chartering, from qualifying as international shipping.

This amendment applies to taxation years that begin after Announcement Date.

“international traffic”

The definition “international traffic” applies in respect of a non-resident person carrying on a business of transporting passengers or goods. This definition is modified to apply in respect of partnerships, as well as persons, and to remove the unnecessary “non-resident” qualifier.

This amendment applies to taxation years that begin after Announcement Date.

“taxable Canadian property”

The definition “taxable Canadian property” in subsection 248(1) of the Act is relevant primarily in relation to the taxation of non-residents and migrants. Taxable Canadian property includes real or immovable property (including Canadian resource property and timber resource property) situated in Canada, as well as certain shares and other interests that derive their value principally from such property.

Paragraph (*e*) of the definition generally provides that taxable Canadian property of a taxpayer includes shares of the capital stock of a corporation that is listed on a designated stock exchange, a share of the capital stock of a mutual fund corporation or a unit of a mutual fund trust if, at any time during the previous 60 months,

- the taxpayer and persons that deal at non-arm’s length with the taxpayer own 25% or more of the shares of the corporation or units of the trust, as the case may be, and
- the shares or units derive more than 50% of their fair market value from real or immovable property situated in Canada.

Generally speaking, when a partnership disposes of property that is taxable Canadian property of the partnership, the gain is calculated at the partnership level and a portion of the gain is allocated to each partner.

Paragraph (*e*) is amended to ensure that a disposition by a partnership of taxable Canadian property constitutes a disposition of taxable Canadian property by a non-resident partner of the partnership for the purposes of subsection 2(3), which provides that an income tax is payable by certain non-residents that have disposed of taxable Canadian property. Specifically, the paragraph is amended to provide that the 25% ownership test applies to shares or units held by the taxpayer, persons that deal at non-arm’s length with the taxpayer and partnerships whose members include, either directly or indirectly, the taxpayer or persons that deal at non-arm’s length with the taxpayer.

This amendment applies in determining whether a property is taxable Canadian property of a taxpayer on or after Announcement Date.

Clause 10

Residence of International Shipping Corporation

ITA
250(6)

Canada’s basic policy regarding the taxation of international shipping income has been in place for over 85 years. That policy is to not tax the international shipping income of non-resident companies, provided their home countries provide Canadian companies a comparable exemption.

In 1991, the government introduced a rule that clarifies whether a foreign-incorporated shipping company is a non-resident of Canada. This rule does not have any relevance for companies that are incorporated in Canada or for their foreign affiliates managed abroad.

Subsection 250(6) of the Act was introduced in 1991 to establish rules for determining the residence of a corporation that is incorporated outside Canada where its principal business in a taxation year consists of the operation of ships used primarily in transporting passengers or goods in international traffic and all or substantially all of its gross revenue for the year is from the operation of ships in transporting such passengers and goods. Where a corporation meets these conditions (and has not been granted articles of continuance in Canada), subsection 250(6) deems the corporation to be resident throughout the year in the country in which it was incorporated and to not be resident in Canada.

Subsequent amendments improved the 1991 residence rule by applying the same test to all foreign shipping companies whether their ships are held directly or in a wholly-owned foreign subsidiary and they confirmed that the exemption applies to capital gains, as well as to other income.

Subsection 250(6) is amended to introduce more flexible rules for international shipping corporations in order to reflect the structures of modern shipping organizations. In particular, the amendments implement the following changes:

- They provide for the use of trusts and partnerships, both as holding entities and as operating entities in a shipping group.
- They lower the ownership threshold that is required for certain purposes to 25% in order to accommodate a broader range of shipping group structures.
- They allow "back-office" services to be provided by an entity in a shipping group to another entity that is part of the group and that engages directly in international shipping if, among other conditions, those services would have qualified as part of the recipient entity's shipping business if they were undertaken by it.

Amended subsection 250(6) applies to a corporation that meets certain conditions. It must have international shipping as its principal business in a taxation year or else it must hold eligible interests (generally, at least a 25% interest) in one or more eligible entities (generally, a shipping corporation that qualifies for the subsection 250(6) deeming rule or a partnership or trust that would so qualify if it were a corporation). If eligible interests in eligible entities are held by the corporation, the cost of those interests must be at least 50% of the cost of all property held by the corporation throughout the year. As well, all or substantially all the corporation's gross revenue for the year must consist of a combination of gross revenue from international shipping, gross revenue from eligible interests held by the corporation in an eligible entity, and interest on debt owing by an eligible entity in which an eligible interest is held by the corporation.

