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Legislative Proposals and Explanatory Notes relating to the Income Tax Act, the Excise Act, 2001 and the Excise Tax Act

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Legislative Proposals

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LEGISLATIVE PROPOSALS IN RESPECT OF BUDGET 2008 AND OTHER TAX MEASURES

PART 1

AMENDMENTS IN RESPECT OF INCOME TAX

INCOME TAX ACT

1. (1) Paragraph 7(1.4)(*b*) of the *Income Tax Act* is amended by striking out the word "or" at the end of subparagraph (iv), by adding the word "or" at the end of subparagraph (v), and by adding the following after subparagraph (v):

(vi) if the old securities were equity in a SIFT wind-up entity that was, at the time of the disposition, a mutual fund trust, a SIFT wind-up corporation in respect of the SIFT wind-up entity

(2) Subsection (1) applies after December 19, 2007.

2. (1) Subsection 12(1) of the Act is amended by adding the following after paragraph (*z.4*):

Former TFSA

(*z.5*) any amount required because of subsection 146.2(9) to be included in computing the taxpayer's income for the year; and

(2) The definition "investment contract" in subsection 12(11) of the Act is amended by adding the following after paragraph (*d*):

(*d.1*) a TFSA,

(3) Subsections (1) and (2) apply to the 2009 and subsequent taxation years.

3. (1) The Act is amended by adding the following after section 12.4:

Definitions

12.5 (1) The definitions in this section apply for the purposes of this section and section 20.4.

"base year" « *année de base* »

"base year" of an insurer means the insurer's taxation year that immediately precedes its transition year.

"insurance business" « *entreprise d'assurance* »

"insurance business" of an insurer, is an insurance business carried on by the insurer, other than a life insurance business.

"reserve transition amount" « *montant transitoire* »

"reserve transition amount" of an insurer, in respect of an insurance business carried on by it in Canada in its transition year, is the positive or negative amount determined by the formula

$$A - B$$

where

A is the maximum amount that the insurer would be permitted to claim under paragraph 20(7)(*c*) (and that would be prescribed by section 1400 of the Regulations for the purpose of paragraph 20(7)(*c*)) as a policy reserve for its base year in respect of its insurance policies if

(*a*) the generally accepted accounting principles that applied to the insurer in valuing its assets and liabilities for its transition year had applied to it for its base year, and

(*b*) section 1400 of the Regulations were read in respect of the insurer's base year as it reads in respect of its transition year, and

B is the maximum amount that the insurer is permitted to claim under paragraph 20(7)(*c*) as a policy reserve for its base year.

"transition year" « *année transitoire* »

"transition year" of an insurer means the insurer's first taxation year that begins after September 30, 2006.

Transition year income inclusion

(2) There shall be included in computing an insurer's income for its transition year from an insurance business carried on by it in Canada in the transition year, the positive amount, if any, of the insurer's reserve transition amount in respect of that insurance business.

Transition year income deduction reversal

(3) If an amount has been deducted under subsection 20.4(2) in computing an insurer's income for its transition year from an insurance business carried on by it in Canada, there shall be included in computing the insurer's income, for each particular taxation year of the insurer that ends after the beginning of the transition year, from that insurance business, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year from that insurance business; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Winding-up

(4) If an insurer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the "parent"), and immediately after the winding-up the parent carries on an insurance business, in applying subsections (3) and 20.4(3) in computing the income of the insurer and the income of the parent for particular taxation years that end on or after the first day (referred to in this subsection as the "start day") on which assets of the insurer were distributed to the parent on the winding-up,

(*a*) the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the insurer in respect of

(i) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the insurer's income from an insurance business for its transition year,

(ii) any amount included under subsection (3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the start day, and

(iii) any amount that would — in the absence of this subsection and if the insurer existed and carried on an insurance business on each day (that is the start day or a subsequent day) that the parent carries on an insurance business — be required to be included or deducted, in respect of any of those days, under subsection (3) or 20.4(3) in computing the insurer's income from an insurance business; and

(*b*) the insurer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsections (3) and 20.4(3) without reference to the start day and days after the start day.

Amalgamations

(5) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of an insurer with one or more other corporations to form one corporation (referred to in this subsection as the "new corporation"), and immediately after the amalgamation the new corporation carries on an insurance business, in applying subsections (3) and 20.4(3) in computing the new corporation's income for particular taxation years that begin on or after the day on which the amalgamation occurred, the new corporation is, on and after that day, deemed to be the same corporation as and a continuation of the insurer in respect of

(*a*) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the insurer's income from an insurance business for its transition year;

(*b*) any amount included under subsection (3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the day on which the amalgamation occurred; and

(*c*) any amount that would — in the absence of this subsection and if the insurer existed and carried on an insurance business on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation carries on an insurance business — be required to be included or deducted, in respect of any of those days, under subsection (3) or 20.4(3) in computing the insurer's income from an insurance business.

Application of subsection (7)

(6) Subsection (7) applies if, at any time, an insurer (referred to in this subsection and subsection (7) as the "transferor") transfers, to a corporation (referred to in this subsection and subsection (7) as the "transferee") that is related to the transferor, property in respect of an insurance business carried on by the transferor in Canada (referred to in this subsection and subsection (7) as the "transferred business") and

(*a*) subsection 138(11.5) or (11.94) applies to the transfer; or

(*b*) subsection 85(1) applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee carries on an insurance business.

Transfer of insurance business

(7) If this subsection applies in respect of the transfer, at any time, of property

(*a*) the transferee is, at and after that time, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (2) or deducted under subsection 20.4(2) in computing the transferor's income for its transition year that can reasonably be attributed to the transferred business,

(ii) any amount included under subsection (3) or deducted under subsection 20.4(3) in computing the transferor's income for a taxation year of the transferor that begins before that time that can reasonably be attributed to the transferred business, and

(iii) any amount that would — in the absence of this subsection and if the transferor existed and carried on an insurance business on each day (that includes that time or a subsequent day) that the transferee carries on an insurance business — be required to be included or deducted, in respect of any of those days, under subsection (3) or 20.4(3) in computing the transferor's income that can reasonably be attributed to the transferred business; and

(*b*) in determining, in respect of the day that includes that time or any subsequent day, any amount that is required under subsection (3) or 20.4(3) to be included or deducted in computing the transferor's income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

Ceasing to carry on business

(8) If at any time an insurer ceases to carry on all or substantially all of an insurance business (referred to in this subsection as the "discontinued business"), and none of subsections (4) to (6) apply, there shall be included in computing the insurer's income from the discontinued business for the insurer's taxation year that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is the amount deducted under subsection 20.4(2) in computing the insurer's income from the discontinued business for its transition year; and

B is the total of all amounts each of which is an amount included under subsection (3) in computing the insurer's income from the discontinued business for a taxation year that began before that time.

Ceasing to exist

(9) If at any time an insurer that carried on an insurance business ceases to exist (otherwise than as a result of a winding-up or amalgamation described in subsection (4) or (5)), for the purposes of subsections (8) and 20.4(4), the insurer is deemed to have ceased to carry on the insurance business at the earlier of

(*a*) the time (determined without reference to this subsection) at which the insurer ceased to carry on the insurance business; and

(*b*) the time that is immediately before the end of the last taxation year of the insurer that ended at or before the time at which the insurer ceased to exist.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

4. (1) The Act is amended by adding the following after section 20.3:

Definitions

20.4 (1) The definitions in section 12.5 apply for the purposes of this section.

Transition year income deduction

(2) There shall be deducted in computing an insurer's income for its transition year from an insurance business carried on by it in Canada in the transition year the absolute value of the negative amount, if any, of the insurer's reserve transition amount in respect of that insurance business.

Transition year income inclusion reversal

(3) If an amount has been included under subsection 12.5(2) in computing an insurer's income for its transition year from an insurance business carried on by it in Canada, there shall be deducted in computing the insurer's income, for each particular taxation year of the insurer that ends after the beginning of the transition year, from that insurance business, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 12.5(2) in computing the insurer's income for the transition year from that insurance business; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Ceasing to carry on business

(4) If at any time an insurer ceases to carry on all or substantially all of an insurance business (referred to in this subsection as the "discontinued business"), and none of subsections 12.5(4) to (6) apply, there shall be deducted in computing the insurer's income from the discontinued business for the insurer's taxation year that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is any amount included under subsection 12.5(2) in computing the insurer's income from the discontinued business for its transition year; and

B is the total of all amounts each of which is an amount deducted under subsection (3) in computing the insurer's income from the discontinued business for a taxation year that began before that time.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

5. (1) Subparagraph 39(1)(*a*)(ii.2) of the Act is replaced by the following:

(ii.2) a property <u>if the disposition is a disposition to which</u> subsection 142.4(4) or (5) or 142.5(1) applies,

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

6. (1) Section 40 of the Act is amended by adding the following after subsection (9):

Application

(10) Subsection (11) applies in computing at any particular time a corporation's gain or loss (in this subsection and subsection (11) referred to as the "new gain" or "new loss", as

the case may be), in respect of any part (which in this subsection and subsection (11) is referred to as the “relevant part” and which may for greater certainty be the whole) of a foreign currency debt of the corporation, arising from a fluctuation in the value of the currency of the foreign currency debt (other than, for greater certainty, a gain or a capital loss that arises because of the application of subsection 111(12)), if at any time before the particular time the corporation realized a capital loss or gain in respect of the foreign currency debt because of subsection 111(12).

Gain or loss on foreign currency debt

(11) If this subsection applies, the new gain is the positive amount, or the new loss is the negative amount, as the case may be, determined by the formula

$$A + B - C$$

where

A is

(*a*) if the corporation would, but for any application of subsection 111(12), recognize a new gain, the amount of the new gain, determined without reference to this subsection, or

(*b*) if the corporation would, but for any application of subsection 111(12), recognize a new loss, the amount of the new loss, determined without reference to this subsection, multiplied by (-1);

B is the total of all amounts each of which is that portion of the amount of a capital loss realized by the corporation at any time before the particular time, in respect of the foreign currency debt because of subsection 111(12), that is reasonably attributable to the relevant part of the foreign currency debt; and

C is the total of all amounts each of which is that portion of the amount of a gain realized by the corporation at any time before the particular time, in respect of the foreign currency debt because of subsection 111(12), that is reasonably attributable to the relevant part of the foreign currency debt;

(2) Subsection (1) applies after 2005.

7. (1) Section 80.01 of the Act is amended by adding the following after subsection (5):

Deemed Settlement on SIFT trust wind-up event

(5.1) If a trust that is a SIFT wind-up entity is the only beneficiary under another trust (in this subsection referred to as the “subsidiary trust”), and a capital property that is a debt or other obligation (in this subsection referred to as the “subsidiary trust’s obligation”) of the subsidiary trust to pay an amount to the SIFT wind-up entity is, as a consequence of a distribution from the subsidiary trust that is a SIFT trust wind-up event, settled at a particular time without any payment of an amount or by the payment of an amount that is less than the principal amount of the subsidiary trust’s obligation

(*a*) paragraph (*b*) applies if,

(i) the payment is less than the amount that would have been the adjusted cost base to the SIFT wind-up entity of the subsidiary trust's obligation immediately before the particular time, and

(ii) the SIFT wind-up entity elects, in prescribed form on or before the SIFT wind-up entity's filing-due date for the taxation year that includes the particular time, to have paragraph (*b*) apply;

(*b*) if this paragraph applies, the amount paid at the particular time in satisfaction of the principal amount of the subsidiary trust's obligation is deemed to be equal to the amount that would be the adjusted cost base to the SIFT wind-up entity of the subsidiary trust's obligation immediately before the particular time if that adjusted cost base included amounts added in computing the SIFT wind-up entity's income in respect of the portion of the indebtedness representing unpaid interest, to the extent that the SIFT wind-up entity has not deducted any amounts as bad debts in respect of that unpaid interest; and

(*c*) for the purposes of applying section 80 to the subsidiary trust's obligation, the subsidiary trust's obligation is deemed to have been settled immediately before the time that is immediately before the distribution.

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

8. (1) Section 85.1 of the Act is amended by adding the following after subsection (6):

Application of subsection (8)

(7) Subsection (8) applies in respect of the disposition (referred to in this subsection and subsection (8) as the "particular disposition") by a taxpayer of SIFT wind-up entity equity (referred to in this subsection and subsection (8) as the "particular unit") to a taxable Canadian corporation, if

(*a*) the particular disposition occurs during a period (referred to in this subsection and subsection (8) as the "exchange period") of no more than 60 days in which all of the equity in the SIFT wind-up entity that was issued and outstanding at the start of the period, or that is issued during the period, is

(i) disposed of to the corporation, or

(ii) redeemed or cancelled by the SIFT wind-up entity;

(*b*) the taxpayer

(i) disposes of all of its equity in the SIFT wind-up entity during the exchange period, and

(ii) receives no consideration for the particular disposition, other than a share (referred to in this subsection and subsection (8) as the "exchange share") of the capital stock of the corporation that

(A) is issued during the exchange period to the taxpayer by the corporation, and

(B) has a fair market value at its issuance that is equal to the fair market value of the particular unit immediately before the particular disposition; and (*c*) all of the exchange shares issued to holders of equity in the SIFT wind-up entity are shares of a single class of the capital stock of the corporation.

Rollover on SIFT unit for share exchange

(8) If this subsection applies in respect of a particular disposition by a taxpayer of a particular unit of a SIFT wind-up entity to a corporation for consideration that is an exchange share, the following rules apply:

(*a*) subsections 85(1) and (2) are deemed not to apply in respect of the particular disposition;

(*b*) the taxpayer is deemed to have

(i) disposed of the particular unit for proceeds of disposition equal to the cost amount to the taxpayer of the particular unit immediately before the particular disposition, and

(ii) acquired the exchange share at a cost equal to the cost amount to the taxpayer of the particular unit immediately before the particular disposition;

(*c*) if the particular unit was immediately before the particular disposition taxable Canadian property of the taxpayer, the exchange share is deemed to be taxable Canadian property of the taxpayer;

(*d*) the cost to the corporation of the particular unit is deemed to be the lesser of

(i) the fair market value of the particular unit immediately before the particular disposition, and

(ii) the amount described as B in the formula in paragraph (*e*) in respect of the particular unit; and

(*e*) in computing the paid up capital in respect of each class of shares of the capital stock of the corporation at any time after the particular disposition there shall be deducted the amount determined by the formula

$$(A - B) \times C / A$$

where

A is the increase, if any, as a result of the particular disposition, in the paid-up capital in respect of all the shares of the capital stock of the corporation, computed without reference to this paragraph as it applies to the particular disposition,

B is the amount determined by the formula

$$D - E$$

where

D is

(i) unless subparagraph (ii) applies, the total of all amounts each of which is

(A) if the SIFT wind-up entity is a trust, the fair market value of property received by the SIFT wind-up entity on the issuance of the particular unit, or

(B) if the SIFT wind-up entity is a partnership,

(I) an amount that has at any time been added, in computing the adjusted cost base to any taxpayer of the particular unit on or before the particular disposition, because of subparagraph 53(1)(*e*)(iv) or (x), or

(II) an amount that would at any time have been added, in computing the adjusted cost base to any taxpayer of the particular unit on or before the particular disposition, because of subparagraph 53(1)(*e*)(i) if subsection 96(1) were read in the specified manner, and

(ii) if the SIFT wind-up entity has on or after the end of the exchange period issued a unit, nil, and

E is the total of all amounts each of which

(i) if the SIFT wind-up entity is a trust, has become payable by the SIFT wind-up entity, in respect of the particular unit, to any holder of the unit on or before the particular disposition, other than an amount that has become payable out of its income (determined without reference to subsection 104(6)) or capital gains, and

(ii) if the SIFT wind-up entity is a partnership,

(A) has at any time been deducted, in computing the adjusted cost base to any taxpayer of the particular unit on or before the particular disposition, because of subparagraph 53(2)(*c*)(iv) or (v), or

(B) would have at any time been deducted, in computing the adjusted cost base to any taxpayer of the particular unit on or before the particular disposition, because of subparagraph 53(2)(*c*)(i) if subsection 96(1) were read in the specified manner, and

C is the increase, if any, as a result of the particular disposition, in the paid-up capital in respect of the class of shares, computed without reference to this paragraph as it applies to the particular disposition.

(2) Subsection (1) applies to

(*a*) dispositions that occur on or after ANNOUNCEMENT DATE and before 2013; and

(*b*) a disposition, by a taxpayer to a corporation, that occurs on or after December 20, 2007 and before ANNOUNCEMENT DATE, if the corporation (jointly with the taxpayer, if the taxpayer and the corporation have validly elected that subsection 85(1) or (2) of the Act apply to the disposition) elects in writing, filed with the Minister of National Revenue on or before the corporation's filing-due date for its taxation year that includes the date of Royal Assent of this Bill, that this subsection apply to the disposition.

9. (1) Paragraph 87(2)(*g.2*) of the Act is replaced by the following:

Financial institution rules

(*g.2*) for the purposes of paragraphs 142.4(4)(*c*) and (*d*) and subsections 142.5(5) and (7), 142.51(11) and 142.6(1), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection 87(2) of the Act is amended by adding the following after paragraph (*s*):

(*s.1*) if a predecessor corporation was a SIFT wind-up corporation immediately before the amalgamation, the new corporation is deemed to be a SIFT wind-up corporation;

(3) Section 87(2.2) of the Act is replaced by the following:

Amalgamation of insurers

(2.2) Where there has been an amalgamation and one or more of the predecessor corporations was an insurer, the new corporation is, notwithstanding subsection (2), deemed, for the purposes of paragraphs 12(1)(*d*), (*e*), (*e.1*), (*i*) and (*s*), subsection 12.5(8), paragraphs 20(1)(*l*), (*l.1*), (*p*) and (*jj*) and 20(7)(*c*), subsections 20(22) and 20.4(4), sections 138, 138.1, 140, 142 and 148 and Part XII.3, to be the same corporation as, and a continuation of, each of those predecessor corporations.

(4) Subsections (1) and (3) apply to taxation years that begin on or after October 1, 2006.

(5) Subsection (2) applies after December 19, 2007.

10. (1) Subparagraph 88(1)(*g*)(i) of the Act is replaced by the following:

(i) for the purposes of paragraphs 12(1)(*d*), (*e*), (*e.1*), (*i*) and (*s*), subsection 12.5(8), paragraphs 20(1)(*l*), (*l.1*), (*p*) and (*jj*) and 20(7)(*c*), subsections 20(22) and 20.4(4), sections 138, 138.1, 140, 142 and 148 and Part XII.3, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary, and

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

11. (1) The Act is amended by adding the following after section 88:

Application

88.1 (1) Subsection (2) applies to a trust’s distribution of property to a taxpayer if

(*a*) the distribution is a SIFT trust wind-up event;

(*b*) the trust is

(i) a SIFT wind-up entity the only beneficiary under which is a taxable Canadian corporation, or

(ii) a trust the only beneficiary under which is another trust described by subparagraph (i);

(*c*) where the trust is a SIFT wind-up entity, the distribution occurs no more than 60 days after the first other distribution, if any, of the property that is a SIFT trust wind-up event of a trust under which the SIFT wind-up entity is the beneficiary; and

(*d*) if the property is shares of the capital stock of a taxable Canadian corporation,

(i) the property was not acquired by the trust on a distribution to which subsection 107(3.1) applies, and

(ii) the trust elects in writing, filed with the Minister on or before the trust's filing-due date for its taxation year that includes the time of the distribution, that this section apply to the distribution.

SIFT trust wind-up event

(2) If this subsection applies to a trust's distribution of property to a taxpayer, subsections 88 (1) to (1.7) and section 87, as it applies for the purposes of those subsections, apply, with any modifications that the circumstances require, as if

(*a*) the trust were a taxable Canadian corporation (in this subsection referred to as the "subsidiary") that is not a private corporation;

(*b*) where the taxpayer is a SIFT wind-up entity, the taxpayer were a taxable Canadian corporation that is not a private corporation;

(*c*) the distribution were a winding-up of the subsidiary;

(*d*) the taxpayer's interests as a beneficiary under the trust were shares of a single class of shares of the capital stock of the subsidiary owned by the taxpayer;

(*e*) the paid-up capital in respect of that class of shares of the subsidiary were the amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the fair market value of property received by the trust on the issuance by it of an interest as a beneficiary under the trust that is, immediately before the distribution, held by the taxpayer, and

B is the total of all amounts each of which has become payable by the trust, in respect of an interest described in A, to any holder of the interest before the distribution, other than an amount that has become payable out of its income (determined without reference to subsection 104(6)) or capital gains;

(*f*) each trust, a majority-interest beneficiary (in this subsection, within the meaning assigned by section 251.1) of which is another trust that is by operation of this subsection treated as if it were a corporation, were a corporation; and

(*g*) the taxpayer last acquired control of the subsidiary and of each corporation (including a trust that is by operation of this subsection treated as if it were a corporation) controlled by the subsidiary at the time, if any, at which the taxpayer last became a majority-interest beneficiary of the trust.

(2) Subsection (1) applies after ANNOUNCEMENT DATE, except that subsection 88.1(1) of the Act, as enacted by subsection (1), is to be read without reference to its paragraph (*c*) in its application to a trust's distribution of property, if the distribution occurs no more than 60 days after the day on which this Act is assented to.