Therefore, in order to qualify for the subsection 250(6) deeming rule, a corporation must either have international shipping as its principal business or it must have a significant investment in one or more corporations, partnerships or trusts that are eligible entities. To qualify as an eligible entity, a corporation, partnership or trust must either have international shipping as its principal business for the year or it must hold eligible interests in one or more eligible entities. If eligible interests in eligible entities are held by the corporation, partnership or trust, the cost of those interests must be at least 50% of the cost of all property held by the corporation, partnership or trust throughout the year. This approach allows for the use of holding entities and tiers of ownership (whether corporations, trusts or partnerships) within a shipping group. The test set out in subsection 250(6) is performed at each level and applies through tiers of entities until there is a partnership, corporation or trust that has international shipping as its principal business.

The definitions "eligible entity" and "eligible interest" are in new subsection 250(6.04). For further information, please see the commentary on subsection 250(6.04). The new definition "international shipping" is introduced in subsection 248(1). For further information, please see the commentary on the definition "international shipping" in subsection 248(1).

This amendment applies to taxation years that begin after Announcement Date.

Partner's Gross Revenue

ITA
250(6.01)

Since a partner may not have gross revenue from the partner's interest in a partnership based on the definition "gross revenue" in subsection 248(1), this provision clarifies that, for the purposes of paragraph 250(6)(*b*), the gross revenue from a partner's partnership interest is considered to be the amount of profit allocated from the partnership to the partner. The term "profit" is not defined for this purpose and is intended to have its ordinary commercial meaning.

This amendment applies to taxation years that begin after Announcement Date.

Service Providers

ITA
250(6.02) and (6.03)

New subsections 250(6.02) and (6.03) of the Act are introduced to facilitate the use of single-purpose entities that provide services within the shipping group. The provisions deem certain ancillary services provided by a member of an international shipping group in support of core shipping activities carried on by members of the group to qualify as international shipping activities, provided certain conditions are met. These conditions are found in new subsection (6.02). If they are met, subsection (6.03) will apply so that such a service provider will be considered to have international shipping as its principal business, allowing it to potentially qualify for the deeming rule in subsection 250(6). Subsection 250(6.02) sets out the conditions that must be met for a service provider within a shipping group to qualify for the deeming rule in subsection 250(6.03). More specifically, subsection 250(6.02) provides that subsection (6.03) applies to a service provider (defined as the "relevant entity") if all the following conditions are met:

- The relevant entity does not have international shipping as its principal business in the year (determined without reference to the deeming rule in subsection 250(6.03) in order to avoid circularity in the operation of subsections 250(6.02) and 250(6.03)).
- All or substantially all the gross revenue of the relevant entity is from the provision of services to one or more eligible entities (as defined in subsection 250(6.04)) other than services described in paragraph (*a*) to (*h*) of the definition "international shipping" in subsection 248(1). Those paragraphs list activities that are specifically excluded from qualifying as international shipping.
- The relevant entity or one or more persons related to the relevant entity (or a combination thereof) holds an eligible interest in each eligible entity to which it provides services (i.e., those referred to in paragraph (6.02)(*b*)).
- All or substantially all the shares of the capital stock of the relevant entity (or other interests in the relevant entity if the relevant entity is a trust or partnership) are held by one or more corporations, trusts or partnerships that would qualify as eligible entities if they did not own shares of, or interests in, the relevant entity (in order to avoid circularity in applying the definition "eligible entity").

New subsection 250(6.03) applies for the purposes of subsection 250(6) and paragraph 81(1)(*c*). If it applies, a corporation, trust or partnership (defined as the "relevant entity" in subsection 250(6.02)) that does not have international shipping as its principal business in a taxation year but that provides services (other than services described in paragraphs (*a*) to (*h*) of the definition "international shipping" in subsection 248(1)) to one or more eligible entities will be deemed:

- to have international shipping as its principal business in a taxation year; and

- to have earned as gross revenue from international shipping activities the gross revenue that it derived from providing those services.

This amendment applies to taxation years that begin after Announcement Date.

Definitions

ITA
250(6.04)

New subsection 250(6.04) of the Act defines certain terms for the purposes of subsections 250(6) to (6.03).

“eligible interest”

“Eligible interest” is defined to mean an interest of at least 25% in a corporation, trust or partnership. For corporations, the interest is based on the votes and fair market value associated with shares of its capital stock. For trusts and partnerships, the interest is based on the relative fair market value of the interest in the trust or partnership.

This amendment applies to taxation years that begin after Announcement Date.

“eligible entity”

An eligible entity, for a taxation year, is a corporation that is deemed by subsection 250(6) to be a resident in a foreign country for the year, or a trust or partnership that, in general terms, would qualify for the deeming rule in subsection 250(6) for the year if it were a corporation. More particularly, in order for a trust or partnership to be an eligible entity for the year, it must satisfy the conditions in subparagraph 250(6)(*a*)(i) or (ii) and all or substantially all its gross revenue must consist of amounts described in subparagraphs 250(6)(*b*)(i) to (iii).

In order to meet the tests in subparagraph 250(6)(*a*)(i) or (ii), the partnership or trust must

- have international shipping as its principal business in the year, or
- hold eligible interests in one or more eligible entities throughout the year and at no time in the year can the total of the cost amounts of all those eligible interests be less than 50% of the total of the cost amounts of all its property.

The gross revenue described in subparagraphs 250(6)(*b*)(i) to (iii) is

- gross revenue from international shipping,
- gross revenue from an eligible interest held by the trust or partnership in an eligible entity, and
- gross revenue from interest on a debt owing by an eligible entity in which an eligible interest is held by the trust or partnership.

This amendment applies to taxation years that begin after Announcement Date.

Clause 11

Functional Currency Tax Reporting

ITA
261

Overview

Section 261 of the Act confirms that as a general rule all amounts required to be determined under the provisions of the Act are to be determined in Canadian currency. It also provides an exception to this requirement where certain conditions are met. If the conditions are met, certain Canadian resident corporations will be permitted to determine their Canadian tax results in their elected functional currency.

Application of Subsection 261(5)

ITA
261(3)(*b*)

Subsection 261(3) of the Act provides the conditions that must be met for a taxpayer to determine its Canadian tax results for a particular taxation year using a currency other than the Canadian dollar. The condition in paragraph 261(3)(*b*) currently requires that the taxpayer file an election with the Minister of National Revenue on or before the day that is six months before the end of the particular taxation year.

Paragraph 261(3)(*b*) is amended to require the election to be filed with the Minister of National Revenue on or before the day that is 60 days after the first day of the first taxation year for which the taxpayer wishes to compute its Canadian tax results using its elected functional currency. This amendment permits a taxpayer with a short taxation year to more easily make the election.

This amendment applies to taxation years that begin after Announcement Date.

Partnerships and Foreign Affiliates

ITA
261(6)(*a*)(iii) and (6.1)(*a*)(i)(C)

Subsection 261(6) of the Act deals with situations where a taxpayer that has made a functional currency election (an electing taxpayer) is or becomes a member of a partnership. Subsection 261(6.1) provides similar rules that deal with the foreign accrual property income (FAPI) of a non-resident corporation that is, or becomes, a foreign affiliate of an electing taxpayer. Generally, both of these subsections attribute to the partnership or foreign affiliate, as the case may be, the same tax reporting currency – and the same history of changes in tax reporting currency – as the electing taxpayer.

Subparagraph 261(6)(*a*)(iii) is amended, as a consequence of the amendment to paragraph 261(3)(*b*), to cause section 261 to apply as if the partnership were a taxpayer that had as its first functional currency year its first fiscal period that begins on or after the day that is 60 days after the first day of the electing taxpayer's first functional currency year.

Clause 261(6.1)(*a*)(i)(C) is similarly amended to cause section 261 to apply as if the foreign affiliate were a taxpayer that had as its first functional currency year its first taxation year that begins on or after the day that is 60 days after the first day of the electing taxpayer's first functional currency year.

These amendments apply to taxation years that begin after Announcement Date.