12. (1) The definition "general rate income pool" in subsection 89(1) of the Act is replaced by the following:

“general rate income pool”
« *compte de revenu à taux général* »

“general rate income pool” at the end of a particular taxation year, of a taxable Canadian corporation that is a Canadian-controlled private corporation or a deposit insurance corporation in the particular taxation year, is the positive or negative amount determined by the formula

$$A - B$$

where

A is the positive or negative amount that would, before taking into consideration the specified future tax consequences for the particular taxation year, be determined by the formula

$$C + [D \times (E - F - G)] + H + I - J$$

where

C is the corporation’s general rate income pool at the end of its preceding taxation year,

D is

(*a*) for the 2009 taxation year, 0.68,

(*b*) for the 2010 taxation year, 0.69,

(*c*) for the 2011 taxation year, 0.70, and

(*d*) for taxation years after 2011, 0.72,

E is

(*a*) unless paragraph (*b*) applies, the corporation’s taxable income for the particular taxation year, and

(*b*) if the corporation is a deposit insurance corporation in the particular taxation year, nil,

F is the amount determined by multiplying the amount, if any, deducted by the corporation under subsection 125(1) for the particular taxation year by the quotient obtained by dividing 100 by the rate of the deduction provided under that subsection for the particular taxation year,

G is

(*a*) if the corporation is a Canadian-controlled private corporation in the particular taxation year, the lesser of the corporation’s aggregate investment income for the particular taxation year and the corporation’s taxable income for the particular taxation year, and

(*b*) in any other case, nil,

H is the total of all amounts each of which is

(*a*) an eligible dividend received by the corporation in the particular taxation year, or (*b*) an amount deductible under section 113 in computing the taxable income of the corporation for the particular taxation year,

I is the total of all amounts determined under subsections (4) to (6) in respect of the corporation for the particular taxation year, and

J is

(*a*) unless paragraph (*b*) applies, the amount, if any, by which

(i) the total of all amounts each of which is the amount of an eligible dividend paid by the corporation in its preceding taxation year

exceeds

(ii) the total of all amounts each of which is an excessive eligible dividend designation made by the corporation in its preceding taxation year, or

(*b*) if subsection (4) applies to the corporation in the particular taxation year, nil, and

B is the amount determined by the formula

$$D \times (K - L)$$

where

K is the total of the corporation's full rate taxable incomes (as would be defined in the definition "full rate taxable income" in subsection 123.4(1), if that definition were read without reference to its subparagraphs (*a*)(i) to (iii)) for the corporation's preceding three taxation years, determined without taking into consideration the specified future tax consequences, for those preceding taxation years, that arise in respect of the particular taxation year, and

L is the total of the corporation's full rate taxable incomes (as would be defined in the definition "full rate taxable income" in subsection 123.4(1), if that definition were read without reference to its subparagraphs (*a*)(i) to (iii)) for those preceding taxation years;

(2) Subparagraph (*b*)(iii) of the definition "paid-up capital" in subsection 89(1) of the Act is replaced by the following:

(iii) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1) and (8), 86(2.1), 87(3) and (9), 128.1(2) and (3), 138(11.7), 139.1(6) and (7), 192(4.1) and 194(4.1) and section 212.1,

(3) Subsection (2) applies after December 19, 2007.

13. (1) Subsection 95(1) of the Act is amended by adding the following in alphabetical order:

“antecedent corporation” « *société antécédente* »

“antecedent corporation” of a particular corporation at any time means a corporation that

(*a*) was a predecessor corporation (within the meaning assigned by subsection 87(1)) in respect of an amalgamation that occurred after that time, to which subsection 87(11) applied and by which the particular corporation was formed, or

(*b*) was wound-up into the particular corporation in a winding-up that began after that time and to which subsection 88(1) applied;

“calculating currency” « *monnaie de calcul* »

“calculating currency” for a taxation year of a foreign affiliate of a taxpayer means

(*a*) the currency of the country in which the foreign affiliate is resident at the end of the taxation year, or

(*b*) any currency that the taxpayer demonstrates to be reasonable in the circumstances;

“designated acquired corporation” « *société acquise désignée* »

“designated acquired corporation” of a taxpayer means a particular antecedent corporation of the taxpayer if

(*a*) the taxpayer or another antecedent corporation of the taxpayer acquired control of the particular antecedent corporation, and

(*b*) the taxpayer or the other antecedent corporation, as the case may be, dealt at arm’s length with the particular antecedent corporation immediately before the acquisition of control;

“specified person or partnership” « *personne ou société de personnes déterminée* »

“specified person or partnership”, in respect of a taxpayer, at any time means a person (other than a designated acquired corporation of the taxpayer), or a partnership, that is

(*a*) the taxpayer,

(*b*) a person (other than a partnership) that, at that time, is resident in Canada and does not deal at arm’s length with the taxpayer,

(*c*) a corporation that would, at that time, be an antecedent corporation of the taxpayer or of a person described in paragraph (*b*) if the reference to “subsection 87(11)” in the definition “antecedent corporation” were read as a reference to “section 87”,

(*d*) a foreign affiliate of a person described in any of paragraphs (*a*) to (*c*) or of a partnership described in paragraph (*e*), or

(*e*) a partnership a member of which is described in any of paragraphs (*a*) to (*d*);

(2) Paragraph 95(2)(*f*) of the Act is replaced by the following:

(*f*) except as otherwise provided in this subdivision and except to the extent that the context otherwise requires, a foreign affiliate of a taxpayer is deemed to be at all times resident in Canada for the purposes of determining, in respect of the taxpayer for a taxation year of the foreign affiliate, each amount that is the foreign affiliate's

(i) capital gain, capital loss, taxable capital gain or allowable capital loss from a disposition of a property, or

(ii) income or loss from a property, from a business other than an active business or from a non-qualifying business;

(*f.1*) in computing an amount described in paragraph (*f*) in respect of a property or a business, there is not to be included any portion of that amount that can reasonably be considered to have accrued while no person or partnership that held the property, or carried on the business, was a specified person or partnership in respect of the taxpayer referred to in paragraph (*f*);

(*f.11*) in determining an amount described in paragraph (*f*) for a taxation year of a foreign affiliate of a taxpayer,

(i) if the amount is described in subparagraph (*f*)(i), this Act is to be read without reference to section 26 of the *Income Tax Application Rules*, and

(ii) if the amount is described in subparagraph (*f*)(ii),

(A) this Act is to be read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership, and

(B) if the foreign affiliate has, in the taxation year, disposed of a foreign resource property in respect of a country, it is deemed to have designated, in respect of the disposition and in accordance with subparagraph 59(1)(*b*)(ii) for the taxation year, the amount, if any, by which

(I) the amount determined under paragraph 59(1)(*a*) in respect of the disposition

exceeds

(II) the amount determined under subparagraph 59(1)(*b*)(i) in respect of the disposition;

(*f.12*) a foreign affiliate of a taxpayer shall determine each of the following amounts in its calculating currency for a taxation year:

(i) subject to paragraph (*f.13*), each capital gain, capital loss, taxable capital gain and allowable capital loss of the foreign affiliate for the taxation year from the disposition, at any time, of a capital property that, at that time, was an excluded property of the foreign affiliate,

(ii) its income or loss for the taxation year from each active business carried on by it in the taxation year in a country, and

(iii) its income or loss that is included in computing its income or loss from an active business for the taxation year because of paragraph (*a*);

(*f.13*) a foreign affiliate of a taxpayer shall determine the amount included in computing its foreign accrual property income, in respect of the taxpayer for a taxation year of the foreign affiliate, attributable to its capital gain or taxable capital gain, from the disposition of an excluded property in the taxation year, in Canadian currency by converting the amount of the capital gain, or taxable capital gain, otherwise determined under subparagraph (*f.12*)(i) in its calculating currency for the taxation year into Canadian currency using the rate of exchange quoted by the Bank of Canada at noon on the day on which the disposition was made;

(*f.14*) a foreign affiliate of a taxpayer shall determine in Canadian currency each amount of its income, loss, capital gain, capital loss, taxable capital gain or allowable capital loss for a taxation year, other than an amount to which paragraph (*f.12*) or (*f.13*) applies;

(*f.15*) for the purpose of applying subparagraph (*f*)(i), the reference in subsection 39(2) to “the currency or currencies of one or more countries other than Canada relative to Canadian currency” shall be read as a reference to “one or more currencies other than the calculating currency relative to the calculating currency” and the references in that subsection to “of a country other than Canada” shall be read as references to “other than the calculating currency”;

(3) The portion of subsection 95(2.2) of the Act before paragraph (*a*) is replaced by the following:

Qualifying interest throughout year

(2.2) For the purposes of paragraphs (2)(*a*) and (*g*), a non-resident corporation that is not a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a particular taxation year is deemed to be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout that particular taxation year if

(4) Section 95 of the Act is amended by adding the following after subsection (2.2):

Controlled foreign affiliate throughout year

(2.201) For the purposes of paragraphs (2)(*a*) and (*g*), a non-resident corporation is deemed to be a controlled foreign affiliate of a taxpayer throughout a taxation year of the non-resident corporation if

(*a*) in the taxation year, a person or partnership acquires or disposes of shares of the capital stock of a corporation and, because of the acquisition or disposition, the non-resident corporation becomes or ceases to be a controlled foreign affiliate of the taxpayer, and

(*b*) at either or both of the beginning and end of the taxation year, the non-resident corporation is a controlled foreign affiliate of the taxpayer.

(5) Section 95 of the Act is amended by adding the following after subsection (2.5):

Rule for the definition "specified person or partnership"

(2.6) For the purpose of the definition "specified person or partnership" in subsection (1), if a person or partnership (referred to in this subsection as the "taxpayer") is not dealing at arm's length with another person or partnership (referred to in this subsection as the "particular person") at a particular time

(*a*) the taxpayer is deemed to have existed and not to have dealt at arm's length with the particular person, nor with each antecedent corporation of the particular person, throughout the period that began when the particular person or the antecedent corporation, as the case may be, came into existence and that ends at the particular time, and

(*b*) the taxpayer is deemed not to have dealt at arm's length, at each time in the period referred to in paragraph (*a*) at which the particular person or an antecedent corporation, as the case may be, did not deal at arm's length with a third person or partnership, with that third person or partnership.

(6) Subsections (1), (2) and (5) apply to taxation years of a foreign affiliate of a taxpayer that begin after October 2, 2007. However,

(*a*) for taxation years of a foreign affiliate that begin before 2009, subparagraph 95(2)(*f*)(ii) of the Act, as enacted by subsection (2), shall be read as follows:

(ii) income or loss from a property or from a business other than an active business;

(*b*) if the taxpayer elects in writing in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day (in this subsection referred to as the taxpayer's "election day") that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to, subsection 95(2.6) of the Act, as enacted by subsection (5), shall, in its application to a taxation year of a foreign affiliate of the taxpayer that begins before Announcement Date and after October 2, 2007, be read as follows:

Rule for the definition "specified person or partnership"

(2.6) For the purpose of the definition "specified person or partnership" in subsection (1), in determining whether, at a particular time, a person was not, at a time (referred to in this subsection as the "prior time") that is before the particular time and at which that person did not exist, dealing at arm's length with another person, where the person exists at the particular time but did not exist at the prior time

(*a*) the person is deemed to exist at the prior time, and

(*b*) where the person is related to another person at the particular time, the person is deemed to have been related to that other person at the prior time;

(*c*) if the taxpayer elects in writing in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the taxpayer's election day, subsections (1), (2) and (5) also apply to taxation years of a foreign affiliate of the taxpayer that begin before October 2, 2007 and after the date chosen by the taxpayer under paragraph (*d*), except that subparagraph 95(2)(*f*)(ii) of the Act, as enacted by subsection (2), shall be read in its application to those taxation years in the manner described in paragraph (*a*); and

(*d*) to be valid, an election under paragraph (*c*) must include the identification by the taxpayer of its choice of one of the following dates:

(i) December 31, 1994,

(ii) December 20, 2002, or

(iii) February 27, 2004.

(7) Subsection (3) applies to taxation years of a foreign affiliate of a taxpayer that begin after 1994. However, the portion of subsection 95(2.2) of the Act before paragraph (*a*), as enacted by subsection (3), shall, in its application to taxation years of a foreign affiliate that begin after 1994 and before 2009, be read as follows:

Rule for paragraphs (2)(*a*) and (*g*)

(2.2) For the purposes of paragraphs (2)(*a*) and (*g*),

(8) Subsection (4) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999. However,

(*a*) subject to paragraph (*b*), for taxation years of a foreign affiliate that begin before December 21, 2002, the reference to "for the purposes of paragraphs (2)(*a*) and (*g*)" in subsection 95(2.201) of the Act, as enacted by subsection (4), shall be read as a reference to "for the purpose of paragraph (2)(*a*)"; and

(*b*) if the taxpayer has made a valid election under subsection 26(46) of the *Budget and Economic Statement Implementation Act, 2007*, being S.C. 2007, c. 35, subsection (4) applies to taxation years of a foreign affiliate of the taxpayer that begin after 1994.

(9) Notwithstanding subsections 152(4) to (5) of the Act, any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year shall be made that is necessary to take into account the provisions of subsections (1) to (8).

14. (1) The portion of subsection 107(2) of the Act before paragraph (*a*) is replaced by the following:

Distribution by personal trust

(2) Subject to subsections (2.001), (2.002) and (4) to (5), if at any time a property of a personal trust or a prescribed trust is distributed (otherwise than as a SIFT trust wind-up event) by the trust to a taxpayer who was a beneficiary under the trust and there is a resulting disposition of all or any part of the taxpayer's capital interest in the trust,

(2) The portion of subsection 107(2.1) of the Act before paragraph (*a*) is replaced by the following:

Other distributions

(2.1) Where at any time a property of a trust is distributed by the trust to a beneficiary under the trust, there would, if this Act were read without reference to paragraphs (*h*) and (*i*) of the definition "disposition" in subsection 248(1), be a resulting disposition of all or any part of the beneficiary's capital interest in the trust (which interest or part, as the case may be, is in this subsection referred to as the "former interest") and the rules in subsections (2) and (3.1) and section 132.2 do not apply in respect of the distribution,

(3) Section 107 of the Act is amended by adding the following after subsection (2.2):

Application of subsection (3.1)

(3) Subsection (3.1) applies to a trust's distribution of property to a taxpayer if:

(*a*) the distribution is a SIFT trust wind-up event to which section 88.1 does not apply;

(*b*) the property is shares of the capital stock of a taxable Canadian corporation; and

(*c*) where the trust is a SIFT wind-up entity, the distribution occurs no more than 60 days after the first other distribution, if any, of the property that is a SIFT trust wind-up event of a trust under which the SIFT wind-up entity is the beneficiary.

SIFT trust wind-up event

(3.1) If this subsection applies to a trust's distribution of property to a taxpayer, the following rules apply:

(*a*) the trust is deemed to have disposed of the property for proceeds of disposition equal to the adjusted cost base to the trust of the property immediately before the distribution;

(*b*) the taxpayer is deemed to have disposed of the taxpayer's interest as a beneficiary under the trust for proceeds of disposition equal to the cost amount to the taxpayer of the interest immediately before the distribution;

(*c*) the taxpayer is deemed to have acquired the property at a cost equal to

(i) if the taxpayer is the only beneficiary under the trust and is a SIFT wind-up entity or a SIFT wind-up corporation in respect of a SIFT wind-up entity, the adjusted cost base to the trust of the property immediately before the distribution, and

(ii) in any other case, the cost amount to the taxpayer of the taxpayer's interest as a beneficiary under the trust immediately before the distribution; and

(*d*) if the taxpayer's interest as a beneficiary under the trust was immediately before the disposition taxable Canadian property of the taxpayer, the property is deemed to be taxable Canadian property of the taxpayer.

(4) Subsections (1) to (3) apply after ANNOUNCEMENT DATE.

15. (1) Paragraph 107.4(3)(*f*) of the Act is replaced by the following:

(*f*) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 44.1(2)(*c*), 51(1)(*f*), 85(1)(*i*), 85.1(1)(*a*) or (8)(*c*), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(*c*), 107(2)(*d.1*) or (3.1)(*d*), the property is deemed to be taxable Canadian property of the transferee trust;

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

16. (1) The portion of the definition "cost amount" in subsection 108(1) of the Act before paragraph (*a*) is replaced by the following:

"cost amount" « *coût indiqué* »

"cost amount" to a taxpayer at any time of a capital interest or part of it, as the case may be, in a trust, means (notwithstanding subsection 248(1) and except for the purposes of subsection 107(3.1) and section 107.4 and, if that time is in a taxation year of the trust that began before 2007 (or, where sections 94.1 to 94.4 apply to a taxation year of the trust that begins before 2007, if that time is in a taxation year of the trust that began before the first day of the first such taxation year to which those sections apply), except in respect of a capital interest in a trust that is at that time a foreign affiliate of the taxpayer),

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

17. (1) Subsection 111(8) of the Act is amended by adding the following in alphabetical order:

"exchange rate" « *taux de change* »

"exchange rate" at any time in respect of a currency of a country other than Canada means the rate of exchange between that currency and Canadian currency quoted by the Bank of Canada at noon on the day that includes that time or, if that day is not a business day, on the day that immediately precedes that day, or a rate of exchange acceptable to the Minister;

"foreign currency debt" « *dette en monnaie étrangère* »

"foreign currency debt" means a debt obligation denominated in a currency of a country other than Canada;

(2) Section 111 of the Act is amended by adding the following after subsection (11):

Foreign currency debt on acquisition of control

(12) For the purposes of subsection (4), if at any time a corporation owes a foreign currency debt, the corporation is deemed to own at the time (in this subsection referred to as the "measurement time") that is immediately before that time a property

(*a*) the adjusted cost base of which at the measurement time is the amount determined by the formula

$$A + B - C$$

where

A is the amount of principal owed by the corporation under the foreign currency debt at the measurement time, calculated, for greater certainty, using the exchange rate applicable at the measurement time;

B is the portion of any gain, previously recognized in respect of the foreign currency debt because of this section, that is reasonably attributable to the amount described in A;

C is the portion of any capital loss previously recognized in respect of the foreign currency debt because of this section, that is reasonably attributable to the amount described in A; and

(*b*) the fair market value of which is the amount that would be the amount of the principal owed by the corporation under the foreign currency debt at the measurement time if that amount were calculated using the exchange rate applicable at the time of the original borrowing;

Additional amount

(13) For the purposes of subsection (12) and subsections 40(10) and (11), if

(*a*) at any particular time a corporation would, but for this subsection realize a gain or loss from a fluctuation in the value of the currency of a foreign currency debt of the corporation;

(*b*) at any time before the particular time the corporation realized a capital loss or gain in respect of the foreign currency debt because of subsection 111(12); and

(*c*) the amount of principal owed by the corporation under the foreign currency debt (expressed in the foreign currency) immediately before the particular time exceeds the amount of principal owed by the corporation under the foreign currency debt (expressed in the foreign currency) immediately before the last time that subsection 111(12) applied to the corporation in respect of the foreign currency debt;

the excess is deemed to be the amount of principal owed by the corporation under a separate foreign currency debt of the corporation;

(3) Subsections (1) and (2) apply to any acquisition of control of a corporation that occurs

(*a*) after March 7, 2008, other than an acquisition of control that occurs before 2009 pursuant to the terms of an agreement made in writing on or before March 7, 2008; or

(*b*) after 2005, if the corporation so elects in writing and files the election with the Minister of National Revenue on or before the corporation's filing due-date for the corporation's taxation year that includes the day on which this Act is assented to;

(4) If an election under paragraph (3)(*b*) is made by the corporation in respect of an acquisition of control, a designation under paragraph 111(4)(*e*) by the corporation for its taxation year that ended immediately before the acquisition of control is deemed to have been made in a timely manner if that designation is made on or before the corporation's filing due-date for its taxation year that includes the day on which this Act is assented to.

18. (1) The portion of subsection 118.1(5.3) of the Act before paragraph (*a*) is replaced by the following:

Direct designation — RRSPs, RRIFs and TFSAs

(5.3) If as a consequence of an individual's death, a transfer of money, or a transfer by means of a negotiable instrument, is made, from an arrangement (other than an arrangement of which a licensed annuities provider is the issuer or carrier) that is a registered retirement savings plan or registered retirement income fund or that was, immediately before the individual's death, a TFSA to a qualified donee, solely because of the donee's interest or, for civil law, a right as a beneficiary under the arrangement, the individual was the annuitant under, or the holder of, the arrangement immediately before the individual's death and the transfer occurs within the 36-month period that begins at the time of the death (or, where written application to extend the period has been made to the Minister by the individual's legal representative, within such longer period as the Minister considers reasonable in the circumstances),

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

19. (1) The definition "investment" in subsection 122.1(1) of the Act is replaced by the following:

"investment"
« *placement* »

"investment", in a trust or partnership,

(*a*) means

(i) a property that is a security of the trust or partnership, or

(ii) a right which may reasonably be considered to replicate a return on, or the value of, a security of the trust or partnership; but

(*b*) does not include an unaffiliated publicly-traded liability of the trust or partnership.

(2) The definition "non-portfolio property" in subsection 122.1(1) of the Act is amended by replacing the portion of paragraph (*a*) before subparagraph (i) with the following:

(*a*) a security of a subject entity (other than a portfolio investment entity), if at that time the trust or partnership holds

(3) Paragraph (*a*) of the definition "qualified REIT property" in subsection 122.1(1) of the Act is replaced by the following:

(*a*) a real or immovable property;

(4) Subparagraph (*c*)(i) of the definition "qualified REIT property" in subsection 122.1(1) of the Act is replaced by the following:

(i) legal title to real or immovable property of the trust or of another subject entity all of the securities of which are held by the trust (including real or immovable property that the trust or the other subject entity holds together with one or more other persons or partnerships), and

(5) Paragraphs (*c*) and (*d*) of the definition "real estate investment trust" in subsection 122.1(1) of the Act are replaced by the following:

(*c*) not less than 75% of the trust's revenues for the taxation year are derived from one or more of the following:

(i) rent from real or immovable properties,

(ii) interest from mortgages, or hypothecs, on real or immovable properties, and

(iii) capital gains from dispositions of real or immovable properties; and

(*d*) at each time in the taxation year an amount, that is equal to 75% or more of the equity value of the trust at that time, is the amount that is the total fair market value of all properties held by the trust each of which is real or immovable property, indebtedness of a Canadian corporation represented by a bankers' acceptance, property described by either paragraph (*a*) or (*b*) of the definition "qualified investment" in section 204, or a deposit with a credit union.