Determination of Amounts Payable

ITA
261(11)

Subsection 261(11) of the Act contains rules for determining amounts payable under the Act by taxpayers that determine their Canadian tax results using an elected functional currency. Clause 261(11)(*b*)(i)(A) and paragraphs 261(11)(*c*) and (*d*) are each amended to replace the erroneous reference in those provisions to "this Part" (i.e., Part XVII) with a reference to Part I.

These amendments apply to taxation years that begin after December 13, 2007.

Amalgamations – Deemed Application of Subsection (5)

ITA
261(17.1)

New subsection 261(17.1) of the Act is added to deal with situations where each predecessor corporation, in respect an amalgamation within the meaning of subsection 87(1), has the same elected functional currency and has not filed a notice of revocation under subsection 261(4) on or before the day that is six months before the end of its last taxation year. Where this is the case, the new corporation formed on the amalgamation is deemed to have made an election under paragraph 261(3)(*b*) to have subsection 261(5) apply to it, and to have filed the election with the Minister of National Revenue on the first day of its first taxation year. The common elected functional currency of the predecessor corporations is deemed to be the new corporation's functional currency for its first taxation year, and therefore its elected functional currency.

This amendment is intended to ensure that an amalgamated corporation can continue to determine its Canadian tax results using the same elected functional currency of its predecessor corporations without having to file an election.

This amendment applies to amalgamations that occur after Announcement Date.

Income Tax Regulations

Clause 12

Periodic Payments

ITR
102(6)

Part I of the *Income Tax Regulations* (the Regulations) provides rules concerning deductions at source that an employer must withhold from amounts paid to employees. Section 102 of the Regulations requires employers to withhold an amount on account of the employee's income tax liabilities from an employee's earnings.

Subsection 102(6) provides that no amount is to be withheld by an employer in respect of amounts that are deductible in computing income under subparagraph 110(1)(*f*)(v) of the Act, which applies to certain employment income earned by Canadian Forces members and police officers on high-risk missions.

Subsection 102(6) is amended to also provide that no amount is to be withheld by an employer in respect of an amount that is deductible in computing income under subparagraph 110(1)(*f*)(iii) or (iv) of the Act, which apply to employment income earned by certain employees of prescribed international organizations and prescribed international non-governmental organizations.

This amendment applies to amounts paid on or after Announcement Date.

Clause 13

Interpretation

ITR
5907

Subsection 5907 of the Regulations provides definitions and rules of interpretation for the purposes of Part LIX of the Regulations and also prescribes certain rules for particular foreign affiliate provisions of the Act.

ITR
5907(1)

Subsection 5907(1) of the Regulations provides definitions for the purposes of Part LIX of the Regulations. A number of these definitions are amended.

“earnings”

The definition “earnings” is relevant for the purpose of computing the surpluses and deficits of a foreign affiliate. Subparagraph (*a*)(iii) of the definition “earnings” provides that earnings of a foreign affiliate of a taxpayer resident in Canada for a taxation year from an active business means the amount that would be the affiliate’s income from the active business for the year under Part I of the Act if the business were carried on in Canada, the foreign affiliate were resident in Canada and the Act were read without reference to certain provisions of the Act. The subparagraph applies only where the affiliate is not required by the income tax law of the country in which it is resident, or carries on the business, to compute the income or profits from the active business.

Subparagraph (*a*)(iii) is amended to add a reference to subsection 18(4) so that in determining the amount that would be the foreign affiliate’s income from an active business, the Act is to be read without reference to the thin capitalization rules in subsection 18(4).

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date. A taxpayer may also elect to have this amendment apply in respect of earlier taxation years.

“exempt earnings”

The definition “exempt earnings” is relevant for the purpose of computing the exempt surplus and exempt deficit of a foreign affiliate.

This definition is amended in three respects. First, the portion of paragraph (*a*) of the definition “exempt earnings” after subparagraph (iii) is repealed because it is no longer relevant following the introduction of the “hybrid surplus” and “hybrid deficit” concepts, which are defined in this subsection and generally include capital gains (other than the taxable portion of a gain that is included in computing the affiliate’s foreign accrual property income) from the disposition of shares of another foreign affiliate. Gains that are included in computing an affiliate’s hybrid surplus and hybrid deficit are excluded from its exempt earnings under the preamble of paragraph (*a*). Second, clause (*d*)(ii)(A) of the definition is amended to add a reference to new subclause 95(2)(*a*)(i)(A)(IV) of the Act to ensure that amounts recharacterized as active business income under that subclause are included in exempt earnings. Third, subclause (*d*)(ii)(E)(I) of the definition is amended to reflect the amendments to clause 95(2)(*a*)(ii)(D) of the Act, which remove the requirement that the second and third affiliates referred to in that clause be resident in the same country. For further information, please see the commentary on subparagraphs 95(2)(*a*)(i) and (ii).