(6) The definition "rent from real or immovable properties" in subsection 122.1(1) of the Act is amended by replacing subparagraph (*a*)(ii) with the following:

(ii) payment for services ancillary to the rental of real or immovable properties and customarily supplied or rendered in connection with the rental of real or immovable properties, and

(iii) a payment that is included under paragraph 104(13)(*a*) in computing the recipient's income and that was made from the part of a trust's income (determined without reference to subsection 104(6)) that was derived from rent from real or immovable properties; but

(7) The definition "SIFT trust" in subsection 122.1(1) of the Act is amended by replacing the portion before paragraph (*a*) with the following:

"SIFT trust" « *fiducie intermédiaire de placement déterminée* »

"SIFT trust", being a specified investment flow-through trust, for a taxation year means a trust (other than an excluded subsidiary entity, or a real estate investment trust, for the taxation year) that meets the following conditions at any time during the taxation year:

(8) Subsection 122.1(1) of the Act is amended by adding the following definitions in alphabetical order:

"equity" « *capitaux propres* »

"equity", of an entity, means

(*a*) if the entity is a corporation, a share of the capital stock of the corporation;

(*b*) if the entity is a trust, an income or capital interest in the trust;

(*c*) if the entity is a partnership, an interest as a member of the partnership;

(*d*) a liability of the entity (and, for purposes of the definition "publicly-traded liability" in this section, a security of the entity that is a liability of another entity), if

(i) the liability is convertible into, or exchangeable for, equity of the entity or of another entity, or

(ii) any amount paid or payable in respect of the liability is contingent or dependent on the use of or production from property, or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation, or to income or capital paid or payable to any member of a partnership or beneficiary under a trust; and

(*e*) a right to, or to acquire, anything described in this paragraph and any of paragraphs (*a*) to (*d*).

"excluded subsidiary entity" « *filiale exclue* »

"excluded subsidiary entity", for a taxation year, means an entity none of the equity of which is at any time in the taxation year

(*a*) listed or traded on a stock exchange or other public market; nor

(*b*) held by any person or partnership other than

(i) a real estate investment trust,

(ii) a taxable Canadian corporation,

(iii) a SIFT trust (determined without reference to subsection (2)),

(iv) a SIFT partnership (determined without reference to subsection 197(8)), or

(v) an excluded subsidiary entity for the taxation year.

"portfolio investment entity" « *entité de placement de portefeuille* »

"portfolio investment entity"at any time means an entity that does not at that time hold any non-portfolio property.

"publicly-traded liability" « *dette transigée publiquement* »

"publicly-traded liability", of an entity, means a liability that is a security of the entity, that is not equity of the entity and that is listed or traded on a stock exchange or other public market.

"unaffiliated publicly-traded liability" « *dette non affiliée transigée publiquement* »

"unaffiliated publicly-traded liability", of an entity at any time means a publicly-traded liability of the entity if, at that time the total fair market value of all publicly-traded liabilities of the entity that are held at that time by persons or partnerships that are not affiliated with the entity is at least 90% of the total fair market value of all publicly-traded liabilities of the entity.

(9) Subsections (1) to (8) are deemed to have come into force on October 31, 2006.

20. (1) Paragraph 127(9.01)(*b*) of theAct is replaced by the following:

(*b*) the number that is the total of 10 and the number of taxation years by which the number of taxation years of the taxpayer that have ended after 1997 exceeds 11.

(2) Paragraph 127(9.02)(*b*) of the Act is replaced by the following:

(*b*) the number that is the total of 9 and the number of taxation years by which the number of taxation years of the taxpayer that have ended after 1997 exceeds 11.

(3) Subparagraphs (*a*)(i) and (ii) of the description of B in subsection 127(10.2) of the Act are replaced by the following:

(i) if the particular corporation is not associated with any other corporation in the particular taxation year, the amount that is its taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) for its immediately preceding taxation year, or

(ii) if the particular corporation is associated with one or more other corporations in the particular taxation year, the amount that is the total of all amounts, each of which is the taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) of the particular corporation for its, or of one of the other corporations for its, last taxation year that ended in the last calendar year that ended before the end of the particular taxation year, or

(4) Subsection 127(10.22) of the Act is replaced by the following:

Deemed non-association of corporations

(10.22) If a particular Canadian-controlled private corporation is associated with another corporation in circumstances where those corporations would not be associated if the Act were read without reference to paragraph 256(1.2)(*a*), the particular corporation has issued shares to one or more persons who have been issued shares by the other corporation and there is at least one shareholder of the particular corporation who is not a shareholder of the other corporation or one shareholder of the other corporation who is not a shareholder of the particular corporation, the particular corporation is deemed not to be associated with the other corporation for the purpose of determining the particular corporation's expenditure limit under subsection (10.2).

(5) Paragraph 127(10.6)(*c*) of the Act is replaced by the following.

(*c*) for the purpose of subsection (10.2), where a Canadian-controlled private corporation has a taxation year that is less than 51 weeks, the taxable income of the corporation for the year shall be determined by multiplying that amount by the ratio that 365 is of the number of days in that year.

(6) Paragraph 127(36)(*b*) of the Act is replaced by the following:

(*b*) the number that is the total of 10 and the number of taxation years or fiscal periods, as the case may be, by which the number of taxation years or fiscal periods of the taxpayer that have ended after 1997 exceeds 11.

(7) Subsections (1), (2) and (6) apply in respect of the 2008 and subsequent taxation years.

(8) Subsection (3) applies to taxation years that end on or after February 26, 2008.

(9) Subsections (4) and (5) apply to taxation years that end on or after March 9, 2009.

21. (1) The definition “qualifying corporation” in subsection 127.1(2) of the Act is replaced by the following:

“qualifying corporation” « *société admissible* »

“qualifying corporation” for a particular taxation year that ends in a calendar year means a particular corporation that is a Canadian-controlled private corporation in the particular taxation year the taxable income of which for its immediately preceding taxation year — together with, if the particular corporation is associated in the particular taxation year with one or more other corporations (in this subsection referred to as “associated corporations”), the taxable income of each associated corporation for its last taxation year that ended in the preceding calendar year (determined before taking into consideration the specified future tax consequences for that last year) — does not exceed the qualifying income limit of the particular corporation for the particular taxation year;

(2) Subsection 127.1(2) of the Act is amended by adding the following in alphabetical order:

"qualifying income limit" « *plafond de revenu admissible* »

"qualifying income limit" of a corporation for a taxation year is the amount determined by the formula

$$\$400,000 \times [(\$40 \text{ million} - A)/\$40 \text{ million}]$$

where

A is

(*a*) nil, if $10 million is greater than or equal to the amount (in paragraph (*b*) referred to as the "taxable capital amount") that is the total of the corporation's taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) for its immediately preceding taxation year and the taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) of each associated corporation for the associated corporation's last taxation year that ended in the last calendar year that ended before the end of the particular taxation year, or

(*b*) in any other case, the lesser of $40 million and the amount by which the taxable capital amount exceeds $10 million;

(3) Subsections (1) and (2) apply to taxation years that end on or after February 26, 2008, except that for taxation years that include February 26, 2008, the formula and the description of A in the definition "qualifying income limit" in subsection 127.1(2) of the Act, as enacted by subsection (2), shall be read as follows:

$$A + [(B\text{-}A) \times (C/D)]$$

where

A is the business limit of the corporation for the taxation year determined in accordance with section 125 of the Act;

B is the qualifying income limit of the corporation for the taxation year determined under subsection 127.1(2) of the Act, as enacted by subsection (2);

C is the number of days in the taxation year that are after February 25, 2008; and

D is the total number of days in the taxation year.

22. (1) Section 128.3 of the Act is replaced by the following:

Former resident — replaced shares

128.3 If, in a transaction to which section 51, subparagraphs 85.1(1)(*a*)(i) and (ii), subsection 85.1(7) or section 86 or 87 applies, a person acquires a share (in this section referred to as the "new share") in exchange for another share or equity in a SIFT wind-up entity (in this section referred to as the "old share"), for the purposes of section 119, subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6), the person is deemed not to have disposed of the old share, and the new share is deemed to be the same share as the old share.

(2) Subsection (1) applies after December 19, 2007.

23. (1) The portion before paragraph (*a*) of the definition “qualifying exchange” in subsection 132.2(2) of the Act is replaced by the following:

“qualifying exchange” « *échange admissible* »

“qualifying exchange” means a transfer at any time (in this section referred to as the “transfer time”) of all or substantially all of the property of a mutual fund corporation <u>(other than a SIFT wind-up corporation)</u> or mutual fund trust to a mutual fund trust (in this section referred to as the “transferor” and “transferee”, respectively, and as the “funds”), <u>if</u>

(2) Subsection (1) applies after December 19, 2007.

24. (1) Paragraph 136(2)(*d*) of the Act is replaced by the following:

(*d*) at least 90% of its shares, if any, are held by members described in paragraph (*c*) or by trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans <u>or TFSAs</u>, the annuitants, <u>holders</u> or subscribers under which are members described in that paragraph.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

25. (1) The portion of subsection 138(10) of the Act before paragraph (*b*) is replaced with the following:

Application of financial institution rules

(10) Notwithstanding sections 142.3, 142.4, 142.5<u> and 142.51</u>, where in a taxation year an insurer (other than an insurer resident in Canada that does not carry on a life insurance business) carries on an insurance business in Canada and in a country other than Canada, in computing its income for the year from carrying on an insurance business in Canada,

(*a*) sections 142.3, 142.5 <u>and 142.51</u> apply only in respect of property that is designated insurance property for the year in respect of the business; and

(2) Subsection 138(12) of the Act is amended by adding the following definitions in alphabetical order:

“base year” « *année de base* »

“base year”of a life insurer means the life insurer’s taxation year that immediately precedes its transition year;

“reserve transition amount” « *montant transitoire* »

“reserve transition amount” of a life insurer, in respect of a life insurance business carried on by it in Canada in its transition year, is the positive or negative amount determined by the formula

$$A - B$$

where

A is the maximum amount that the life insurer would be permitted to claim under subparagraph 138(3)(*a*)(i) (and that would be prescribed by section 1404 of the Regulations for the purpose of subparagraph 138(3)(*a*)(i)) as a policy reserve for its base year in respect of its life insurance policies in Canada if

(*a*) the generally accepted accounting principles that applied to the life insurer in valuing its assets and liabilities for its transition year had applied to it for its base year, and (*b*) section 1404 of the Regulations were read in respect of the life insurer's base year as it reads in respect of its transition year, and

B is the maximum amount that the life insurer is permitted to claim under subparagraph 138(3)(*a*)(i) as a policy reserve for its base year;

"transition year" « *année transitoire* »

"transition year" of a life insurer means the life insurer's first taxation year that begins after September 30, 2006;

(3) Section 138 of the Act is amended by adding the following after subsection (15):

Transition year income inclusion

(16) There shall be included in computing a life insurer's income for its transition year from a life insurance business carried on by it in Canada in the transition year, the positive amount, if any, of the life insurer's reserve transition amount in respect of that life insurance business.

Transition year income deduction

(17) There shall be deducted in computing a life insurer's income for its transition year from a life insurance business carried on by it in Canada in the transition year, the absolute value of the negative amount, if any, of the life insurer's reserve transition amount in respect of that life insurance business.

Transition year income inclusion reversal

(18) If an amount has been included under subsection (16) in computing a life insurer's income for its transition year from a life insurance business carried on by it in Canada, there shall be deducted in computing the life insurer's income, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection (16) in computing the life insurer's income for the transition year from that life insurance business; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Transition year income deduction reversal

(19) If an amount has been deducted under subsection (17) in computing a life insurer's income for its transition year from a life insurance business carried on by it in Canada, there shall be included in computing the life insurer's income, for each particular taxation year of the life insurer that ends after the beginning of the transition year, from that life insurance business, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection (17) in computing the life insurer's income for the transition year from that life insurance business; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Winding-up

(20) If a life insurer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the “parent”), and immediately after the winding-up the parent carries on a life insurance business, in applying subsections (18) and (19) in computing the income of the life insurer and of the parent for particular taxation years that end on or after the first day (referred to in this subsection as the “start day”) on which assets of the life insurer were distributed to the parent on the winding-up,

(*a*) the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the life insurer in respect of

(i) any amount included under subsection (16) or deducted under subsection (17) in computing the life insurer’s income from a life insurance business for its transition year,

(ii) any amount deducted under subsection (18) or included under subsection (19) in computing the life insurer’s income from a life insurance business for a taxation year of the life insurer that begins before the start day, and

(iii) any amount that would — in the absence of this subsection and if the life insurer existed and carried on a life insurance business on each day (that is the start day or a subsequent day) that the parent carries on a life insurance business — be required to be included or deducted, in respect of any of those days, under subsection (18) or (19) in computing the life insurer’s income from a life insurance business; and

(*b*) the life insurer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsections (18) and (19) without reference to the start day and days after the start day.

Amalgamations

(21) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of a life insurer with one or more other corporations to form one corporation (referred to in this subsection as the “new corporation”), and immediately after the amalgamation the new corporation carries on a life insurance business, in applying subsections (18) and (19) in computing the income of the new corporation for particular taxation years of the new corporation that begin on or after the day on which the amalgamation occurred, the new corporation is, on and after that day, deemed to be the same corporation as and a continuation of the life insurer in respect of

(*a*) any amount included under subsection (16) or deducted under subsection (17) in computing the life insurer’s income from a life insurance business for its transition year;

(*b*) any amount deducted under subsection (18) or included under subsection (19) in computing the life insurer’s income from a life insurance business for a taxation year that begins before the day on which the amalgamation occurred; and

(*c*) any amount that would — in the absence of this subsection and if the life insurer existed and carried on a life insurance business on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation carries on a life insurance business — be required to be included or deducted, in respect of any of those days, under subsection (18) or (19) in computing the life insurer's income from a life insurance business.

Application of subsection (23)

(22) Subsection (23) applies if, at any time, a life insurer (referred to in this subsection and subsection (23) as the "transferor") transfers, to a corporation (referred to in this subsection and subsection (23) as the "transferee") that is related to the transferor, property in respect of a life insurance business carried on by the transferor in Canada (referred to in this subsection and subsection (7) as the "transferred business") and

(*a*) subsection 138(11.5) or (11.94) applies to the transfer; or

(*b*) subsection 85(1) applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee carries on a life insurance business.

Transfer of life insurance business

(23) If this subsection applies in respect of the transfer, at any time, of property

(*a*) the transferee is, at and after that time, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (16) or deducted under subsection (17) in computing the transferor's income for its transition year that can reasonably be attributed to the transferred business,

(ii) any amount deducted under subsection (18) or included under subsection (19) in computing the transferor's income for a taxation year of the transferor that begins before that time that can reasonably be attributed to the transferred business, and

(iii) any amount that would — in the absence of this subsection and if the transferor existed and carried on a life insurance business on each day (that includes that time or a subsequent day) that the transferee carries on a life insurance business — be required to be deducted or included, in respect of any of those days, under subsection (18) or (19) in computing the transferor's income that can reasonably be attributed to the transferred business; and

(*b*) in determining, in respect of the day that includes that time or any subsequent day, any amount that is required under subsection (18) or (19) to be included or deducted in computing the transferor's income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

Ceasing to carry on business

(24) If at any time a life insurer ceases to carry on all or substantially all of a life insurance business (referred to in this subsection as the "discontinued business"), and none of subsections (20) to (22) apply,

(*a*) there shall be deducted, in computing the life insurer's income from the discontinued business for the life insurer's taxation year that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is the amount included under subsection (16) in computing the life insurer's income from the discontinued business for its transition year, and

B is the total of all amounts each of which is an amount deducted under subsection (18) in computing the life insurer's income from the discontinued business for a taxation year that began before that time; and

(*b*) there shall be included, in computing the life insurer's income from the discontinued business for the life insurer's taxation year that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

C is the amount deducted under subsection (17) in computing the life insurer's income from the discontinued business for its transition year, and

D is the total of all amounts each of which is an amount included under subsection (19) in computing the life insurer's income from the discontinued business for a taxation year that began before that time.

Ceasing to exist

(25) If at any time a life insurer that carried on a life insurance business ceases to exist (otherwise than as a result of a winding-up or amalgamation described in subsection (20) or (21)), for the purposes of subsection (24), the life insurer is deemed to have ceased to carry on the life insurance business at the earlier of

(*a*) the time (determined without reference to this subsection) at which the life insurer ceased to carry on the life insurance business; and

(*b*) the time that is immediately before the end of the last taxation year of the life insurer that ended at or before the time at which the life insurer ceased to exist.

(4) Subsections (1) to (3) apply to taxation years that begin on or after October 1, 2006.

26. (1) Paragraph (*a*) of the definition "bien évalué à la valeur du marché" in subsection 142.2(1) of the French version of the Act is replaced by the following:

a) une action;

(2) Paragraph (*d*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act is replaced by the following:

(*d*) a share of a corporation in which the taxpayer has a significant interest at any time in the year,

(*d.1*) a property that is, at every time in the year at which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer, (*d.2*) if the taxpayer is an investment dealer and the year begins after 1998, a property that is, at every time in the year at which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer, or

(*d.3*) a share of a corporation held, at any time in the year, by the taxpayer if

(i) control of the corporation is, at any time (referred to in this paragraph as the "acquisition of control time") that is after 2001 and is in the 24 month period that begins immediately after the end of the year, acquired by

(A) the taxpayer,

(B) one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)), or

(C) the taxpayer and one or more persons described in clause (B), and

(ii) the taxpayer elects in writing that this paragraph apply and files the election with the Minister on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time, or

(3) The definition "mark-to-market property" in subsection 142.2(1) of the Act, as amended by subsection (2), is replaced by the following:

"mark-to-mark et property" « *bien évalué à la valeur du marché* »

"mark-to-market property" of a taxpayer for a taxation year means property <u>(other than an excluded property)</u> held at any time in the taxation year by the taxpayer that is

(*a*) a share,

(*b*) if the taxpayer is not an investment dealer, a specified debt obligation that is a fair value property of the taxpayer for the taxation year,

(*c*) if the taxpayer is an investment dealer, a specified debt obligation, or

(*d*) a tracking property of the taxpayer that is a fair value property of the taxpayer for the taxation year;

(4) Subsection 142.2(1) of the Act is amended by adding the following definitions in alphabetical order:

"excluded property" « *bien exclu* »

"excluded property" of a taxpayer for a taxation year means property, held at any time in the taxation year by the taxpayer, that is

(*a*) a share of the capital stock of a corporation if, at any time in the taxation year, the taxpayer has a significant interest in the corporation,

(*b*) a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed payment card corporation share of the taxpayer,

(*c*) if the taxpayer is an investment dealer, a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed securities exchange investment of the taxpayer, (*d*) a share of the capital stock of a corporation if

(i) control of the corporation is, at any time (referred to in this paragraph as the "acquisition of control time") that is in the 24 month period that begins immediately after the end of the year, acquired by

(A) the taxpayer,

(B) one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)) , or

(C) the taxpayer and one or more persons described in clause (B), and

(ii) the taxpayer elects in writing that this paragraph apply and files the election with the Minister on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time, or

(*e*) a prescribed property;

"fair value property" « *bien évalué à sa juste valeur* »

"fair value property"of a taxpayer for a taxation year means property, held at any time in the taxation year by the taxpayer, that is — or it is reasonable to expect would, if the taxpayer held the property at the end of the taxation year, be — valued (otherwise than solely because its fair value was less than its cost to the taxpayer or, if the property is a specified debt obligation, because of a default of the debtor) in accordance with generally accepted accounting principles, at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year;

"tracking property" « *bien à évaluer* »

"tracking property" of a taxpayer means property of the taxpayer the fair market value of which is determined primarily by reference to one or more criteria in respect of property (referred to in this definition as "tracked property") that, if owned by the taxpayer, would be mark-to-market property of the taxpayer, which criteria are

(*a*) the fair market value of the tracked property,

(*b*) the profits or gains from the disposition of the tracked property,

(*c*) the revenue, income or cash flow from the tracked property, or

(*d*) any other similar criteria in respect of the tracked property;

(5) The portion of subsection 142.2(2) of the Act before paragraph (*a*) is replaced by the following:

Significant interest

(2) For the purposes of the definitions "excluded property", "mark-to-market property" and "specified debt obligation" in subsection (1), and subsection (5), a taxpayer has a significant interest in a corporation at any time if

(6) Subsections 142.2(4) and (5) of the Act are replaced by the following:

Extension of meaning of "related"

(4) For the purposes of this subsection and subsections (2) and (3), in determining if, at a particular time, a person or partnership is related to another person or partnership, the rules in section 251 are to be applied as if,

(*a*) a partnership (other than a partnership in respect of which any amount of the income or capital of the partnership that any entity may receive directly from the partnership at any time as a member of the partnership depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power) were a corporation having capital stock of a single class divided into 100 issued shares and each member of the partnership owned, at the particular time, that proportion of the issued shares of that class that

(i) the fair market value of the member's interest in the partnership at the particular time

is of

(ii) the fair market value of all interests in the partnership at the particular time; and

(*b*) a trust (other than a trust in respect of which any amount of the income or capital of the trust that any entity may receive directly from the trust at any time as a beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power) were a corporation having capital stock of a single class divided into 100 issued shares and each beneficiary under the trust owned, at the particular time, that proportion of the issued shares of that class that

(i) the fair market value of the beneficiary's beneficial interest in the trust at the particular time

is of

(ii) the fair market value at that time of all beneficial interests in the trust.