The first amendment noted above applies in respect of dispositions made after 2012.

The amendment to clause (*d*)(ii)(A) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date. A taxpayer may elect to have the amendment apply in respect of taxation years of all foreign affiliates of the taxpayer that end after 2007.

The amendment to subsection (*d*)(ii)(E)(I) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

“exempt surplus”

The definition “exempt surplus” is primarily relevant for the purpose of determining the deductibility of dividends received from a foreign affiliate, pursuant to subsection 5900(1) of the Regulations and subsection 113(1) of the Act.

Subparagraph (vi) of the description of A and subparagraph (vi) of the description of B of the definition are both amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

These amendments apply in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have these amendments apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

“hybrid surplus”

The definition “hybrid surplus” is primarily relevant for determining the surplus treatment of capital gains and losses realized in respect of dispositions of certain shares of a foreign affiliate, certain partnership interests, and certain financial instruments relating to such shares and partnership interests.

Subparagraph (v) of the description of A and subparagraph (vii) of the description of B of the definition are both amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

These amendments come into force on August 20, 2011, unless an election is made to have these amendments come into force, in respect of the taxpayer, on Announcement Date.

“hybrid underlying tax”

The definition “hybrid underlying tax” is relevant in accounting for income or profits taxes paid in respect of hybrid surplus. It is similar to the concept of underlying foreign tax, which applies in the context of taxable surplus.

Subparagraph (iv) of the description of A and subparagraph (iv) of the description of B of the definition are both amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

These amendments come into force on August 20, 2011, unless an election is made to have these amendments come into force, in respect of the taxpayer, on Announcement Date.

“taxable surplus”

The definition “taxable surplus” is primarily relevant for the purpose of determining the deductibility of dividends received from a foreign affiliate, pursuant to subsection 5900(1) of the Regulations and subsection 113(1) of the Act.

Subparagraph (iv) of the description of A and subparagraph (vi) of the description of B of the definition are both amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

These amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have these amendments apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

“underlying foreign tax”

The definition “underlying foreign tax” is primarily relevant for the purposes of determining the deductibility of dividends received from a foreign affiliate of a corporation, pursuant to subsection 5900(1) of the Regulations and subsection 113(1) of the Act.

Subparagraph (v) of the description of A and subparagraph (iv) of the description of B of the definition are both amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

These amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have these amendments apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

ITR
5907(1.03)

Subsection 5907(1.03) of the Regulations is a rule analogous to subsection 91(4.1) of the Act, which denies foreign tax credits and similar deductions with respect to foreign income or profits tax if the burden of that tax is not, in fact, borne by the taxpayer.

Subsection 5907(1.03) is amended to add a reference to new subsection 5907(1.092) of the Regulations. For further information, please see the commentary on subsection 5907(1.092).

This amendment applies to income or profits tax paid 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, unless an election is made to have it apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

ITR
5907(1.091) and (1.092)

New subsections 5907(1.091) and (1.092) of the Regulations ensure that appropriate surplus adjustments are made where, under foreign tax laws, the shareholder of a fiscally transparent entity (FTE) that is a foreign affiliate of a taxpayer, and not the FTE itself, is liable for and pays foreign tax in respect of income of the FTE. This situation is also addressed by the amendments to the definition "foreign accrual tax" (FAT) in subsection 95(1) of the Act. For further information, please see the commentary on the definition "foreign accrual tax" in subsection 95(1).

Subsection 5907(1.091) sets out the conditions for the application of subsection 5907(1.092). It generally provides that subsection 5907(1.092) applies, in respect of income or profits tax paid by, or refunded to, a foreign affiliate (the shareholder affiliate) of a taxpayer – in respect of the income, profits or loss of another foreign affiliate (the transparent affiliate) of the taxpayer – if all the following conditions are satisfied:

- The shareholder affiliate has an equity percentage (as defined in subsection 95(4) of the Act) in the transparent affiliate.
- The income or profits tax is paid to, or refunded by, a foreign country.
- The shareholder affiliate, and not the transparent affiliate, is liable for that tax, or is entitled to that refund, under the income tax laws of the foreign country.