(7) Subsections (1) and (2) apply to taxation years that end after February 22, 1994, except that any election made under paragraph (*d.3*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, as enacted by subsection (2), is deemed to have been made on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to.

(8) Subsection (3) applies to taxation years that begin on or after October 1, 2006 except that for taxation years that begin before November 7, 2007, the definition "mark-to-market property" in subsection 142.2(1) of the Act, as enacted by subsection (3), is to be read without its paragraph (*d*).

(9) Subsections (4) to (6) apply to taxation years that begin on or after October 1, 2006 except that any election made under paragraph (*d*) of the definition "excluded property" in subsection 142.2(1), as enacted by subsection (4), is deemed to have been made on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to.

27. (1) Section 142.5 of the Act is amended by adding the following after subsection (8):

Application of subsection (8.2)

(8.1) Subsection (8.2) applies to a taxpayer for the taxpayer's first taxation year that begins on or after October 1, 2006 (referred to in this subsection and subsection (8.2) as the "first taxation year") if

(*a*) subsection (2) deems the taxpayer to have disposed of a particular specified debt obligation immediately before the end of the first taxation year (in subsection (8.2) referred to as "the particular disposition"); and

(*b*) the particular specified debt obligation was owned by the taxpayer at the end of the taxation year immediately preceding the first taxation year and was not a mark-to-market property of the taxpayer for that preceding taxation year.

Rules applicable to first deemed disposition of debt obligation

(8.2) If this subsection applies to a taxpayer for the first taxation year, the following rules apply to the taxpayer in respect of the particular disposition:

(*a*) subsection 20(21) does not apply to the taxpayer in respect of the particular disposition; and

(*b*) if section 12.4 does not apply to the taxpayer in respect of the particular disposition, there shall be included in computing the taxpayer's income for the first taxation year the amount, if any, by which

(i) the total of all amounts each of which is

(A) an amount deducted under paragraph 20(1)(*l*) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year, or

(B) an amount deducted under paragraph 20(1)(*p*) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for a taxation year that preceded the first taxation year,

exceeds

(ii) the total of all amounts each of which is

(A) an amount included under paragraph 12(1)(*d*) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year, or

(B) an amount included under paragraph 12(1)(*i*) in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year or a preceding taxation year.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

28. (1) The Act is amended by adding the following after section 142.5:

Definitions

142.51 (1) The following definitions apply for the purposes of this section.

"base year" « *année de base* »

"base year"of a taxpayer means the taxpayer's taxation year that immediately precedes its transition year.

“transition amount” « *montant transitoire* »

“transition amount”of a taxpayer for the taxpayer’s transition year is the positive or negative amount determined by the formula

$$A - B$$

where

A is the total of all amounts each of which is the fair market value, at the end of the taxpayer’s base year, of a transition property of the taxpayer; and

B is the total of all amounts each of which is the cost amount to the taxpayer, at the end of the taxpayer’s base year, of a transition property of the taxpayer.

“transition property” « *bien transitoire* »

“transition property”of a taxpayer means a property that

(*a*) was a specified debt obligation held by the taxpayer at the end of the taxpayer’s base year;

(*b*) was not a mark-to-market property of the taxpayer for the taxpayer’s base year, but would have been a mark-to-market property of the taxpayer for the taxpayer’s base year if the property had been carried at the property’s fair market value in the taxpayer’s balance sheet as at the end of each taxation year of the taxpayer – that ends after the taxpayer last acquired the property (otherwise than by reason of a reacquisition under subsection 142.5(2)) and before the commencement of the taxpayer’s transition year; and

(*c*) was a mark-to-market property of the taxpayer for the transition year of the taxpayer.

“transition year” « *année transitoire* »

“transition year” of a taxpayer means the taxpayer’s first taxation year that begins after September 30, 2006.

Transition year income inclusion

(2) If a taxpayer is a financial institution in its transition year, there shall be included in computing the taxpayer’s income for its transition year the absolute value of the negative amount, if any, of the taxpayer’s transition amount.

Transition year income deduction

(3) If a taxpayer is a financial institution in its transition year, there shall be deducted in computing the taxpayer’s income for its transition year the positive amount, if any, of the taxpayer’s transition amount.

Transition year income inclusion reversal

(4) If an amount has been included under subsection (2) in computing a taxpayer’s income for its transition year there shall be deducted in computing the taxpayer’s income for each particular taxation year of the taxpayer that ends after the beginning of the transition year, and in which particular taxation year the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection (2) in computing the taxpayer's income for the transition year; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Transition year income deduction reversal

(5) If an amount has been deducted under subsection (3) in computing a taxpayer's income for its transition year, there shall be included in computing the taxpayer's income, for each particular taxation year of the taxpayer ending after the beginning of the transition year, and in which particular taxation year the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection (3) in computing the taxpayer's income for the transition year; and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

Winding-up

(6) If a taxpayer has, in a winding-up to which subsection 88(1) has applied, been wound-up into another corporation (referred to in this subsection as the "parent"), and immediately after the winding-up the parent is a financial institution, in applying subsections (4) and (5) in computing the income of the taxpayer and of the parent for particular taxation years that end on or after the first day (referred to in this subsection as the "start day") on which assets of the taxpayer were distributed to the parent on the winding-up,

(*a*) the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the taxpayer in respect of

(i) any amount included under subsection (2) or deducted under subsection (3) by the taxpayer in computing the taxpayer's income for its transition year,

(ii) any amount deducted under subsection (4) or included under subsection (5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the start day, and

(iii) any amount that would — in the absence of this subsection and if the taxpayer existed and was a financial institution on each day (that is the start day or a subsequent day) that the parent is a financial institution — be required to be deducted or included, in respect of any of those days, under subsection (4) or (5) in computing the taxpayer's income for its transition year; and

(*b*) the taxpayer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsections (4) and (5) without reference to the start day and days after the start day.

Amalgamations

(7) If there is an amalgamation (within the meaning assigned by subsection 87(1)) of a taxpayer with one or more other corporations to form one corporation (referred to in this subsection as the "new corporation"), and immediately after the amalgamation the new cor-

poration is a financial institution, in applying subsections (4) and (5) in computing the income of the new corporation for particular taxation years of the new corporation that begin on or after the day on which the amalgamation occurred, the new corporation is, on and after that day, deemed to be the same corporation as and a continuation of the taxpayer in respect of

(*a*) any amount included under subsection (2) or deducted under subsection (3) in computing the taxpayer's income for its transition year of the taxpayer;

(*b*) any amount deducted under subsection (4) or included under subsection (5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred; and

(*c*) any amount that would — in the absence of this subsection and if the taxpayer existed and was a financial institution on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation is a financial institution — be required to be included or deducted, in respect of any of those days, under subsection (4) or (5) in computing the taxpayer's income.

Application of subsection (9)

(8) Subsection (9) applies if, at any time, a taxpayer (referred to in this subsection and subsection (9) as the "transferor") transfers, to a corporation (referred to in this subsection and subsection (9) as the "transferee") that is related to the transferor, property in respect of a business carried on by the transferor in Canada (referred to in this subsection and subsection (9) as the "transferred business") and

(*a*) subsection 138(11.5) or (11.94) applies to the transfer; or

(*b*) subsection 85(1) applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee is a financial institution.

Transfer of a business

(9) If this subsection applies in respect of the transfer, at any time, of property

(*a*) the transferee is, at and after that time, deemed to be the same corporation as and a continuation of the transferor in respect of

(i) any amount included under subsection (2) or deducted under subsection (3) in computing the transferor's income for its transition year that can reasonably be attributed to the transferred business,

(ii) any amount deducted under subsection (4) or included under subsection (5) in computing the transferor's income for a taxation year of the transferor that begins before that time that can reasonably be attributed to the transferred business, and

(iii) any amount that would — in the absence of this subsection and if the transferor existed and was a financial institution on each day (that includes that time or a subsequent day) that the transferee is a financial institution — be required to be deducted or included, in respect of any of those days, under subsection (4) or (5) in computing the transferor's income that can reasonably be attributed to the transferred business; and (*b*) in determining, in respect of the day that includes that time or any subsequent day, any amount that is required under subsection (4) or (5) to be included or deducted in computing the transferor's income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

Continuation of a partnership

(10) If subsection 98(6) deems a partnership (in this subsection referred to as the "new partnership") to be a continuation of another partnership (in this subsection referred to as the "predecessor partnership"), and at the time that is immediately after the predecessor partnership ceases to exist, the new partnership is a financial institution, in applying subsections (4) and (5) in computing the income of the new partnership for particular taxation years of the new partnership that begin on or after the day on which the new partnership comes into existence, the new partnership is, on or after the day on which the new partnership comes into existence, deemed to be the same partnership as and a continuation of the predecessor partnership in respect of

(*a*) any amount included under subsection (2) or deducted under subsection (3) in computing the predecessor partnership's income for its transition year;

(*b*) any amount deducted under subsection (4) or included under subsection (5) in computing the predecessor partnership's income for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence; and

(*c*) any amount that would — in the absence of this subsection and if the predecessor partnership existed and was a financial institution on each day (that is the day on which the new partnership comes into existence or a subsequent day) that the new partnership is a financial institution — be required to be deducted or included, in respect of any of those days, under subsection (4) or (5) in computing the predecessor partnership's income.

Ceasing to carry on a business

(11) If at any time, a taxpayer ceases to be a financial institution

(*a*) there shall be deducted, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$A - B$$

where

A is the amount included under subsection (2) in computing the taxpayer's income for its transition year, and

B is the total of all amounts each of which is an amount deducted under subsection (4) in computing the income of the taxpayer for a taxation year that began before that time; and (*b*) there shall be included, in computing the income of the taxpayer for the taxation year of the taxpayer that includes the time that is immediately before that time, the amount determined by the formula

$$C - D$$

where

C is the amount deducted under subsection (3) in computing the taxpayer's income for its transition year, and

D is the total of all amounts each of which is an amount included under subsection (5) in computing the taxpayer's income for a taxation year that began before that time.

Ceasing to exist

(12) If at any time a taxpayer ceases to exist (otherwise than as a result of a merger to which subsection 87(2) applies, a winding-up to which subsection 88(1) applies or a continuation to which subsection 98(6) applies), for the purposes of subsection (11), the taxpayer is deemed to have ceased be a financial institution at the earlier of

(*a*) the time (determined without reference to this subsection) at which the taxpayer ceased to be a financial institution; and

(*b*) the time that is immediately before the end of the last taxation year of the taxpayer that ended at or before the time at which the taxpayer ceased to exist.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

29. (1) Section 142.6 of the Act is amended by adding the following after subsection (1.3):

Change in status — prescribed payment card corporation share

(1.4) If, at any particular time in a taxation year, a property becomes a mark-to-market property of a taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed payment card corporation share of the taxpayer,

(*a*) the taxpayer is deemed

(i) to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and

(ii) to have acquired the property, at the particular time, at a cost equal to those proceeds; and

(*b*) subsection 142.5(1) does not apply to the disposition under subparagraph (*a*)(i).

Change in status — prescribed securities exchange investment

(1.5) If, at any particular time in a taxation year, a property becomes a mark-to-market property of a taxpayer for the taxation year because it ceased, at the particular time, to be a prescribed securities exchange investment of the taxpayer,

(*a*) the taxpayer is deemed

(i) to have disposed of the property immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and

(ii) to have acquired the property, at the particular time, at a cost equal to those proceeds; and

(*b*) subsection 142.5(1) does not apply to the disposition under subparagraph (*a*)(i).

Change in status — significant interest

(1.6) If, at the end of a particular taxation year, a taxpayer holds shares of the capital stock of a corporation, because of that holding, the taxpayer has a significant interest in that corporation at any time in that taxation year, and the taxpayer did not, at any time in the following taxation year have a significant interest in that corporation, the taxpayer is deemed to have,

(*a*) disposed of those shares immediately before the end of the particular taxation year for proceeds of disposition equal to the fair market value, at that time, of those shares; and

(*b*) acquired those shares at the end of the particular taxation year at a cost equal to those proceeds.

(2) Subsection 142.6(2) of the Act is replaced by the following:

Deemed disposition not applicable

(2) For the purposes of this Act, the determination of when a taxpayer acquired a share shall be made without regard to a disposition or acquisition that occurred because of subsection 142.5(2) or subsection (1), (1.1), (1.2), (1.4), (1.5), or (1.6).

(3) Subsection 142.6(1.4) of the Act, as enacted by subsection (1), applies to taxation years that end after February 22, 1994.

(4) Subsection 142.6(1.5) of the Act, as enacted by subsection (1), applies to taxation years that begin after 1998.

(5) Subsection 142.6(1.6) of the Act, as enacted by subsection (1), applies to taxation years that begin on or after October 1, 2006.

(6) Subsection (2) applies to taxation years that begin on or after October 1, 2006.

30. (1) Subsections 146.2(4) to (6) of the Act are renumbered as subsections 146.2(6) to (8).

(2) Subsections 146.2(7) to (9) of the Act are renumbered as subsections 146.2(10) to (12).

(3) Subparagraph (*b*)(ii) of the definition “qualifying arrangement” in subsection 146.2(1) of the Act is replaced by the following:

(ii) an annuity contract with an issuer that is a licensed annuities provider, or

(4) Subsection 146.2(3) of the Act is replaced by the following:

Paragraphs (2)(*a*), (*b*) and (*e*) not applicable

(3) The conditions in paragraphs (2)(*a*), (*b*) and (*e*) do not apply to the extent that they are inconsistent with subsection (4).

Using TFSA interest as security for a loan

(4) A holder of a TFSA may use the holder's interest or, for civil law, right in the TFSA as security for a loan or other indebtedness if

(*a*) the terms and conditions of the indebtedness are terms and conditions that persons dealing at arm's length with each other would have entered into; and

(*b*) it can reasonably be concluded that none of the main purposes for that use is to enable a person (other than the holder) or a partnership to benefit from the exemption from tax under this Part of any amount in respect of the TFSA.

TFSA

(5) If the issuer of an arrangement that is, at the time it is entered into, a qualifying arrangement files with the Minister, before March of the calendar year following the calendar year in which the arrangement was entered into, an election in prescribed form and manner to register the arrangement as a TFSA under the Social Insurance Number of the individual with whom the arrangement was entered into, the arrangement becomes a TFSA at the time the arrangement was entered into and ceases to be a TFSA at the earliest of the following times:

(*a*) the time at which the last holder of the arrangement dies,

(*b*) the time at which the arrangement ceases to be a qualifying arrangement, or

(*c*) the earliest time at which the arrangement is not administered in accordance with the conditions in subsection (2).

(5) Section 146.2 of the Act is amended by adding the following after subsection (8):

Trust ceasing to be a TFSA on death of holder

(9) If an arrangement that governs a trust ceases to be a TFSA because of the death of the holder of the TFSA,

(*a*) the arrangement is deemed, for the purposes of subsections (6) and (8), any regulations made under subsection (13), the definition "trust" in subsection 108(1), paragraph 149(1)(*u.2*) and the definitions "qualified investment" and "non-qualified investment" in subsection 207.01(1), to continue to be a TFSA until, and to cease to be a TFSA immediately after, the exemption-end time, being in this subsection the earlier of

(i) the time at which the trust ceases to exist, and

(ii) the end of the first calendar year that begins after the holder dies;

(*b*) there shall be included in computing a taxpayer's income for a taxation year the total of all amounts each of which is an amount determined by the formula

$$A - B$$

where

A is the amount of a payment made out of or under the trust, in satisfaction of all or part of the taxpayer's beneficial interest in the trust, in the taxation year, after the holder's death and at or before the exemption-end time, and

B is an amount designated by the trust not exceeding the lesser of

(i) the amount of the payment, and

(ii) the amount by which the fair market value of all of the property held by the trust immediately before the holder's death exceeds the total of all amounts each of which is the value of B in respect of any other payment made out of or under the trust; and

(*c*) there shall be included in computing the trust's income for its first taxation year, if any, that begins after the exemption-end time the amount determined by the formula

$$A - B$$

where

A is the fair market value of all of the property held by the trust at the exemption-end time, and

B is the amount by which the fair market value of all of the property held by the trust immediately before the holder's death exceeds the total of all amounts each of which is the value of B in paragraph (*b*) in respect of a payment made out of or under the trust.

(6) Section 146.2 of the Act is amended by adding the following after subsection (12):

Regulations

(13) The Governor in Council may make regulations requiring issuers of TFSAs to file information returns in respect of TFSAs.

(7) Subsections (1) to (6) apply to the 2009 and subsequent taxation years.

31. (1) The definition "entrusted shares percentage" in subsection 149.1(1) of the Act is repealed.

(2) The definition "divestment obligation percentage" in subsection 149.1(1) of the Act is replaced by the following:

"divestment obligation percentage" « *pourcentage de dessaisissement* »

"divestment obligation percentage"of a private foundation for a particular taxation year, in respect of a class of shares of the capital stock of a corporation, is the percentage, if any, that is the lesser of

(*a*) the excess, if any, at the end of the taxation year, of the percentage of issued and outstanding shares of that class that are held by the private foundation over the exempt shares percentage of the private foundation, and

(*b*) the percentage determined by the formula

$$A + B - C$$

where

A is the percentage determined under this paragraph in respect of the private foundation in respect of the class for the preceding taxation year, B is the total of all percentages, each of which is the portion of a net increase in the excess corporate holdings percentage of the private foundation in respect of the class for the particular taxation year or for a preceding taxation year that is allocated to the particular taxation year in accordance with subsection 149.2(5), and

C is the total of all percentages, each of which is the portion of a net decrease in the excess corporate holdings percentage of the private foundation in respect of the class for the particular taxation year or for a preceding taxation year that is allocated to the particular taxation year in accordance with subsection 149.2(7);

(3) Paragraph (*c*) of the definition “excess corporate holdings percentage” in subsection 149.1(1) of the Act is replaced with the following:

(*c*) in any other case, the number of percentage points, if any, by which the total corporate holdings percentage of the private foundation in respect of the class, at that time, exceeds the greater of 20% and the exempt shares percentage, at that time, of the private foundation in respect of the class;

(4) Subsection 149.1(1) of the Act is amended by adding the following definitions in alphabetical order:

“equity percentage” « *pourcentage d’intérêt* »

“equity percentage”of a person in a corporation has, subject to subsection 149.2(2.1), the same meaning as defined in subsection 95(4);

“exempt shares” « *actions exonérées* »

“exempt shares” held by a private foundation at any particular time means shares, of a class of the capital stock of a corporation,

(*a*) that were acquired by the private foundation by way of a gift that was subject to a trust or direction that the shares are to be held by the private foundation for a period ending not earlier than the particular time, if the gift was made

(i) before March 19, 2007,

(ii) on or after March 19, 2007 and before March 19, 2012

(A) under the terms of a will that was executed by a taxpayer before March 19, 2007 and not amended, by codicil or otherwise, on or after March 19, 2007, and

(B) in circumstances where no other will of the taxpayer was executed or amended on or after March 19, 2007, or

(iii) on or after March 19, 2007, under the terms of a testamentary or *inter vivos* trust created before March 19, 2007, and not amended on or after March 19, 2007,

(*b*) that were last acquired by the private foundation before March 19, 2007, other than shares that, at the particular time,

(i) are described in paragraph (*a*),

(ii) are listed on a designated stock exchange, or

(iii) are shares of the capital stock of a particular corporation, which particular corporation has an equity percentage greater than 0% in a public corporation, a class of the shares of the capital stock of which is listed on a designated stock exchange, if

(A) a corporation (in this subparagraph referred to as a "controlled corporation" and which may, for greater certainty, be the particular corporation)

(I) owns one or more shares of a class of the capital stock of the public corporation, and

(II) is controlled, directly or indirectly in any manner whatever, by one or more relevant persons in respect of the private foundation, or by the private foundation alone or together with one or more such relevant persons,

(B) the private foundation, if it held directly the shares described in subclause (A)(I), would have an excess corporate holdings percentage (determined without reference to subsection 149.2(8)) in respect of that class of shares that is greater than 0%, and

(C) the private foundation, alone or together with all controlled corporations, holds more than an insignificant interest in respect of the class of shares described in subclause (A)(I), or

(*c*) that are substituted shares held by the private foundation;

"exempt shares percentage" « *pourcentage d'actions exonérées* »

"exempt shares percentage"of a private foundation at any time, in respect of a class of shares of the capital stock of a corporation, is the total of all amounts, each of which is the percentage of the issued and outstanding shares of that class that are exempt shares held by the private foundation at that time;

"substituted shares" « *actions de remplacement* »

"substituted shares" held by a private foundation means shares acquired by the private foundation, in exchange for exempt shares held by the private foundation, in the course of a transaction to which section 51, subsection 85.1(1), or section 86 or 87 applies;

(5) Subsections (1) to (4) apply after March 18, 2007.

32. (1) Section 149.2 of the Act is amended by adding the following after subsection (2):

Ownership

(2.1) For the purposes of the definition "equity percentage", and subparagraph (*b*)(iii) of the definition "exempt shares", in subsection 149.1(1), a person who, if paragraph 251(5)(*b*) applied would be deemed by that paragraph to have the same position in relation to the control of a corporation as if the person owned a share, is deemed to own the share.

(2) Section 149.2 of the Act is amended by adding the following after subsection (8):

Where subsection (10) applies

(9) Subsection (10) applies for the purposes of applying section 149.1 and subsections (8) and 188.1(3.1) to a private foundation at a particular time if, both on March 18, 2007 and at the particular time,

(*a*) the private foundation was the sole trustee of a trust, or was a majority interest beneficiary (within the meaning assigned by section 251.1) of a trust more than 50% of the trustees of which were the private foundation and one or more relevant persons in respect of the private foundation; and

(*b*) the trust held one or more shares of a class of the capital stock of a corporation.

Shares held through a trust on March 18, 2007

(10) If this subsection applies at a particular time to a private foundation in respect of shares of a class of the capital stock of a corporation held by a trust, the private foundation is deemed to hold at the particular time that number of those shares as is determined by the formula

$$A \times B / C$$

where

A is the lesser of the number of those shares held by the trust on March 18, 2007 and the number so held at the particular time,

B is the total fair market value of all interests held by the private foundation in the trust at the particular time, and

C is the total fair market value of all property held by the trust at the particular time.

Discretionary trusts

(11) For the purpose of subsection (10), if the amount of income or capital of a trust that a person may receive as a beneficiary under the trust depends on the exercise by any person of, or the failure by any person to exercise, a discretionary power, that person is deemed to have fully exercised, or to have failed to exercise, the power, as the case may be.

(3) Subsections (1) applies after March 18, 2007.

(4) Subsection (2) applies to taxation years, of private foundations, that begin on or after February 26, 2008.

(5) If a registered charity was on March 19, 2007 a private foundation, in applying paragraphs 149.2(5)(*b*) and (*c*) of the Act to the first taxation year of the registered charity that begins after that date, the phrase "in the current year" in those paragraphs shall be read as the phrase "in the period that begins on March 18, 2007 and ends at the end of the current year".

33. (1) Subsection 152(4) of the Act is amended by striking out the word "or" at the end of paragraph (*a*), by adding the word "or" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) as a consequence of a change in the allocation of the taxpayer's taxable income earned in a province as determined under the law of a province that provides rules similar to those prescribed for the purposes of section 124, an assessment, reassessment or additional assessment of tax for a taxation year payable by a corporation under a law of a province that imposes on the corporation a tax similar to the tax imposed under this Part (in this paragraph referred to as a "provincial reassessment") is made, and as a consequence of the provincial reassessment, an assessment, reassessment or additional assessment is made on or before the day that is one year after the later of

(i) the day on which the Minister is advised of the provincial reassessment, and

(ii) the day that is 90 days after the day of mailing of a notice of the provincial reassessment.

(2) Section 152 of the Act is amended by adding the following after subsection (6.1):

Extended reassessment period

(6.2) The Minister shall reassess a taxpayer's tax for a particular taxation year, in order to take into account the application of paragraph (*d*) of the definition "excluded property" in subsection 142.2(1) in respect of shares held by the taxpayer in the particular year, if

(*a*) the taxpayer has filed for the particular taxation year the return of income required by section 150; and

(*b*) the taxpayer files with the Minister, on or before the filing-due date for the taxpayer's taxation year that includes the acquisition of control time referred to in paragraph (*d*) of that definition, a prescribed form amending the return.

(3) Subsection (2) applies to taxation years that begin after 2001, except that

(*a*) for taxation years that begin before October 1, 2006, each reference in subsection 152(6.2) of the Act, as enacted by subsection (2), to "paragraph (*d*) of the definition "excluded property"" shall be read as a reference to "paragraph (*d.3*) of the definition "mark-to-market property""; and

(*b*) a prescribed form referred to in paragraph 152(6.2)(*b*) of the Act, as enacted by subsection (2), is deemed to have been filed by a taxpayer with the Minister of National Revenue on a timely basis if it is filed by the taxpayer with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to.

34. (1) Clause 181.3(1)(*c*)(ii)(B) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

35. (1) Paragraph 188.1(3.2)(*c*) of the Act is replaced by the following:

(*c*) each of those shares is deemed to have a fair market value, at the particular time, equal to the fair market value, at the particular time, of a share of the class issued by the corporation, determined without reference to this subsection.

(2) Section 188.1 of the Act is amended by adding the following after subsection (3.2):

Where subsection (3.5) applies

(3.3) Subsection (3.5) applies to a private foundation at a particular time in a taxation year if

(*a*) at the particular time, a person (in this subsection and subsection (3.5) referred to as an "insider" of the private foundation) that is the private foundation, or is a relevant person in respect of the private foundation, is a beneficiary under a trust;

(*b*) at or before the particular time

(i) the insider acquired an interest in or under the trust, or

(ii) the trust acquired a property;

(*c*) it may reasonably be considered that a purpose of the acquisition described in paragraph (*b*) was to hold, directly or indirectly, shares of a class of the capital stock of a corporation (referred to in subsection (3.5) as the “subject corporation”);

(*d*) the shares described in paragraph (*c*) would, if they were held by the insider, cause the private foundation to have a divestment obligation percentage for the taxation year; and

(*e*) at the particular time, the insider holds the interest described in subparagraph (*b*)(i), or the trust holds the property described in subparagraph (*b*)(ii), as the case may be.

Rules applicable

(3.4) For the purpose of subsections (3.3) and (3.5),

(*a*) interests (or, for civil law, rights), other than shares, of a trust in a corporation that entitle the trust to a right described in paragraph 251(5)(*b*) in respect of a class of the capital stock of the corporation, are deemed to be converted into shares of that class in the manner described by paragraph (3.2)(*a*); and

(*b*) if the amount of income or capital of the trust that a person may receive as a beneficiary under the trust depends on the exercise by any person of, or the failure by any person to exercise, a discretionary power, that person is deemed to have fully exercised, or to have failed to exercise, the power, as the case may be.

Avoidance of divestiture

(3.5) If this subsection applies to a private foundation at a particular time in respect of an interest of an insider of the private foundation in a trust, for the purposes of applying this section, subsection 149.1(1) and section 149.2,

(*a*) the insider is deemed to hold at the particular time, in addition to any shares of the capital stock of the subject corporation that it holds otherwise than because of this subsection, the number of shares, of the class of shares referred to in paragraph (3.3)(*c*), determined by the formula

$$A \times B / C$$

where

A is the number of shares of that class that are held, directly or indirectly, by the trust at the particular time,

B is the total fair market value of all interests held by the insider in the trust at the particular time, and

C is the total fair market value of all property held by the trust at the particular time;

(*b*) each of those shares is deemed to be a share that is issued by the corporation and outstanding and to continue to be held by the holder until such time as the holder no longer holds the interest or right; and

(*c*) each of those shares is deemed to have a fair market value, at the particular time, equal to the fair market value, at the particular time, of a share of the class issued by the corporation, determined without reference to this subsection.

(3) Subsections (1) and (2) apply to taxation years, of private foundations, that begin on or after February 26, 2008.

36. (1) Subparagraph 190.11(*b*)(ii) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

37. (1) Subparagraph 190.13(*c*)(iv) of the Act is repealed.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

38. (1) The definition "SIFT partnership" in subsection 197(1) of the Act is amended by replacing the portion before paragraph (*a*) with the following:

"SIFT partnership" « *société de personnes intermédiaire de placement déterminée* »

"SIFT partnership", being a specified investment flow-through partnership, for any taxation year, means a partnership (other than an "excluded subsidiary entity" for the taxation year as defined in subsection 122.1(1)) that meets the following conditions at any time during the taxation year:

(2) Subsection (1) is deemed to have come into force on October 31, 2006.

39. (1) Paragraph (*c.1*) of the definition "qualified investment" in section 204 of the Act is replaced by the following:

(*c.1*) debt obligations that meet the following criteria, namely,

(i) any of

(A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,

(B) the debt obligations have an investment grade rating with a prescribed credit rating agency, or

(C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*, and

(ii) either

(A) the debt obligations were issued as part of a single issue of debt of at least $25 million, or

(B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least $25 million,

(2) Subsection (1) applies in determining whether a property is, at any time after March 18, 2007, a qualified investment.

40. (1) The definition "restricted property" in subsection 207.01(1) of the Act is repealed.

(2) Paragraph (*a*) of the definition "advantage" in subsection 207.01(1) of the Act is amended by striking out "and" at the end of subparagraph (i) and by adding the following after subparagraph (ii):

(iii) a distribution under the TFSA;

(3) Paragraph (*b*) of the definition "advantage" in subsection 207.01(1) of the Act is replaced by the following:

(*b*) an increase in the total fair market value of the property held in connection with the TFSA if it is reasonable to consider, having regard to all the circumstances, that the increase is attributable, directly or indirectly, to

(i) a transaction or event or a series of transactions or events that

(A) would not have occurred in an open market in which parties deal with each other at arm's length and act prudently, knowledgeably and willingly, and

(B) had as one of its main purposes to enable a person or a partnership to benefit from the exemption from tax under Part I of any amount in respect of the TFSA, or

(ii) a payment received as, on account or in lieu of, or in satisfaction of, a payment

(A) for services provided by a person who is, or who does not deal at arm's length with, the holder of the TFSA, or

(B) of interest, of a dividend, of rent, of a royalty or of any other return on investment, or of proceeds of disposition, in respect of property (other than property held in connection with the TFSA) held by a person who is, or who does not deal at arm's length with, the holder of the TFSA; and

(*c*) a prescribed benefit.

(4) The description of E in the definition "excess TFSA amount" in subsection 207.01(1) of the Act is replaced by the following:

E is the total of all amounts each of which is the qualifying portion of a distribution made in the calendar year and at or before the particular time under a TFSA of which the individual was the holder at the time of the distribution and, for this purpose, the qualifying portion of a distribution is

(*a*) nil, if the distribution is a qualifying transfer or a prescribed distribution; and

(*b*) in any other case, the lesser of

(i) the amount of the distribution, and

(ii) the amount that would be the individual's excess TFSA amount at the time of the distribution if the amount of the distribution were nil.

(5) The portion of the definition "prohibited investment" in subsection 207.01(1) of the Act before paragraph (*a*) is replaced by the following:

“prohibited investment” « *placement interdit* »

“prohibited investment”, at any time, for a trust governed by a TFSA means property (other than prescribed excluded property) that is at that time

(6) Paragraph (*d*) of the definition “prohibited investment” in subsection 207.01(1) of the Act is replaced by the following:

(*d*) prescribed property.

(7) Subsection 207.01(1) of the Act is amended by adding the following in alphabetical order:

“exempt contribution” « *cotisation exclue* »

“exempt contribution” means a contribution made in a calendar year under a TFSA by the survivor of an individual if

(*a*) the contribution is made during the period (in this definition referred to as the “rollover period”) that begins when the individual dies and that ends at the end of the first calendar year that begins after the individual dies (or at any later time that is acceptable to the Minister);

(*b*) a payment (in this definition referred to as the “survivor payment”) was made to the survivor during the rollover period, as a consequence of the individual’s death, directly or indirectly out of or under an arrangement that ceased, because of the individual’s death, to be a TFSA;

(*c*) the survivor designates, in prescribed form filed in prescribed manner within 30 days after the day on which the contribution is made, the contribution in relation to the survivor payment; and

(*d*) the amount of the contribution does not exceed the least of

(i) the amount, if any, by which

(A) the amount of the survivor payment

exceeds

(B) the total of all other contributions designated by the survivor in relation to the survivor payment,

(ii) the amount, if any, by which

(A) the total proceeds of disposition that would, if section 146.2 were read without reference to subsection 146.2(9), be determined in respect of the arrangement under paragraph 146.2(8)(*a*), (10)(*a*) or (11)(*a*), as the case may be,

exceeds

(B) the total of all other exempt contributions in respect of the arrangement made by the survivor at or before the time of the contribution, and

(iii) if the individual had, immediately before the individual’s death, an excess TFSA amount or if payments described in paragraph (*b*) are made to more than one survivor of the individual, nil or the greater amount, if any, allowed by the Minister in respect of the contribution.

(8) Subsection 207.01(2) of the Act is repealed.

(9) The portion of subsection 207.01(3) of the Act before paragraph (*a*) is replaced by the following:

Survivor as successor holder

(3) If an individual's survivor becomes the holder of a TFSA as a consequence of the individual's death and, immediately before the individual's death, the individual had an excess TFSA amount, the survivor is deemed (other than for the purposes of the definition "exempt contribution") to have made, at the beginning of the month following the individual's death, a contribution under a TFSA equal to the amount, if any, by which

(10) Subsections (1) to (9) apply to the 2009 and subsequent taxation years.

41. (1) Subsection 207.04(3) of the Act is replaced by the following:

Where both prohibited and non-qualified investment

(3) For the purposes of this section and subsection 146.2(6), if a trust governed by a TFSA holds property at any time that is, for the trust, both a prohibited investment and a non-qualified investment, the property is deemed at that time not to be a non-qualified investment, but remains a prohibited investment, for the trust.

(2) Paragraph 207.04(7)(*a*) of the Act is replaced by the following:

(*a*) the Act were read without reference to paragraph 82(1)(*b*), section 121 and subsection 146.2(6); and

(3) Subsections (1) and (2) apply to the 2009 and subsequent taxation years.

42. (1) The portion of subsection 207.06(2) of the Act before paragraph (*a*) is replaced by the following:

Waiver of tax payable

(2) If a person would otherwise be liable to pay a tax under this Part because of subsection 207.04(1) or section 207.05, the Minister may waive or cancel all or part of the liability where the Minister considers it just and equitable to do so having regard to all the circumstances, including

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

43. (1) Paragraph (*a*) of the definition "registered life insurance policy" in subsection 211(1) of the Act is replaced by the following:

(*a*) as a registered retirement savings plan, or

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

44. (1) Paragraph 212(1)(*p*) of the Act is replaced by the following:

Former TFSA

(*p*) an amount that would, if the non-resident person had been resident in Canada at the time at which the amount was paid, be required by paragraph 12(1)(*z.5*) to be included in computing the non-resident person's income for the taxation year that includes that time;

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

45. (1) The portion of subsection 241(1) of the Act before paragraph (*a*) is replaced by the following:

Provision of information

241. (1) Except as authorized by this section, no official or other representative of a government entity shall

(2) Subsection 241(2) of the Act is replaced by the following:

Idem

(2) Notwithstanding any other Act of Parliament or other law, no official or other representative of a government entity shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

(3) Paragraph 241(4)(*l*) of the Act is replaced by the following:

(*l*) subject to subsection (9.2), provide to a representative of a government entity the business number of, the name of (including any trade name or other name used by), and any contact information, corporate information and registration information in respect of, the holder of a business number (other than an excluded individual), if the information is provided solely for the purposes of the administration or enforcement of

(i) an Act of Parliament or of a legislature of a province, or

(ii) a by-law of a municipality in Canada or a law of an aboriginal government;

(4) The portion of subsection 241(5) of the Act before paragraph (*a*) is replaced by the following:

Disclosure to taxpayer or on consent

(5) An official or other representative of a government entity may provide taxpayer information relating to a taxpayer

(5) The portion of subsection 241(6) of the Act before paragraph (*a*) is replaced by the following:

Appeal from order or direction

(6) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official, other representative of a government entity or authorized person to give or produce evidence relating to any taxpayer information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(6) Section 241 of the Act is amended by adding the following after subsection (9.1):

Restrictions on information sharing

(9.2) No information may be provided to a representative of a government entity under paragraph (4)(*l*) in connection with a program, activity or service provided or undertaken by the government entity unless the government entity uses the business number as an identifier in connection with the program, activity or service.

Public disclosure

(9.3) The Minister may, in connection with a program, activity or service provided or undertaken by the Minister, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number (other than an excluded individual).

Public disclosure by representative of government entity

(9.4) A representative of a government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number (other than an excluded individual), if

(*a*) a representative of the government entity was provided with that information pursuant to paragraph 4(*l*); and

(*b*) the government entity uses the business number as an identifier in connection with the program, activity or service.

(7) The portion of the definition “taxpayer information” in subsection 241(10) of the Act that is after paragraph (*b*) is replaced by the following:

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates and, for the purposes of applying subsections (2), (5) and (6) to a representative of a government entity that is not an official, taxpayer information includes only the information referred to in paragraph 241(4)(*l*);

(8) Subsection 241(10) of the Act is amended by adding the following in alphabetical order:

“aboriginal government” « *gouvernement autochtone* »

“aboriginal government” means an aboriginal government as defined in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*;

“contact information” « *coordonnées* »

“contact information”, in respect of a holder of a business number, means the name, address, telephone number, facsimile number and preferred language of communication of the holder, or similar information as specified by the Minister in respect of the holder, and includes such information in respect of one or more

(*a*) trustees of the holder, if the holder is a trust;

(*b*) members of the holder, if the holder is a partnership;

(*c*) officers of the holder, if the holder is a corporation; or

(*d*) officers or members of the holder, if the holder is not described by any of paragraphs (*a*) to (*c*);

“corporate information” « *renseignements d’entreprise* »

“corporate information”, in respect of a holder of a business number that is a corporation, means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation;

“excluded individual” « *particulier exclu* »

“excluded individual” means an individual who is a holder of a business number solely because the individual is required under this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited;

“government entity” « *entité gouvernementale* »

“government entity” means

(*a*) a department or agency of the Government of Canada or of a province;

(*b*) a municipality in Canada;

(*c*) an aboriginal government;

(*d*) a corporation all of the shares (except directors’ qualifying shares) of the capital stock of which are owned by one or more persons each of which is

(i) Her Majesty in right of Canada,

(ii) Her Majesty in right of a province,

(iii) a municipality in Canada, or

(iv) a corporation described in this paragraph; or

(*e*) a board or commission, established by Her Majesty in right of Canada or Her Majesty in right of a province, that performs an administrative or regulatory function of government, or by one or more municipalities in Canada, that performs an administrative or regulatory function of a municipality.

“registration information” « *renseignements relatifs à l’inscription* »

“registration information”, in respect of a holder of a business number, means

(*a*) any information pertaining to the legal form of the holder,

(*b*) the type of activities carried on or proposed to be carried on by the holder,

(*c*) each date on which

(i) the business number was issued to the holder,

(ii) the holder began activities,

(iii) the holder ceased or resumed activities, or

(iv) the business number assigned to the holder was changed, and

(*d*) the reasons for the cessation, resumption or change referred to in subparagraph (*c*)(iii) or (iv);

“representative” « *représentant* »

“representative” of a government entity means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, a government entity, and includes, for the purposes of subsections 241(1), (2), (5) and (6), a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged;

46. (1) The definitions “personal trust” and “TFSA” in subsection 248(1) of the Act are replaced by the following:

“personal trust” « *fiducie personelle* »

“personal trust” means a trust (other than a trust that is, or was at any time after 1999, a unit trust) that is

(*a*) a testamentary trust, or

(*b*) an *inter vivos* trust, no beneficial interest in which was acquired for consideration payable directly or indirectly to

(i) the trust, or

(ii) any person or partnership that has made a contribution to the trust by way of transfer, assignment or other disposition of property;

“TFSA” « *compte d’épargne libre d’impôt* »

“TFSA”, being a tax-free savings account, has the meaning assigned by subsection 146.2(5);

(2) Paragraph (*d*) of the definition “Canadian real, immovable or resource property” in subsection 248(1) of the Act is replaced by the following:

(*d*) a share of the capital stock of a corporation, an income or capital interest in a trust or an interest in a partnership (other than a taxable Canadian corporation, a SIFT trust or a SIFT partnership), if more than 50% of the fair market value of the share or interest is derived directly or indirectly from one or any combination of properties described in paragraphs (*a*) to (*c*), or

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

“foreign currency debt” « *dette en monnaie étrangère* »

“foreign currency debt” has the meaning assigned by subsection 111(8);

“SIFT trust wind-up event” « *fait lié à la conversion d’une EIPD-fiducie* »

“SIFT trust wind-up event” means a distribution, by a trust of all of its property to a taxpayer, that meets the following conditions:

(*a*) the distribution occurs before 2013,

(*b*) there is a resulting disposition of all of the taxpayer’s interest as a beneficiary under the trust, and

(*c*) the trust is

(i) a SIFT wind-up entity, or

(ii) a trust the only beneficiary of which is, throughout the period that begins on ANNOUNCEMENT DATE and that ends at the time of the distribution, another trust that is a SIFT wind-up entity;

“SIFT wind-up corporation” « *société de conversion d’EIPD* »

“SIFT wind-up corporation”, in respect of a SIFT wind-up entity, means at any time a public corporation shares of the capital stock of which were, before that time,

(*a*) issued as consideration for a disposition to the corporation, as part of a series of transactions under which the corporation acquired all of the equity in the SIFT wind-up entity, of equity in the SIFT wind-up entity, or

(*b*) distributed on a SIFT trust wind-up event to one or more taxpayers that are neither SIFT wind-up entities nor corporations that have issued shares as described by paragraph (*a*);

“SIFT wind-up entity” « *EIPD convertible* »

“SIFT wind-up entity” means a trust or partnership that at any time in the period that began on October 31, 2006 and that ends on ANNOUNCEMENT DATE is

(*a*) a SIFT trust (determined without reference to subsection 122.1(2)),

(*b*) a SIFT partnership (determined without reference to subsection 197(8)), or

(*c*) a real estate investment trust;

“SIFT wind-up entity equity” « *intérêt dans une EIPD convertible* »

“SIFT wind-up entity equity”, or equity in a SIFT wind-up entity, means

(*a*) if the SIFT wind-up entity is a trust, a capital interest (determined without reference to subsection (25)) in the trust, and

(*b*) if the SIFT wind-up entity is a partnership, an interest as a member of the partnership where, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is, to the extent of the interest, limited, but

(*c*) if all of the interests, described in paragraph (*a*) or (*b*) as the case may be, in a SIFT wind-up entity are described by reference to units, the part of the interest represented by such a unit;

(4) Paragraph 248(3)(*c*) of the Act is replaced by the following:

(*c*) an arrangement (other than an arrangement that is a trust determined without reference to this paragraph) <u>entered into with a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee</u> is deemed to be a trust and property subject to rights and obligations under the arrangement is, if the arrangement is deemed by this paragraph to be a trust, deemed to be held in trust and not otherwise, where the arrangement is

(i) established by or under a written contract that is governed by the laws of the Province of Quebec,

(ii) presented as a declaration of trust or provides that, for the purposes of this Act, it shall be considered to be a trust, and

(iii) presented as an arrangement in respect of which the corporation is to take action for the arrangement to become a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA;

(5) Subsection 248(25.1) of the Act is replaced by the following:

Trust-to-trust transfers

(25.1) Where at any time a particular trust transfers property to another trust (other than a trust governed by a registered retirement savings plan or by a registered retirement income fund) in circumstances to which paragraph (*f*) of the definition "disposition" in subsection (1) applies, without affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(*f*), the other trust is deemed to be after that time the same trust as, and a continuation of, the particular trust, and, for greater certainty, if the property was deemed to be taxable Canadian property of the particular trust by paragraph 51(1)(*f*), 85(1)(*i*), 85.1(1)(*a*) or (8)(*c*), subsection 85.1(5) or 87(4) or (5) or paragraph 97(2)(*c*), 107(2)(*d.1*) or (3.1)(*d*), the property is deemed to be taxable Canadian property of the other trust.