When these conditions are satisfied, subsection 5907(1.092) ensures that the foreign income or profits tax paid by, or refunded to, the shareholder affiliate has appropriate consequences for the shareholder affiliate's surplus accounts. In the absence of subsection 5907(1.092), the surplus regulations in Part LIX of the Regulations would not apply appropriately because the entity paying the tax (i.e., the shareholder affiliate) is not the entity (i.e., the transparent affiliate) that earned the income to which the tax relates.

Appropriate surplus adjustments are achieved, first, by paragraph 5907(1.092)(*a*) deeming the tax that is paid by, or refunded to, the shareholder affiliate not to have been so paid or refunded. Paragraphs 5907(1.092)(*b*) and (*c*) then provide specific adjustments to the surplus accounts of the shareholder affiliate, which are generally the same adjustments as would have occurred in respect of the transparent affiliate's surplus accounts had the tax been paid by, or refunded to, the transparent affiliate.

Paragraph 5907(1.092)(*b*) makes surplus adjustments in the case where income or profits tax is paid by the shareholder affiliate in respect of the transparent affiliate's income. It provides that 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 been liable (instead of the shareholder affiliate) for the tax, reduces specific surplus accounts, or increases specific deficit accounts, of the shareholder affiliate, to the extent that it would have resulted in such reductions to the corresponding surplus accounts, or increases to corresponding deficit accounts, of the transparent affiliate had it been payable by the transparent affiliate. Paragraph 5907(1.092)(*b*) also provides for an increase to the shareholder affiliate's hybrid underlying tax, to the extent of any adjustment under that paragraph to hybrid surplus or deficit, and an increase to the shareholder affiliate's underlying foreign tax, to the extent of any adjustment under that paragraph to taxable surplus or deficit.

Paragraph 5907(1.092)(*c*) makes surplus adjustments where income or profits tax is refunded to the shareholder affiliate. These adjustments are the converse of the adjustments resulting from a tax payment under paragraph 5907(1.092)(*b*).

Consequential amendments are also made to the definitions "exempt surplus", "hybrid surplus", "hybrid underlying tax", "taxable surplus" and "underlying foreign tax" in subsection 5907(1) of the Regulations to add references to additions or reductions under subsection 5907(1.092). For further information, please see the commentaries on those definitions.

These amendments apply to taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have these amendments apply in respect of a taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

ITR
5907(1.1)

Subsection 5907(1.1) of the Regulations contains rules for the calculation of surpluses and deficits of a foreign affiliate where the affiliate is a member of a group of foreign affiliates that files a consolidated or combined return in a foreign country (e.g., the United States) and one of the affiliates (the primary affiliate) in the group is responsible, on behalf of the group, for paying, or claiming a refund of, the tax of the primary affiliate and the other members (the secondary members) of the group.

Subsection 5907(1.1) is amended to remove the requirement that the primary and secondary affiliates all be resident in the same foreign country under whose laws they are treated as a consolidated or combined group.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2003.

ITR
5907(1.11)

New subsection 5907(1.11) of the Regulations deems a non-resident corporation to be a foreign affiliate of a corporation resident in Canada, in certain circumstances, for the purposes of subsection 5907(1.1). Foreign affiliate status is relevant in the context of subsection 5907(1.1) because that subsection applies only in respect of two or more foreign affiliates of a Canadian-resident corporation that determine their foreign income tax liabilities on a consolidated or combined basis. For further information, please see the commentary on subsection 5907(1.1).

Subsection 5907(1.11) generally deems, for the purposes of subsection 5907(1.1), a non-resident corporation to be a foreign affiliate of a particular corporation resident in Canada if the non-resident corporation is a foreign affiliate of another corporation that is

- resident in Canada, and
- related to the particular corporation resident in Canada, otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act.

This rule ensures, among other things, that where a Canadian-resident corporation does not have an equity percentage (as defined in subsection 95(4) of the Act) in a non-resident corporation that is a member of the same foreign consolidated group as one or more foreign affiliates of the Canadian-resident corporation, subsection 5907(1.1) can still apply in respect of that non-resident corporation.