(6) The definition "personal trust" in subsection 248(1) of the Act, as enacted by subsection (1), applies after ANNOUNCEMENT DATE.

(7) The definition "TFSA" in subsection 248(1) of the Act, as enacted by subsection (1), applies to the 2009 and subsequent taxation years.

(8) Subsection (2) is deemed to have come into force on October 31, 2006.

(9) The definition "foreign currency debt" in subsection 248(1) of the Act, as enacted by subsection (3), applies after 2005.

(10) The definitions "SIFT trust wind-up event", "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act, as enacted by subsection (3), apply after December 19, 2007.

(11) Subsection (4) applies to taxation years that begin after October 30, 2003.

(12) Subsection (5) applies after December 19, 2007.

47. (1) Section 253.1 of the Act is replaced by the following:

Investments in limited partnerships

253.1 For the purposes of subparagraph 108(2)(*b*)(ii), paragraphs 130.1(6)(*b*), 131(8)(*b*), 132(6)(*b*) and 146.1(2.1)(*c*), subsection 146.2(6), paragraphs 146.4(5)(*b*) and 149(1)(*o.2*), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(*o.3*) and (*o.4*), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

48. (1) Subsection 256(7) of the Act is amended by adding the following after paragraph (*c*):

(*c*.1) if a particular trust is the only beneficiary of another trust, the particular trust is described in paragraph (*c*) of the definition "SIFT trust wind-up event", the particular trust would, in the absence of this paragraph, acquire control of a corporation solely because of a SIFT trust wind-up event that is a distribution of shares of the capital stock of the corporation by the other trust, and the other trust controlled the corporation immediately before the distribution, the particular trust is deemed not to acquire control of the corporation because of the distribution;

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

49. (1) The portion of subsection 259(1) of the Act before paragraph (*a*) is replaced by the following:

Proportional holdings in trust property

259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.1(2.1), 146.2(6) and 146.3(7), (8) and (9) and Parts X, X.2 and XI to XI.1, if at any time a taxpayer that is a registered investment or that is described in any of paragraphs 149(1)(*r*), (*s*), (*u*) to (*u.2*) or (*x*) acquires, holds or disposes of a particular unit in a qualified trust and the qualified trust elects for any period that includes that time to have this subsection apply,

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

BUDGET IMPLEMENTATION ACT, 2008

50. (1) The description of B in the formula in subsection 19(5) of the *Budget Implementation Act, 2008* is replaced by the following:

B is the expenditure limit of the corporation for the taxation year determined in accordance with the formula in subsection 127(10.2), as that subsection would apply to a taxation year that ended on February 26, 2008;

INCOME TAX REGULATIONS

51. (1) Paragraph 202(2)(*h*) of the *Income Tax Regulations* is replaced by the following:

(*h*) a payment to which paragraph 212(1)(*p*) of the Act applies,

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

52. (1) Subsection 204(3) of the Regulations is amended by striking out "or" at the end of paragraph (*d.1*), by adding "or" at the end of paragraph (*e*) and by adding the following after paragraph (*e*):

(*f*) governed by a TFSA or by an arrangement that is deemed by paragraph 146.2(9)(*a*) of the Act to be a TFSA.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

53. (1) Subsection 209(1) of the Regulations is replaced by the following:

(1) A person who is required by any of sections 200, 201, 202, 204, 208, 212, 214, 215, 217, 218, 226, 227, 228, 229, 230, 232, 233 or 234 or subsection 223(2) to make an information return shall forward to each taxpayer to whom the return relates two copies of the portion of the return that relates to that taxpayer.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

54. (1) Subsection 221(2) of the Regulations is replaced by the following:

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest as a beneficiary under it, is a qualified investment under section 146, 146.1, 146.3, 204, 205 or 207.01 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

55. (1) Section 223 of the Regulations is replaced by the following:

TFSAs

223. (1) An issuer of a TFSA shall make an information return for each calendar year in prescribed form in respect of the TFSA.

(2) An issuer of a TFSA who makes a payment of an amount that is required because of paragraph 146.2(9)(*b*) of the Act to be included in computing the income of a taxpayer for a taxation year shall make an information return in prescribed form.

(3) An issuer of a TFSA that governs a trust shall notify the holder of the TFSA in prescribed form and manner before March of a calendar year if, at any time during the preceding calendar year,

(*a*) the trust acquires or disposes of property that is a non-qualified investment for the trust; or

(*b*) property held by the trust becomes or ceases to be a non-qualified investment for the trust.

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

56. (1) Paragraph 304(1)(*a*) of the Regulations is replaced by the following:

(*a*) an annuity contract that is, or is issued pursuant to, an arrangement described in any of paragraphs 148(1)(*a*) to (*b.2*) or (*d*) of the Act; and

(2) Subsection (1) applies to annuity contracts issued after 2008.

57. (1) Sections 414 and 415 of the Regulations are replaced by the following:

Definitions

414. (1) The following definitions apply in this section.

“general corporate income tax rate” « *taux général d’imposition du revenu des sociétés* »

“general corporate income tax rate”, in a province for a taxation year, means

(*a*) for Quebec, 0%; and

(*b*) for each other province, the highest percentage rate of tax imposed under the laws of the province on the taxable income of a public corporation earned in the taxation year in the province.

“province” « *province* »

“province” includes the Newfoundland offshore area and the Nova Scotia offshore area.

“taxable SIFT distributions” « *montant des distributions imposables* »

“taxable SIFT distributions”, for a taxation year, means

(*a*) in the case of a SIFT trust, its non-deductible distributions amount for the taxation year; and

(*b*) in the case of a SIFT partnership, its taxable non-portfolio earnings for the taxation year.

(2) In determining the amount of a SIFT trust’s or SIFT partnership’s taxable SIFT distributions for a taxation year earned in a province

(*a*) except as provided in paragraph (*b*), this Part applies in respect of the SIFT trust or SIFT partnership as though

(i) each reference to “corporation” (other than in the expression “subsidiary controlled corporation”) were read as a reference to “SIFT trust” or “SIFT partnership” as the case may be,

(ii) each reference to “taxable income” were read as a reference to “taxable SIFT distributions”, and

(iii) “subsidiary controlled corporation” in respect of a SIFT trust or a SIFT partnership meant a corporation more than 50% of the issued share capital of which (having full voting rights under all circumstances) belongs to the SIFT trust or SIFT partnership; and

(*b*) subsection 400(1), section 401, subsections 402(1) and (2), and sections 403 to 413 do not apply.

(3) In applying the definition “provincial SIFT tax rate” in subsection 248(1) of the Act in respect of a SIFT trust or SIFT partnership for a taxation year, the prescribed amount determined in respect of the SIFT trust or SIFT partnership for the taxation year is

(*a*) if the SIFT trust or SIFT partnership has no permanent establishment in a province in the taxation year, 0.10;

(*b*) if the SIFT trust or SIFT partnership has a permanent establishment in a province in the taxation year and has no permanent establishment outside that province in the taxation year, the decimal fraction equivalent of the general corporate income tax rate in the province for the taxation year; and

(*c*) if the SIFT trust or SIFT partnership has a permanent establishment in the taxation year in a province, and has a permanent establishment outside that province in the taxation year, the amount, expressed as a decimal fraction, determined by the formula

$$A + B$$

where

A is the total of all amounts, if any, each of which is in respect of a province in which the SIFT trust or SIFT partnership has a permanent establishment in the taxation year and is determined by the formula

$$C/D \times E$$

where

C is its taxable SIFT distributions for the taxation year earned in the province,

D is its total taxable SIFT distributions for the taxation year, and

E is the decimal fraction equivalent of the general corporate income tax rate in the province for the taxation year, and

B is the amount determined by the formula

$$(1 - F/D) \times 0.1$$

where

F is the total of all amounts each of which is an amount determined under the description of C in respect of a province in which the SIFT trust or SIFT partnership has a permanent establishment in the taxation year.

(2) Subsection (1) applies to the 2007 and subsequent taxation years.

58. (1) The portion of subsection 1401(1) of the Regulations before subparagraph (*c*)(i) is replaced by the following:

1401. (1) For the purposes of subsection 211.1(3) of the Act and section 307 of the Regulations, the amounts determined under this subsection are,

(*a*) in respect of deposit administration fund policies, the aggregate of the insurer’s liabilities under those policies calculated in the manner required for the purposes of the insurer’s annual report to the relevant authority for the year or, where the insurer was throughout the year subject to the supervision of the relevant authority but was not required to file an annual report with the relevant authority for the year, in its financial statements for the year;

(*b*) in respect of a group term life insurance policy that provides coverage for a period not exceeding 12 months, the unearned portion of the premium paid by the policyholder for the policy at the end of the year determined by apportioning the premium paid by the policyholder equally over the period to which that premium pertains;

(*c*) in respect of a life insurance policy, other than a policy referred to in paragraph (*a*) or (*b*), the greater of

(2) The portion of paragraph 1401(1)(*c.1*) of the Regulations before subparagraph (i) is replaced by the following:

(*c.1*) in respect of a group life insurance policy, the amount (other than an amount in respect of which a deduction may be claimed by the insurer pursuant to subsection 140(1) of the Act because of subparagraph 138(3)(*a*)(v) of the Act in computing its income for the year) in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy that will be used by the insurer to reduce or eliminate a future adverse claims experience under the policy or that will be paid or unconditionally credited to the policyholder by the insurer or applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer, which is the least of

(3) The portion of paragraph 1401(1)(*d*) of the Regulations before subparagraph (i) is replaced by the following:

(*d*) in respect of a policy, other than a policy referred to in paragraph (*a*), in respect of a benefit, risk or guarantee that is

(4) The portion of paragraph 1401(1)(*d*) of the Regulations after subparagraph (ix) and before subparagraph (x) is replaced by the following:

equal to the lesser of

(5) Paragraphs 1401(1)(*d.1*) to (*e*) of the Regulations are repealed.

(6) Subsections 1401(1.1), (3) and (4) of the Regulations are repealed.

(7) Subsections (1) to (6) apply to taxation years that begin on or after October 1, 2006.

59. (1) The headings before section 1404 and section 1404 of the Regulations are replaced by the following:

DIVISION 4

LIFE INSURANCE POLICY RESERVES

1404. (1) For the purpose of subparagraph 138(3)(*a*)(i) of the Act, there may be deducted, in computing a life insurer's income from carrying on its life insurance business in Canada for a taxation year in respect of its life insurance policies in Canada, the amount the insurer claims, not exceeding

(*a*) the amount determined under subsection (3) in respect of the insurer for the year, where that amount is greater than nil; and (*b*) nil, in any other case.

(2) For the purpose of paragraph 138(4)(*b*) of the Act, the amount prescribed in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada, is

(*a*) the absolute value of the amount determined under subsection (3) in respect of the insurer for the year, where that amount is less than nil; and

(*b*) nil, in any other case.

(3) For the purposes of paragraphs (1)(*a*) and (2)(*a*), the amount determined under this subsection in respect of an insurer for a taxation year, in respect of its life insurance policies in Canada, is the amount, which may be positive or negative, determined by the formula

$$A + B + C + D - M$$

where

A is the amount (except to the extent the amount is determined in respect of a claim, premium, dividend or refund in respect of which an amount is included in determining the value of B, C or D), in respect of the insurer's life insurance policies in Canada, equal to the lesser of

(*a*) the total of the reported reserves of the insurer at the end of the year in respect of those policies, and

(*b*) the total of the policy liabilities of the insurer at the end of the year in respect of those policies;

B is the amount, in respect of the insurer's life insurance policies in Canada under which there may be claims incurred before the end of the year that have not been reported to the insurer before the end of the year, equal to 95% of the lesser of

(*a*) the total of the reported reserves of the insurer at the end of the year in respect of the possibility that there are such claims, and

(*b*) the total of the policy liabilities of the insurer at the end of the year in respect of the possibility that there are such claims;

C is the total of all amounts each of which is the unearned portion at the end of the year of the premium paid by the policyholder for the policy, determined by apportioning the premium paid by the policyholder equally over the period to which that premium relates, where the policy is a group term life insurance policy that

(*a*) provides coverage for a period that does not exceed 12 months, and

(*b*) is a life insurance policy in Canada;

D is the total of all amounts (other than an amount deductible under subparagraph 138(3)(*a*)(v) of the Act) each of which is the amount, which is the least of P, Q and R, in respect of a dividend, refund of premiums or refund of premium deposits provided for under the terms of a group life insurance policy that is a life insurance policy in Canada that will be (*a*) used by the insurer to reduce or eliminate a future adverse claims experience under the policy,

(*b*) paid or unconditionally credited to the policyholder by the insurer, or

(*c*) applied in discharge, in whole or in part, of a liability of the policyholder to pay premiums to the insurer under the policy,

where

P is a reasonable amount as a reserve determined as at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy,

Q is 25% of the amount of the premium under the terms of the policy for the 12-month period ending

(*a*) on the day the policy is terminated, if the policy is terminated in the year, and

(*b*) at the end of the year, in any other case, and

R is the amount of the reported reserve of the insurer at the end of the year in respect of the dividend, refund of premiums or refund of premium deposits provided for under the terms of the policy; and

M is the total of all amounts determined in respect of a life insurance policy in Canada each of which is

(*a*) an amount payable in respect of a policy loan under the policy, or

(*b*) interest that has accrued to the insurer to the end of the year in respect of a policy loan under the policy.

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

60. (1) The definition “life insurance policy in Canada” in subsection 1408(1) of the Regulations is replaced by the following:

“life insurance policy in Canada” « *police d’assurance-vie au Canada* »

“life insurance policy in Canada” has the same meaning as defined in subsection 138(12) of the Act.

(2) Subsection 1408(1) of the Regulations is amended by adding the following in alphabetical order:

“life insurance policy” « *police d’assurance-vie* »

“life insurance policy” has the same meaning as defined in subsection 138(12) of the Act.

(3) Subsections (1) and (2) apply to taxation years that begin after November 7, 2007.

61. (1) Subsection 2400(1) of the Regulations is amended by adding the following in alphabetical order:

"base year"
« *année de base* »

"base year" of an insurer means the insurer's taxation year that immediately precedes its transition year.

"transition year"
« *année transitoire* »

"transition year" of an insurer means the insurer's first taxation year that begins after September 30, 2006.

(2) Section 2400 of the Regulations is amended by adding the following after subsection (7):

Transition year

(8) A computation that is required to be made under this Part in respect of an insurer's base year and that is relevant to a computation (in this subsection referred to as the "transition year computation") that is required to be made under this Part in respect of the insurer's transition year shall, for the purposes only of the transition year computation, be made using the same definitions, rules and methodologies that are used in the transition year computation.

(3) Subsections (1) and (2) apply to taxation years that begin on or after October 1, 2006.

62. (1) The portion of subsection 4900(1) of the Regulations before paragraph (*a*) is replaced by the following:

4900. (1) For the purposes of paragraph (*d*) of the definition "qualified investment" in subsection 146(1) of the Act, paragraph (*e*) of the definition "qualified investment" in subsection 146.1(1) of the Act, paragraph (*c*) of the definition "qualified investment" in subsection 146.3(1) of the Act, paragraph (*h*) of the definition "qualified investment" in section 204 of the Act, paragraph (*d*) of the definition "qualified investment" in subsection 205(1) of the Act and paragraph (*c*) of the definition "qualified investment" in subsection 207.01(1) of the Act, each of the following investments is prescribed as a qualified investment for a plan trust at a particular time if at that time it is

(2) Paragraph 4900(1)(*i.3*) of the Regulations is repealed.

(3) Subparagraph 4900(1)(*j.2*)(ii) of the Regulations is replaced by the following:

(ii) the certificate has, at the time of acquisition by the plan trust, an investment grade rating with a credit rating agency referred to in subsection (2), and

(4) Paragraph 4900(1)(*k*) of the Regulations is repealed.

(5) Paragraph 4900(1)(*l*) of the Regulations is repealed.

(6) Paragraph 4900(1)(*o*) of the Regulations is repealed.

(7) Subsection 4900(1) of the Regulations is amended by adding the following after paragraph (*o*):

(*p.1*) an American Depositary Receipt where the property represented by the receipt is listed on a designated stock exchange;

(8) Paragraph 4900(1)(*s*) of the Regulations is repealed.

(9) Subsection 4900(5) of the Regulations is replaced by the following:

(5) For the purposes of paragraph (*e*) of the definition “qualified investment” in subsection 146.1(1) of the Act, paragraph (*d*) of the definition “qualified investment” in subsection 205(1) of the Act <u>and paragraph (*c*) of the definition “qualified investment” in subsection 207.01(1) of the Act</u>, a property is prescribed as a qualified investment for a trust governed by a registered disability savings plan, a registered education savings plan or <u>a TFSA</u> at any time if at that time the property is an interest in a trust or a share of the capital stock of a corporation that was a registered investment for a trust governed by a registered retirement savings plan during the calendar year in which that time occurs or during the preceding year.

(10) Paragraph 4900(12)(*a*) of the Regulations is replaced by the following:

(*a*) the property was a share of the capital stock of a <u>specified small business</u> corporation,

(11) Section 4900 of the Regulations is amended by adding the following after subsection (13):

(14) For the purposes of paragraph (*c*) of the definition “qualified investment” in subsection 207.01(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a TFSA at any time if, at the time the property was acquired by the trust, the property

(*a*) was

(i) a share of the capital stock of a specified small business corporation,

(ii) a share of the capital stock of a venture capital corporation described in any of sections 6700, 6700.1 or 6700.2, or

(iii) a qualifying share in respect of a specified cooperative corporation and the TFSA; and

(*b*) was not a prohibited investment (within the meaning assigned by subsection 207.01(1) of the Act) for the trust.

(12) Subsections (1) and (9) to (11) apply to the 2009 and subsequent taxation years.

(13) Subsections (2) to (6) and (8) apply to property acquired after this Act is assented to.

(14) Subsection (7) applies in determining whether a property is, at any time after 2005, a qualified investment, except that in applying paragraph 4900(1)(*p.1*) of the Regulations, as enacted by subsection (7), before December 14, 2007, the reference in that paragraph to “designated stock exchange” shall be read as a reference to “stock exchange referred to in section 3200 or 3201”.

63. (1) The definitions “connected person”, “governing plan” and “qualifying share” in subsection 4901(2) of the Regulations are replaced by the following:

“connected person” « *personne rattachée* »

“connected person” under a governing plan of a plan trust means a person who is an annuitant, a beneficiary, an employer or a subscriber under, or a holder of, the governing plan and any person who does not deal at arms's length with that person;

“governing plan” « *régime d’encadrement* »

“governing plan” means a deferred profit sharing plan or a revoked plan, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA;

“qualifying share” « *part admissible* »

“qualifying share” in respect of a specified cooperative corporation and a governing plan, means a share of the capital or capital stock of the corporation where

(*a*) ownership of the share or a share identical to the share is not a condition of membership in the corporation, or

(*b*) a connected person under the governing plan

(i) has not received a payment from the corporation pursuant to an allocation in proportion to patronage in respect of consumer goods or services, and

(ii) can reasonably be expected not to receive a payment, after the acquisition of the share by the plan trust, from the corporation pursuant to an allocation in proportion to patronage in respect of consumer goods or services;

(2) Subsection 4901(2) of the Regulations is amended by adding the following in alphabetical order:

“specified small business corporation” « *société déterminée exploitant une petite entreprise* »

“specified small business corporation”, at any time, means a corporation (other than a cooperative corporation) that would, at that time or at the end of the last taxation year of the corporation that ended before that time, be a small business corporation if the expression “Canadian-controlled private corporation” in the definition “small business corporation” in subsection 248(1) of the Act were read as “Canadian corporation (other than a corporation controlled at that time, directly or indirectly in any manner whatever, by one or more non-resident persons)”;

(3) Subsections (1) and (2) apply to the 2009 and subsequent taxation years.

64. (1) The Regulations are amended by adding the following after Part XLIX:

PART L — TAX-FREE SAVINGS ACCOUNTS

Prohibited investment

5000. (1) For the purpose of the definition “prohibited investment” in subsection 207.01(1) of the Act, property described in paragraph 4900(1)(*j.1*) is prescribed excluded property.

(2) For the purpose of paragraph (*d*) of the definition “prohibited investment” in subsection 207.01(1) of the Act, property that is a qualified investment for a trust governed by a TFSA solely because of subsection 4900(14) is prescribed property for the trust at any time if, at that time, it is not described in any of subparagraphs 4900(14)(*a*)(i) to (iii).

(2) Subsection (1) applies to the 2009 and subsequent taxation years.

65. (1) The heading before section 5700 of Regulations is replaced by the following:

PART LVII

MEDICAL EXPENSE TAX CREDIT

(2) Subsection (1) is deemed to have come into force on February 27, 2008.

66. (1) The Regulations are amended by adding the following after section 5700:

5701. For the purpose of subparagraph 118.2(2)(*n*)(ii) of the Act, a drug, medicament or other preparation or substance is prescribed if it

(*a*) is manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder or abnormal physical state, or its symptoms, or in restoring, correcting or modifying an organic function;

(*b*) is prescribed for a patient by a medical practitioner; and

(*c*) may, in the province in which it is acquired, be lawfully acquired for use by the patient only with the intervention of a medical practitioner.

(2) Subsection (1) is deemed to have come into force on February 27, 2008.

67. (1) Subsection 5907(11) of the Regulations is replaced by the following:

(11) For the purposes of this Part, a sovereign state or other jurisdiction is a "designated treaty country" for a taxation year of a foreign affiliate of a corporation if Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income, or a comprehensive tax information exchange agreement, in respect of that sovereign state or jurisdiction, that has entered into force and has effect for that taxation year, but any territory, possession, department, dependency or area of that sovereign state or jurisdiction to which that agreement or convention does not apply is not considered to be part of that sovereign state or jurisdiction for the purpose of determining whether it is a designated treaty country.

(2) Section 5907 of the Regulations is further amended by adding the following after subsection (11.1):

(11.11) For the purpose of applying subsection (11) in respect of a foreign affiliate of a corporation, where a comprehensive tax information exchange agreement enters into force on a particular day, the agreement is deemed to enter into force and to come into effect on the first day of the foreign affiliate's taxation year that includes the particular day.

(3) Subsections (1) and (2) apply after 2007.

68. (1) Paragraphs 7305.1(*a*) and (*b*) of the Regulations are replaced by the following:

(*a*) if a taxpayer is employed in a taxation year by a particular person principally in selling or leasing automobiles and an automobile is made available in the year to the taxpayer or a person related to the taxpayer by the particular person or a person related to the particular person, 21 cents; and (*b*) in any other case, 24 cents.

(2) Subsection (1) applies to taxation years that end after 2007.

69. (1) Paragraph 7306(*a*) of the Regulations is replaced by the following:

(*a*) the product of 46 cents multiplied by the number of those kilometres;

(2) Subsection (1) applies to kilometres driven after 2007.

70. (1) Subsections 9001(2) and 9002(1) to (3) of the Regulations are amended by replacing each reference in those subsections to "mark-to-market property" with a reference to "excluded property".

(2) Subsection (1) applies to taxation years that begin on or after October 1, 2006.

71. (1) The Regulations are amended by adding the following immediately before section 9004:

9002.1 For the purpose of paragraph (*b*) of the definition "excluded property" in subsection 142.2(1) of the Act, a prescribed payment card corporation share of a taxpayer at any time means a share of the capital stock of a particular corporation if, at that time,

(*a*) the particular corporation is any one of the following

(i) MasterCard International Incorporated,

(ii) MasterCard Incorporated, or

(iii) Visa Inc.; and

(*b*) the share

(i) is of a class of shares that is not listed on a stock exchange,

(ii) is not convertible into or exchangeable for a share of the class of the capital stock of a corporation that is listed on a stock exchange, and

(iii) was issued by the particular corporation to the taxpayer or to a person related to the taxpayer.

9002.2 For the purpose of paragraph (*c*) of the definition "excluded property" in subsection 142.2(1) of the Act, a prescribed securities exchange investment of a taxpayer at any time means a share of the capital stock of a corporation if, at that time, the corporation is not a public corporation and is

(*a*) The Toronto Stock Exchange Inc.,

(*b*) TSX Inc.;

(*c*) TSX Group Inc.;

(*d*) Bourse de Montréal Inc.; or

(*e*) Canadian Venture Exchange Inc.

(2) Section 9002.1 of the Regulations, as enacted by subsection (1), applies to taxation years that end after February 22, 1994, except that, for taxation years that begin before

October 1, 2006, the portion of that section before paragraph (*a*), as enacted by subsection (1), is to be read as follows:

9002.1 For the purpose of paragraph (*d.1*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a prescribed payment card corporation share of a taxpayer at any time means a share of the capital stock of a particular corporation if, at that time,

(3) Section 9002.2 of the Regulations, as enacted by subsection (1), applies to taxation years that begin after 1998 and before 2008, except that, for taxation years that begin before October 1, 2006, the portion of that section before paragraph (*a*), as enacted by subsection (1), is to be read as follows:

9002.2 For the purpose of paragraph (*d.2*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act, a prescribed securities exchange investment of a taxpayer at any time means a share of the capital stock of a corporation if, at that time, the corporation is not a public corporation and is

PART 2

AMENDMENTS IN RESPECT OF SALES AND EXCISE TAXES

EXCISE ACT, 2001

72. The portion of the definition "officer" in section 2 of the English version of the *Excise Act, 2001* before paragraph (*a*) is replaced by the following:

"officer"
« *préposé* »

"officer" means, except in section 167, in the definition "contact information" in subsection 211(1) and in sections 226 and 296,

73. (1) The portion of the definition "confidential information" in subsection 211(1) of the Act after paragraph (*b*) is replaced by the following:

It excludes information that does not directly or indirectly reveal the identity of the person to whom it relates and, for the purposes of applying subsections (3), (8) and (9) to a representative of a government entity that is not an official, it includes only the information referred to in paragraph 211(6)(*j*).

(2) Subsection 211(1) of the Act is amended by adding the following in alphabetical order:

"aboriginal government"
« *gouvernement autochtone* »

"aboriginal government" means an aboriginal government as defined in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*.

"contact information"
« *coordonnées* »

"contact information", in respect of a holder of a business number, means the name, address, telephone number, facsimile number and preferred language of communication of the holder, or similar information as specified by the Minister in respect of the holder, and includes such information in respect of one or more

(*a*) trustees of the holder, if the holder is a trust;

(*b*) members of the holder, if the holder is a partnership;

(*c*) officers of the holder, if the holder is a corporation; or

(*d*) officers or members of the holder, in any other case.

“corporate information” « *renseignements d’entreprise* »

“corporate information”, in respect of a holder of a business number that is a corporation, means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“government entity” « *entité gouvernementale* »

“government entity” means

(*a*) a department or agency of the Government of Canada or of a province;

(*b*) a municipality;

(*c*) an aboriginal government;

(*d*) a corporation all of the shares (except directors’ qualifying shares) of the capital stock of which are owned by one or more persons each of which is

(i) Her Majesty,

(ii) Her Majesty in right of a province,

(iii) a municipality, or

(iv) a corporation described in this paragraph; or

(*e*) a board or commission, established by Her Majesty or Her Majesty in right of a province, that performs an administrative or regulatory function of government, or by a municipality, that performs an administrative or regulatory function of a municipality.

“municipality” « *municipalité* »

“municipality” means an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated.

“registration information” « *renseignements relatifs à l’inscription* »

“registration information”, in respect of a holder of a business number, means

(*a*) any information pertaining to the legal form of the holder,

(*b*) the type of activities carried on or proposed to be carried on by the holder,

(*c*) each date on which

(i) the business number was issued to the holder,

(ii) the holder began activities,

(iii) the holder ceased or resumed activities, or

(iv) the business number assigned to the holder was changed, and (*d*) the reasons for the cessation, resumption or change referred to in subparagraph (*c*)(iii) or (iv).

“representa-tive”
« *représentant* »

“representative” of a government entity means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, a government entity, and includes, for the purposes of subsections 211(2), (3), (8) and (9), a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged.

(3) The portion of subsection 211(2) of the Act before paragraph (*a*) is replaced by the following:

Provision of information

(2) Except as authorized under this section, no official or other representative of a government entity shall knowingly

(4) Subsection 211(3) of the Act is replaced by the following:

Confidential information evidence not compellable

(3) Despite any other Act of Parliament or other law, no official or other representative of a government entity shall be required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

(5) Paragraph 211(6)(*j*) of the Act is replaced by the following:

(*j*) subject to subsection (6.1), provide to a representative of a government entity the business number of, the name of (including any trade name or other name used by), and any contact information, corporate information and registration information in respect of, the holder of a business number, if the information is provided solely for the purpose of the administration or enforcement of

(i) an Act of Parliament or of a legislature of a province, or

(ii) a by-law of a municipality or a law of an aboriginal government;

(6) Section 211 of the Act is amended by adding the following after subsection (6):

Restrictions on information sharing

(6.1) No information may be provided to a representative of a government entity under paragraph (6)(*j*) in connection with a program, activity or service provided or undertaken by the government entity unless the government entity uses the business number as an identifier in connection with the program, activity or service.

Public disclosure

(6.2) The Minister may, in connection with a program, activity or service provided or undertaken by the Minister, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number.

Public disclosure by representative of government entity

(6.3) A representative of a government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number, if

(*a*) a representative of the government entity was provided with that information pursuant to paragraph 6(*j*); and (*b*) the government entity uses the business number as an identifier in connection with the program, activity or service.

(7) The portion of subsection 211(8) of the Act before paragraph (*a*) is replaced by the following:

Disclosure to person or on consent

(8) An official or other representative of a government entity may provide confidential information relating to a person

(8) The portion of subsection 211(9) of the Act before paragraph (*a*) is replaced by the following:

Appeal from order or direction

(9) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official or other representative of a government entity to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed immediately by the Minister or by the person against whom it is made to

EXCISE TAX ACT

74. (1) The portion of the definition "confidential information" in subsection 295(1) of the *Excise Tax Act* after paragraph (*b*) is replaced by the following:

but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates and, for the purposes of applying subsections 295 (3), (6) and (7) to representative of a government entity who is not an official, includes only the information described in paragraph 295(5)(*j*);

(2) Subsection 295(1) of the Act is amended by adding the following in alphabetical order:

"aboriginal government" « *gouvernement autochtone* »

"aboriginal government" means an aboriginal government as defined in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*;

"contact information" « *coordonnées* »

"contact information", in respect of a holder of a business number, means the name, address, telephone number, facsimile number and preferred language of communication of the holder, or similar information as specified by the Minister in respect of the holder, and includes such information in respect of one or more

(*a*) trustees of the holder, if the holder is a trust,

(*b*) members of the holder, if the holder is a partnership,

(*c*) officers of the holder, if the holder is a corporation, or

(*d*) officers or members of the holder, in any other case;

"corporate information" « *renseignements d'entreprise* »

"corporate information", in respect of a holder of a business number that is a corporation, means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation;

“government entity” « entité gouvernementale »

“government entity” means

(*a*) a department or agency of the Government of Canada or of a province,

(*b*) a municipality,

(*c*) an aboriginal government,

(*d*) a corporation all of the shares (except directors’ qualifying shares) of the capital stock of which are owned by one or more persons each of which is

(i) Her Majesty in right of Canada,

(ii) Her Majesty in right of a province,

(iii) a municipality, or

(iv) a corporation described in this paragraph, or

(*e*) a board or commission, established by Her Majesty in right of Canada or Her Majesty in right of a province, that performs an administrative or regulatory function of government, or by a municipality, that performs an administrative or regulatory function of a municipality;

“municipality” « *municipalité* »

“municipality” does not include a local authority determined by the Minister to be a municipality under paragraph (*b*) of the definition of “municipality” in section 123(1);

“registration information” « *renseignements relatifs à l’inscription* »

“registration information”, in respect of a holder of a business number, means

(*a*) any information pertaining to the legal form of the holder,

(*b*) the type of activities carried on or proposed to be carried on by the holder,

(*c*) each date on which

(i) the business number was issued to the holder,

(ii) the holder began activities,

(iii) the holder ceased or resumed activities, or

(iv) the business number assigned to the holder was changed, and

(*d*) the reasons for the cessation, resumption or change referred to in subparagraph (*c*)(iii) or (iv);

“representative” « *représentant* »

“representative” of a government entity means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, a government entity, and includes, for the purposes of subsection 295(2), (3), (6) and (7), a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged.

(3) The portion of subsection 295(2) of the Act before paragraph (*a*) is replaced by the following:

Provision of information

(2) Except as authorized under this section, no official or other representative of a government entity shall knowingly

(4) Subsection 295(3) of the Act is replaced by the following:

Idem

(3) Notwithstanding any other Act of Parliament or other law, no official or other representative of a government entity shall be required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

(5) Subparagraph 295(5)(*d*)(i) of the Act is replaced by the following:

(i) to an official of the Department of Finance solely for the purposes of

(A) the formulation or evaluation of fiscal policy,

(B) an administration agreement, as defined in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*, entered into with an aboriginal government, or

(C) an administration agreement, as defined in subsection 2(1) of the *First Nations Goods and Services Tax Act*,

(6) Paragraph 295(5)(*j*) of the Act is replaced by the following:

(*j*) subject to subsection (5.01), provide to a representative of a government entity the business number of, the name of (including any trade name or other name used by), and any contact information, corporate information and registration information in respect of, the holder of a business number, if the information is provided solely for the purpose of the administration or enforcement of

(i) an Act of Parliament or of a legislature of a province, or

(ii) a by-law of a municipality or a law of an aboriginal government;

(7) Section 295 of the Act is amended by adding the following after subsection (5):

Restrictions on information sharing

(5.01) No information may be provided to a representative of a government entity under paragraph (5)(*j*) in connection with a program, activity or service provided or undertaken by the government entity unless the government entity uses the business number as an identifier in connection with the program, activity or service.

Public disclosure

(5.02) The Minister may, in connection with a program, activity or service provided or undertaken by the Minister, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number.

Public disclosure by representative of government entity

(5.03) A representative of a government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number, if

(*a*) a representative of the government entity was provided with that information pursuant to paragraph (5)(*j*); and

(*b*) the government entity uses the business number as an identifier in connection with the program, activity or service.

(8) The portion of subsection 295(6) of the Act before paragraph (*a*) is replaced by the following:

Disclosure to taxpayer or on consent

(6) An official <u>or other representative of a government entity</u> may provide confidential information relating to a person

(9) The portion of subsection 295(7) of the Act before paragraph (*a*) is replaced by the following:

Appeal from order or direction

(7) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official <u>or other representative of a government entity</u> to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

Explanatory Notes

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Regulations*, the *Excise Act, 2001*, the *Excise Tax Act*, and the *Budget Implementation Act, 2008* to implement the remaining tax measures for the Budget announced on February 26, 2008. These explanatory notes also describe proposed amendments to the *Income Tax Act* related to additional tax initiatives. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

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

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Part 1

Amendments related to Income Tax

Income Tax Act

Clause 1

Stock Options

ITA
7

Section 7 of the *Income Tax Act* deals with agreements (commonly referred to as stock options) under which employees of a corporation or a mutual fund trust acquire rights to acquire securities of the employer (or a person with whom the employer does not deal at arm's length).

Exchange of options

ITA
7(1.4)(*b*)(iv)

Subsection 7(1.4) of the Act contains provisions that apply when an individual disposes of rights to acquire securities under an employee option agreement in exchange for other such rights under an agreement with a designated person (within the meaning assigned by paragraph 7(1.4)(*b*) of the Act). Provided certain conditions are met, subsection 7(1.4) deems the disposition not to have occurred and deems the new option to be the same as, and a continuation of, the original option.

Paragraph 7(1.4)(*b*) of the Act is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act.

The amendment to paragraph 7(1.4)(*b*), which adds a new subparagraph (vi), extends the concept of a designated person in that provision to include a SIFT wind-up corporation in respect of a particular SIFT wind-up entity, provided that the particular SIFT wind-up entity was a mutual fund trust at the time of the disposition of the old rights and provided that those rights were rights to acquire equity in the particular SIFT wind-up entity (i.e., rights to acquire a beneficial interest in the trust described by reference to units).

For more detail, readers may refer to the commentary on the definitions "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act.

This amendment applies after December 19, 2007.

Clause 2

Income from business or property

ITA
12

Section 12 of the Act provides for the inclusion of various amounts in computing a taxpayer's income from business or property.

Former TFSA

ITA
12(1)(*z.5*)

New paragraph 12(1)(*z.5*) of the Act requires that the income of a taxpayer arising from the application of new subsection 146.2(9) of the Act be included in computing the taxpayer's income from property. That subsection, which applies on the death of the last holder of a trusteed tax-free savings account (TFSA), continues the trust's tax-exempt status until the end of the year following the year of death. It also provides for any income earned on, or appreciation in the value of, the trust's property during the post-death exempt period to be included, to the extent paid out during that period, in the income of the recipient and, otherwise, in the trust's income for its first taxable year. For more details, readers may refer to the commentary on subsection 146.2(9).

This amendment applies to the 2009 and subsequent taxation years.

Definitions

ITA
12(11)

Subsection 12(4) of the Act requires that the accrued interest on an investment contract be included in computing income on an annual basis. A number of arrangements are specifically excluded from these rules under the definition "investment contract" in subsection 12(11) of the Act.

The definition "investment contract" is amended to add tax-free savings accounts (TFSAs) to the list of exclusions. This will ensure that a TFSA that is issued as a deposit will not be subject to the interest accrual rules.

This amendment applies to the 2009 and subsequent taxation years.

Clause 3

Insurer's Reserve Inclusion

ITA
12.5

New section 12.5 of the *Income Tax Act* (the "Act") provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules.

New section 12.5 applies in conjunction with the provisions of new section 20.4 of the Act. Similar changes in respect of insurers' life insurance businesses are proposed in section 138 of the Act. These rules are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period.

Rules are also introduced to treat these five-year transitional amounts appropriately if, during the transitional period, an insurer transfers its assets to another entity. More particularly, the transferee corporation will be treated as a continuation of the transferor for the purposes of the five-year transition amounts. If an insurer ceases to carry on a business, the recognition of the five-year transition period is generally accelerated to the time at which that business ceases to be carried on.

For further details, readers may refer to the commentary to proposed sections 20.4 and 142.51 of the Act and proposed amendments to section 138 of the Act and Part XIV of the *Income Tax Regulations* (the "Regulations").

Definitions

ITA
12.5(1)

New subsection 12.5(1) of the Act contains definitions that apply for the purposes of new section 12.5. These definitions also apply for the purposes of section 20.4 of the Act.

The definitions in subsection 12.5(1) apply to taxation years that begin on or after October 1, 2006.

“base year”

The new definition “base year” provides that the base year of an insurer is the insurer’s taxation year that immediately precedes its transition year.

“insurance business”

Sections 12.5 and 20.4 apply in respect of an insurance business other than a life insurance business. “Insurance business” for these purposes therefore means an insurance business carried on by the insurer, other than a life insurance business.

“reserve transition amount”

The “reserve transition amount”of an insurer for the insurer’s transition year in respect of an insurance business (other than a life insurance business) carried on by it in Canada in that year is the positive or negative amount determined by the formula A-B.

If the formula gives rise to a positive amount in respect of an insurer’s insurance business, the insurer is required by subsection 12.5(2) of the Act to include the amount in computing its income for its transition year from that business. If, instead, the amount is a negative amount, the insurer is required by subsection 20.4(2) to deduct the amount in computing its income from the insurance business for the transition year.

Element A of the formula is the maximum amount that the insurer would be permitted to claim under paragraph 20(7)(*c*) of the Act (and that would be prescribed by section 1400 of the Regulations for the purpose of that paragraph) as a policy reserve for the base year of the insurer in respect of its insurance policies, if

- the generally accepted accounting principles that applied to the insurer in valuing its assets and liabilities for its transition year had applied to the insurer for its base year, and
- section 1400 of the Regulations were read in respect of the insurer’s base year as it reads in respect of its transition year.

Element B of the formula is the maximum amount that the insurer is permitted to claim under paragraph 20(7)(*c*) as a policy reserve for its base year.

“transition year”

The new definition “transition year” provides that an insurer’s transition year is its first taxation year that begins after September 30, 2006.

Transition year income inclusion

ITA
12.5(2)

New subsection 12.5(2) of the Act includes in computing an insurer’s income for its transition year from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the positive amount, if any, of the insurer’s reserve transition amount for its transition year in respect of that insurance business.

Subsection 12.5(2) operates in conjunction with new subsection 20.4(3) of the Act. In general terms, if an insurer has included an amount under subsection 12.5(2), subsection 20.4(3) provides for a corresponding deduction – recognized over a 5-year period beginning with years that end after the start of its transition year – in computing the insurer's income from that business.

For further details, readers may refer to the commentary on subsection 20.4(3) and the new definitions "reserve transition amount" and "transition year" in subsection 12.5(1) of the Act.

New subsection 12.5(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction reversal

ITA
12.5(3)

New subsection 12.5(3) of the Act requires that an insurer include an amount in income in respect of an insurance business if the insurer has deducted an amount under subsection 20.4(2) of the Act in computing its income for its transition year from that business. The amount to be included by the insurer, for each of its particular taxation years that ends after the start of its transition year, in computing its income from that insurance business, is the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year from that insurance business, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

For further details, readers may refer to the commentary to subsection 20.4(2) and the definitions "reserve transition amount" and "transition year" in subsection 12.5(1) of the Act.

New subsection 12.5(3) applies to taxation years that begin on or after October 1, 2006.

Winding-up

ITA
12.5(4)

New subsection 12.5(4) of the Act is one of a series of special rules contained in subsections 12.5(4) to (9) and 20.4(4) of the Act and that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(4) applies in the circumstances of a wind-up of the insurer corporation into its parent. Specifically, subsection 12.5(4) applies if an insurer has, in a winding-up to which subsection 88(1) of the Act has applied, been wound-up into its parent corporation, and immediately after the winding-up the parent carries on an insurance business. In these circumstances, subsection 12.5(4) set outs a series of continuity rules for applying subsections 12.5(3) and 20.4(3) of the Act in computing the insurer's income and that of the parent for particular taxation years that end on or after the first day (the "start day") on which assets of the insurer were distributed to the parent on the winding-up. These continuity rules ensure that in so applying those provisions:

- the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the insurer in respect of
    - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the insurer's income from an insurance business for its transition year,

  - any amount included under subsection 12.5(3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the start day, and
  - any amount that — in the absence of subsection 12.5(4) and assuming that the insurer carries on an insurance business on each day (that is the start day or a subsequent day) that the parent carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the insurer's income from an insurance business; and

- the insurer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsection 12.5(3) and 20.4(3) without reference to the start day and days after the start day.