Subsection 5907(1.11) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2003.

ITR
5907(1.3)

In computing a taxpayer's income, subsection 91(4) of the Act allows a deduction in respect of the foreign accrual tax that is attributable to foreign accrual property income included in the taxpayer's income. Subsection 95(1) of the Act defines foreign accrual tax to include amounts prescribed to be foreign accrual tax.

In circumstances where a loss incurred by a foreign corporation in a particular group of foreign affiliates is relevant in the computation of the income tax liability of the group, paragraphs 5907(1.3)(*a*) and (*b*) of the Regulations provide that an amount will be considered foreign accrual tax if the amount is paid by a particular foreign corporation to another foreign corporation for the use of a loss in computing the group's foreign tax liability. These provisions apply where the loss of the other corporation is an active business loss or a capital loss resulting from the disposition of excluded property as well as where the loss is one that is determined under the current version of paragraph 5903(1)(*a*).

Subsection 5907(1.3) is amended to modernize its language and to accommodate the use in certain foreign jurisdictions of fiscally transparent entities (FTEs) that are considered to be corporations under Canadian tax principles. A common example of an FTE is a limited liability company (LLC) formed under various U.S. state statutes. In recognition of the fact that, under certain foreign income tax laws, the shareholder of an FTE, and not the FTE itself, is liable for and pays the foreign tax in respect of income of the FTE, paragraphs 5907(1.3)(*a*) and (*b*) are amended to

- refer to consolidated group taxation under the tax laws of the country in which the foreign affiliate that is a shareholder of the FTE (the shareholder affiliate) is resident, and
- allow an amount paid by the shareholder affiliate for the use of another group member's loss to qualify as FAT in certain circumstances.

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have it apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

ITR
5907(1.5) and (1.6)

Subsections 5907(1.5) and (1.6) of the Regulations contain rules that allow for the reinstatement in certain circumstances of foreign accrual tax denied under subsection 5907(1.4). Subsection 5907(1.4) ensures that an amount paid by a particular affiliate to another corporation, as contemplated by subsection 5907(1.3), that is in respect of a loss of another corporation will only be foreign accrual tax to the extent that the amount paid can reasonably be considered to be in respect of a foreign accrual property loss of a controlled foreign affiliate of a person or partnership that is, at the end of the relevant taxation year, a relevant person or partnership (within the meaning of new subsection 5903(6)) in respect of the taxpayer.

Subsection 5907(1.5) and (1.6) allow foreign accrual tax that is initially denied under subsection 5907(1.4) to be reinstated in the year in which the loss that caused the denial, and all other losses of group members for that same taxation year, would otherwise have been used against non-foreign accrual property income of the consolidated group, provided those losses are used up within five years of the year in which the foreign accrual property income is realized.

Consistent with amendments to subsection 5907(1.3), subsections 5907(1.5) and (1.6) are amended to accommodate the use of fiscally transparent entities (FTEs) in certain foreign jurisdictions. This is accomplished by adding references to a “shareholder affiliate”, i.e., a foreign affiliate that is the shareholder of a foreign FTE and that makes the compensatory payment to another group member for the use of a loss in respect of which subsection 5907(1.4) applies. For further information, please see the commentary on subsection 5907(1.3).

This amendment applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 2010, unless an election is made to have it apply in respect of taxation years of all foreign affiliates of a taxpayer that end on or after Announcement Date.

Clause 14

Assessments

Clause 14 provides for the automatic override of the normal statute-barring rules of subsection 152(4) of the Act for clauses 1, 5 to 7 and 11 to 13.

Part 2

Excise Duties and Sales Tax

Excise Act, 2001

Clause 15

Serious Offences

EA, 2001
211(6.4)

Section 211 of the *Excise Act, 2001* (the Act) prohibits the use or communication of confidential information except as otherwise permitted in that section. In this regard, confidential information may be shared with law enforcement authorities in very limited circumstances. For example, officials of the Canada Revenue Agency (CRA) may share confidential information with the police when those officials are seeking information from the police that is relevant to the CRA's administration or enforcement of the Act. Information sharing with appropriate persons is also permitted where the confidential information may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country.

The Act requires licensees and other persons to report certain information to the CRA (e.g., tobacco licensees filing excise duty returns). The Act also allows the CRA to demand information from such persons, and inspect their books and records and other documents, for the purposes of administration and enforcement of the Act. The CRA is not generally permitted to use this authority for other purposes, such as to assist law enforcement authorities in the course of criminal investigations.

However, there are occasions when CRA officials, in the course of their ordinary duties, become aware of information that a reasonable person would believe is evidence of the commission of a crime. Section 211 generally prevents the CRA from, on its own initiative, communicating such evidence to law enforcement authorities.

New subsection 211(6.4) responds to the 14 October 2010 recommendation of the Council of Fiscal Affairs of the Organisation for Economic Co-operation and Development (OECD) that member countries, in accordance with their legal systems, establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of serious crimes arising out of the performance of their duties, to the appropriate domestic law enforcement authorities. More specifically, new subsection 211(6.4) permits a government official to provide confidential information to a law enforcement officer (e.g., a police officer) of an appropriate police organization (domestic or foreign) when the official has reasonable grounds to believe that the information will afford evidence of a listed offence. This provision does not provide the CRA with a mandate to use the information-collection authorities in the Act to conduct, or assist in the conduct of, criminal investigations. Nor does it permit the sharing of information on the basis of mere suspicion of the commission of a criminal offence.

New clauses 211(6.4)(*a*)(i)(A), (B) and (C) relate to bribery and the corruption of government officials. New clause 211(6.4)(*a*)(i)(D) and subparagraphs 211(6.4)(*a*)(ii) and (iii) reflect legislation enacted in the *Safe Streets and Communities Act*, S.C. 2012, c.1, to restrict the imposition of conditional sentences for serious crimes.

The administration of these new measures will be closely controlled within the CRA.

This amendment comes into force on Royal Assent.

Excise Tax Act

Clause 16

Serious Offences

ETA
295(5.04)

Section 295 of the *Excise Tax Act* (the ETA) prohibits the use or communication of confidential information except as otherwise permitted in that section. In this regard, confidential information may be shared with law enforcement authorities in very limited circumstances. For example, officials of the CRA may share confidential information with the police when those officials are seeking information from the police that is relevant to the CRA's administration or enforcement of the goods and services tax and harmonized sales tax (GST/HST). Information sharing with appropriate persons is also permitted where the confidential information relates to an imminent danger of death or physical injury to any individual.

Part IX of the ETA requires businesses and other persons to report certain information to the CRA (e.g., in GST/HST returns). Part IX of the ETA also allows the CRA to demand information, and inspect books and records and other documents, for the purposes of the administration and enforcement of the GST/HST. The CRA is not generally permitted to use this authority for other purposes, such as to assist law enforcement authorities in the course of criminal investigations.

However, there are occasions when CRA officials, in the course of their ordinary duties, become aware of information that a reasonable person would believe is evidence of the commission of a crime. Section 295 currently prevents the CRA from, on its own initiative, communicating such evidence to law enforcement authorities.

New subsection 295(5.04) responds to the 14 October 2010 recommendation of the Council of Fiscal Affairs of the Organisation for Economic Co-operation and Development (OECD) that member countries, in accordance with their legal systems, establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of serious crimes arising out of the performance of their duties, to the appropriate domestic law enforcement authorities. More specifically, subsection 295(5.04) permits a government official to provide confidential information to a law enforcement officer (e.g., a police officer) of an appropriate police organization (domestic or foreign) when the official has reasonable grounds to believe that the information will afford evidence of a listed offence. This provision does not provide the CRA with a mandate to use the information-collection authorities in Part IX of the ETA to conduct, or assist in the conduct of, criminal investigations. Nor does it permit the sharing of information on the basis of mere suspicion of the commission of a criminal offence.

New clauses 295(5.04)(*a*)(i)(A), (B) and (C) relate to bribery and the corruption of government officials. New clause 295(5.04)(*a*)(i)(D) and subparagraphs 295(5.04)(*a*)(ii) and (iii) reflect legislation enacted in the *Safe Streets and Communities Act*, S.C. 2012, c.1, to restrict the imposition of conditional sentences for serious crimes.

The administration of these new measures will be closely controlled within the CRA.

This amendment comes into force on Royal Assent.