New subsection 12.5(4) applies to taxation years that begin on or after October 1, 2006.

Amalgamations

ITA
12.5(5)

New subsection 12.5(5) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(5) applies if there is an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of an insurer with one or more other corporations to form a new corporation, and immediately after the amalgamation the new corporation carries on an insurance business. In these circumstances, subsection 12.5(5) set outs a series of continuity rules for applying subsections 12.5(3) and 20.4(3) of the Act in computing the income of the new corporation for its taxation years that begin on or after the day on which the amalgamation occurred. These continuity rules ensure that in applying those provisions the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the insurer in respect of:

- any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the insurer's income from an insurance business for its transition year;
- any amount included under subsection 12.5(3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the day on which the amalgamation occurred; and
- any amount that — in the absence of subsection 12.5(5) and assuming that the insurer carries on an insurance business on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the insurer's income from an insurance business.

New subsection 12.5(5) applies to taxation years that begin on or after October 1, 2006.

Transfer of insurance business

ITA
12.5(6) & (7)

New subsections 12.5(6) and (7) of the Act are part of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Under subsection 12.5(6), subsection 12.5(7) will apply if, at any time,

- an insurer (the “transferor”) transfers, to a related corporation (the “transferee”), property in respect of an insurance business carried on by the transferor in Canada (the “transferred business”) and
- either
  - subsection 138(11.5) or (11.94) of the Act applies to the transfer, or
  - subsection 85(1) of the Act applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee carries on an insurance business.

If these conditions are met, subsection 12.5(7) applies in respect of the property transfer. The effects of applying the subsection are that:

- the transferee is, at and after that time, deemed to be the same corporation as and a continuation of the transferor in respect of
  - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the transferor’s income for its transition year that can reasonably be attributed to the transferred business,
  - any amount included under subsection 12.5(3) of the Act or deducted under subsection 20.4(3) of the Act in computing the transferor’s income for a taxation year of the transferor that begins before that time that can reasonably be attributed to the transferred business, and
  - any amount that, in the absence of subsection 12.5(7) — and assuming that the transferor carries on an insurance business on each day (that includes that time or is a subsequent day) that the transferee carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the transferor’s income that can reasonably be attributed to the transferred business, and
- in determining, in respect of the day that includes that time or any subsequent day, any amount that is required under subsection 12.5(3) or 20.4(3) to be included or deducted in computing the transferor’s income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

New subsections 12.5(6) and (7) apply to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA
12.5(8)

New subsection 12.5(8) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer’s reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(8) applies if at a particular time an insurer ceases to carry on all or substantially all of an insurance business (the “discontinued business”), and none of the special continuity rules contained in subsections 12.5(4) to (6) of the Act apply to that cessation. In these circumstances, subsection 12.5(8) requires that the insurer include — in computing its income from the discontinued business for its taxation year that includes the time that is immediately before the particular time — the amount determined by the formula A – B set out in that subsection.

Element A in the formula is the amount deducted under subsection 20.4(2) of the Act in computing the insurer’s income from the discontinued business for its transition year. Element B in the formula is the total of all amounts each of which is an amount included under subsection 12.5(3) of the Act in computing the insurer's income from the discontinued business for a taxation year that began before the particular time.

Readers may also refer to the commentary on subsections 12.5(9) and 20.4(4) of the Act.

New subsection 12.5(8) applies to taxation years that begin on or after October 1, 2006.

Ceasing to exist

ITA
12.5(9)

New subsection 12.5(9) of the Act applies in conjunction with subsections 12.5(8) and 20.4(4) of the Act. Subsection 12.5(9) is one of a series of special rules, contained in subsections 12.5(4) to (9) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 12.5(9) applies in circumstances in which an insurer that carried on an insurance business (other than a life insurance business) ceases to exist at any time, unless the insurer ceased to exist because of a winding-up or amalgamation described in subsection 12.5(4) or (5) of the Act. Subsection 12.5(9) provides that, for the purposes of subsections 12.5(8) and 20.4(4) of the Act, the insurer is deemed to have ceased to carry on the insurance business at the earlier of

- the time at which the insurer actually ceased to carry on the insurance business, and
- the time that is immediately before the end of the last taxation year of the insurer that ended at or before the time at which the insurer ceased to exist.

New subsection 12.5(9) applies to taxation years that begin on or after October 1, 2006.

Clause 4

Insurer's Reserve Deduction

ITA
20.4

New section 20.4 of the Act provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules.

New section 20.4 applies in conjunction with new section 12.5 of the Act. Similar changes applicable to insurers in respect of their life insurance businesses are proposed in section 138 of the Act. These rules are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period.

For further details, readers may refer to the commentary to proposed sections 12.5 and 142.51 of the Act and proposed amendments to section 138 of the Act and Part XIV of the Regulations.

Definitions

ITA
20.4(1)

New subsection 20.4(1) of the Act provides that the definitions in subsection 12.5(1) of the Act apply for the purposes of section 20.4. Subsection 12.5(1) defines the expressions "base year", "insurance business", "reserve transition amount" and "transition year" used in section 20.4. For more detail, readers may refer to the commentary on those definitions.

New subsection 20.4(1) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction

ITA
20.4(2)

New subsection 20.4(2) of the Act provides that there is to be deducted in computing an insurer's income for its transition year from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the insurer's reserve transition amount for its transition year in respect of that insurance business.

Subsection 20.4(2) of the Act operates in conjunction with new subsection 12.5(3) of the Act. In general terms, if an insurer has deducted an amount under subsection 20.4(2), subsection 12.5(3) requires a corresponding inclusion – recognized over a 5-year period beginning with its transition year – in computing the insurer's income from that business.

For further details, readers may refer to the commentary on section 12.5.

New subsection 20.4(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income inclusion reversal

ITA
20.4(3)

New subsection 20.4(3) of the Act requires that an insurer deduct an amount in computing its income in respect of an insurance business if the insurer has included an amount under subsection 12.5(2) of the Act in computing its income for its transition year from that business. The amount to be deducted by the insurer, for each of its particular taxation years that ends after the start of the transition year, in computing the insurer's income from that insurance business, is the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 12.5(2) in computing the insurer's income for its transition year from that insurance business, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

For further details, readers may refer to the commentary to subsection 12.5(2) and the definitions "reserve transition amount" and "transition year" in subsection 12.5(1) of the Act.

New subsection 20.4(3) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA
20.4(4)

New subsection 20.4(4) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 20.4(4) of the Act applies if at a particular time an insurer ceases to carry on all or substantially all of an insurance business (the “discontinued business”), and none of the special continuity rules contained in subsections 12.5(4) to (6) apply to that cessation. In these circumstances, subsection 20.4(4) requires that the insurer deduct — in computing its income from the discontinued business for its taxation year that includes the time that is immediately before the particular time — the amount determined by the formula A – B set out in that subsection.

Element A of the formula is the amount included under subsection 12.5(2) of the Act in computing the insurer’s income from the discontinued business for its transition year.

Element B of the formula is the total of all amounts each of which is an amount deducted under subsection 20.4(3) of the Act in computing the insurer’s income from the discontinued business for a taxation year that began before the particular time.

In general terms, the positive amount, if any, resulting from the formula represents an acceleration of the recognition of any outstanding amounts that the insurer would otherwise have been required — had the business not ceased — to deduct by operation of subsection 20.4(3) in computing its income in respect of the discontinued business.

See also the commentary on subsections 12.5(8) and (9) of the Act.

New subsection 20.4(4) applies to taxation years that begin on or after October 1, 2006.

Clause 5

Capital Gains

ITA
39

Section 39 of the Act sets out the meaning of capital gain, capital loss and business investment loss and provides a number of special rules relating to capital gains including the provisions which guarantee capital gains treatment to certain taxpayers in respect of the disposition of Canadian securities.

Meaning of capital gain and capital loss

ITA
39(1)(*a*)(ii.2)

Paragraph 39(1)(*a*) of the Act describes a taxpayer's capital gain for a taxation year from the disposition of property. Under this paragraph, gains from dispositions of specified properties are to be excluded in determining a capital gain from the disposition of the property.

Subparagraph 39(1)(*a*)(ii.2) provides an exclusion for specified debt obligations if subsection 142.4(4) or (5) of the Act applies to the disposition, and for mark-to-market properties if subsection 142.5(1) of the Act applies to the disposition. (The expressions “specified debt obligation” and “mark-to-market property” are defined in subsection 142.2(1) of the Act.) These exclusions are required in case the gain that is determined under subdivision c of the Act exceeds the profit or gain determined for the purpose of the new rules for financial institutions.

Subparagraph 39(1)(*a*)(ii.2) is amended to clarify that it applies to a property if the disposition (described in the opening words of paragraph 39(1)(*a*)) is a disposition to which subsection 142.4(4) or (5) or 142.5(1) applies.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 6

Calculation of Gain or Loss

ITA
40

Section 40 of the Act provides rules for determining a taxpayer's gain or loss from the disposition of a property.

Section 40 is amended by adding new subsections (10) and (11), consequential on the introduction of new subsections 111(12) and (13) of the Act. New subsections 111(12) and (13) extend the general treatment of accrued capital gains and losses on an acquisition of control of a corporation to also apply to a corporation's accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency.

For more information regarding the definition "foreign currency debt", readers may please refer to the notes to subsection 111(8) of the Act, below.

Application

ITA
40(10)

New subsection 40(10) of the Act provides the conditions for new subsection (11) to apply. Specifically, subsection (10) provides that subsection (11) applies in computing at any particular time a corporation's gain or loss (in these notes and in subsections 40(10) and (11) referred to as the "new gain" or "new loss") from a fluctuation in the value of the currency of a foreign currency debt of the corporation (other than, for greater certainty, a gain or a capital loss that arises because of the application of new subsection 111(12) of the Act), if the corporation has previously realized a capital loss or gain in respect of the foreign currency debt because of subsection 111(12). The portion of the foreign currency debt that gives rise to the new gain or new loss is referred to in subsections 40(10) and 40 (11) as the "relevant part".

ITA
40(11)

New subsection 40(11) of the Act provides a mechanism for the computation of the gain or loss on a foreign currency debt that takes into account the impact of gains and losses already recognized in respect of a foreign currency debt because of new subsection 111(12) of the Act. This is necessary because, unlike gains and losses in respect of property, gains and losses from a fluctuation in the value of the currency of a foreign currency debt of the corporation are not referable to a cost base that may be adjusted to account for previously recognized gains and losses.

The formula in new subsection 40(11) provides that the new gain is the positive amount, or the new loss is the negative amount, equal to:

$$A + B - C$$

A is, in effect, the new gain or new loss as it would be calculated if new subsection 111(12) had never applied in relation to the foreign currency debt.

B is the portion of a capital loss previously realized by the corporation, in respect of the foreign currency debt and because of subsection 111(12), that is reasonably attributable to the relevant part of the foreign currency debt.

C is the portion of a gain previously realized by the corporation at any time before the particular time, in respect of the foreign currency debt and because of subsection 111(12), that is reasonably attributable to the relevant part of the foreign currency debt.

Example 1 [1]

T1: Canco borrows F$1 million. The exchange rate at T1 is F$1 = C$1.20.

T2: Canco undergoes an acquisition of control. The exchange rate at T2 is F$1 = C$1.15. Applying new subsection 111(12), Canco realizes a capital gain, due to the fluctuation of the value of the foreign currency relative to the Canadian dollar, of $50,000 in respect of that debt.

T3: Canco repays F$400,000 to its creditor. The exchange rate at T3 is F$1 = C$1.

The new gain or loss at T3 is determined by the formula: A + B – C

A is $80,000 (the amount of the new gain that would have been realized on the repayment of the F$400,000 if subsection 111(12) did not apply)

B is nil (there is no previous capital loss in this case)

C is $20,000 (the amount of the gain already recognized in respect of the F$400,000 at T2)

Therefore the new gain or loss under subsection 40(11) is:

$80,000 + 0 – $20,000 = $60,000

The result is a positive number, resulting in a gain of $60,000.

Example 2

Same facts as situation 1, except that at T3, the exchange rate is F$1 = C$1.25.

The new gain or loss at T3 is: A +B – C

A is –$20,000 (the amount of the new loss in respect of the F$400,000 repayment, calculated without reference to subsection 111(12), multiplied by (–1)).

B is nil

C is $20,000 (the amount of the gain already recognized in respect of the F$400,000 at T2)

Therefore the new gain or loss under subsection 40(11) is:

–$20,000 + 0 – $20,000 = –$40,000

Canco will recognize a $40,000 loss on the repayment. This larger loss reflects Canco's previously recognition of a gain in relation to the foreign currency debt.

New subsections 40(10) and (11) apply after 2005.

[1] References in this and subsequent examples to currency are to Canadian dollars except where indicated. F$ means foreign currency units. T1, T2 and T3 are three separate times that occur in sequence (with T1 occurring first).

Clause 7

Deemed settlement on SIFT winding-up

ITA
80.01(5.1)

New subsection 80.01(5.1) of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions “SIFT trust wind-up event” and “SIFT wind-up entity” in subsection 248(1) of the Act.

New subsection 80.01(5.1) of the Act applies where a debt owed by one trust (“the subsidiary trust”) to its beneficiary – another trust that is a SIFT wind-up entity – is settled as a consequence of a distribution that is a SIFT trust wind-up event. If the settlement is without payment, or for a payment that is less than the principal amount of the debt, then the rules in paragraphs 80.01(5.1)(*a*) to (*c*) apply in respect of the settlement.

Under paragraphs 80.01(5.1)(*a*) and (*b*), if the settlement payment is less than the adjusted cost base (“ACB”) to the SIFT wind-up entity of the settled debt and the SIFT wind-up entity so elects, the amount paid in satisfaction of the principal amount of the debt obligation is deemed to be the amount of that ACB plus any amounts added in computing the SIFT wind-up entity’s income in respect of the portion of the indebtedness representing unpaid interest, to the extent that the SIFT wind-up entity has not deducted any amounts as bad debts in respect of that unpaid interest.

Paragraph 80.01(5.1)(*c*) provides a timing rule that applies for purposes of the debt forgiveness rules in section 80 of the Act. Under that paragraph, the settlement is treated for those purposes as having occurred immediately before the time that is immediately before the time of the distribution. This rule ensures that there is an appropriate reduction under section 80 in the cost amount of distributed property.

This subsection applies after Announcement Date.

Clause 8

Rollover

ITA
85.1

Section 85.1 of the Act permits a tax deferred rollover for shareholders who exchange shares of a taxable Canadian corporation for shares of a Canadian purchaser corporation in the course of an arm’s length sale of the acquired corporation’s shares.

SIFT unit for share exchange

ITA
85.1(7) and (8)

New subsection 85.1(7) of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions “SIFT trust wind-up event”, “SIFT wind-up entity” and “SIFT wind-up entity equity” in subsection 248(1) of the Act.

Subsection 85.1(7) sets out the conditions that must be met in order for the rules in subsection 85.1(8) of the Act to apply to a taxpayer’s disposition of a unit in a SIFT wind-up entity to a corporation in exchange for a share of the corporation. Subsection 85.1(7) requires that

- the corporation be a taxable Canadian corporation and that the disposition occur during a specified 60-day period (“the exchange period) at the end of which the corporation owns 100% of the equity in the SIFT wind-up entity then outstanding. For this purpose, “SIFT wind-up entity equity” generally means, in respect of a SIFT wind-up entity, a capital interest in a trust or a membership interest as a limited partner in a partnership. For more detail, readers may refer to the commentary on that definition.

- the taxpayer dispose of all of its equity in the SIFT wind-up entity during the exchange period and receive, as consideration, nothing other than shares ("exchange shares") of the corporation having a fair market value equal to the equity; and
- all of the exchange shares issued to holders of equity in the SIFT wind-up entity be of a single class.

New subsection 85.1(8) of the Act provides a number of the tax consequences to the taxpayer from a disposition described in subsection 85.1(7). Specifically,

- subsections 85(1) and (2) do not apply in respect of the disposition;
- the taxpayer is provided with a tax-deferred exchange of the particular unit for the exchange share; and
- if the particular unit was taxable Canadian property of the taxpayer, the exchange share is deemed to be taxable Canadian property of the taxpayer.

New subsection 85.1(8) also deems the cost to the corporation of the particular unit to be the lesser of its fair market value and the amount determined by element B of the formula in paragraph 85.1(8)((*e*). That element B, described in greater detail below, is generally the portion of the SIFT wind-up entity's trust's outstanding capital that is attributable to the particular unit.

Finally, subsection 85.1(8) provides for a deduction, after the particular disposition, from the paid-up capital in respect of each class of shares of the capital stock of the corporation. This deduction is determined by the formula (A-B) x C/A. The elements of that formula are as follows:

- A is the increase in the paid-up capital in respect of each class of the capital stock of the corporation (determined before applying the formula in paragraph 85.1(8)(e)) resulting from the particular disposition.
- B is generally the portion of the outstanding capital of the SIFT wind-up entity's that is attributable to the particular unit. More specifically, if the SIFT wind-up entity is a trust, B will be the difference between the consideration received by the trust on the issuance of the particular unit and any amounts that have ever become payable (other than as income or capital gains) in respect of the particular unit to a holder of the particular unit. Where the SIFT wind-up entity is a partnership, B will be the difference between
    - the total of amounts that have been added in computing the adjusted cost base (ACB) to any taxpayer of the particular unit on or before the particular disposition because of subparagraphs 53(1)(*e*)(iv) or (x) of the Act or that would have been so added under subparagraph 53(1)(*e*)(i) if that subparagraph had been applied as though subsection 96(1) of the Act were read, and
    - the total of amounts that have been deducted in computing the ACB to any taxpayer of the particular unit on or before the particular disposition because of subparagraphs 53(2)(*c*)(iv) or (v) of the Act or that would have been so deducted under subparagraph 53(2)(*c*)(i) if that subparagraph had been applied as though subsection 96(1) of the Act were read in specified manner[2].

If the conditions of subsection 85.1(7) are met in respect of a disposition, subsection 85.1(8) will apply to the disposition provided that the disposition occurs on or after Announcement Date and before 2013. In addition, if a disposition occurs after December 19, 2007 and before Announcement Date and the corporation validly elects (either alone, or if the taxpayer has filed an election under subsection 85(1) or (2) of the Act in respect of the

[2] References to the "specified manner" of reading subsection 96(1) of the Act indicate that appropriate modifications will be made application to the application of, in particular, paragraph 96(1)(d) in the context.

disposition, together with the taxpayer), then subsections 85.1(8) will apply in respect of that disposition (provided that the conditions in subsection 85.1(7) are met).

Clause 9

Amalgamation

ITA
87

Section 87 of the Act provides rules that apply where there has been an amalgamation of two or more taxable Canadian corporations to form a new corporation. The new corporation is generally treated as a continuation of its predecessor for the purposes of the Act.

Financial institution rules

ITA
87(2)(*g.2*)

Paragraph 87(2)(*g.2*) of the Act provides that, for the purposes of a number of the rules for financial institutions in sections 142.4 to 142.6 of the Act, the new corporation formed on an amalgamation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Paragraph 87(2)(*g.2*) is amended to include a reference to new subsection 142.51(11) of the Act. This change is proposed as a result of the introduction of new section 142.51 of the Act.

For further detail, readers may refer to the commentary to new section 142.51.

This amendment applies to taxation years that begin on or after October 1, 2006.

Amalgamations involving a SIFT wind-up corporation

ITA
87(2)(*s.1*)

New paragraph 87(2)(*s.1*) of the Act provides that, on an amalgamation (within the meaning of subsection 87(1) of the Act), of a SIFT wind-up corporation and one or more other corporations, the corporation formed on the amalgamation is deemed to be a SIFT wind-up corporation.

Because of paragraph 88(1)(*e.2*) of the Act, if a SIFT wind-up corporation is the subject of a winding-up into its parent in circumstances to which subsection 88(1) of the Act applies, the parent will also be deemed to be a SIFT wind-up corporation.

This amendment applies after December 19, 2007.

Amalgamation of insurers

ITA
87(2.2)

Subsection 87(2.2) of the Act deals with the amalgamation of two or more corporations one or more of which is an insurer. Where this occurs, the resulting corporation is treated as a continuation of each of the predecessor insurance corporations for the purposes of section 138 and certain other provisions of the Act relating to insurers that are listed in subsection 87(2.2).

This subsection is amended to add references to new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4.

For further details, readers may refer to the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 10

Wind-up

ITA
88

Section 88 of the Act deals with the tax consequences arising from the winding-up of a corporation.

Winding-up

ITA
88(1)(*g*)

Subsection 88(1) of the Act deals with the winding-up of a corporation that is a subsidiary into its parent. Subparagraph 88(1)(*g*)(i) treats the parent corporation as a continuation of a subsidiary that is an insurance corporation for the purposes of certain provisions relating to insurers listed in subparagraph 88(1)(*g*)(i). This subparagraph is amended to add references to proposed new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4.

For further details, readers may refer to the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 11

New section 88.1 of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Section 88.1 provides for the tax consequences on a trust's distribution that is a SIFT trust wind-up event (as defined in subsection 248(1)). The section allows certain trusts (i.e., a SIFT wind-up entity and its wholly-owned subsidiary trusts) to access the wind-up rules in subsections 88 (1) to (1.7) (and section 87 as it applies for those purposes) in respect of such a distribution.

SIFT trust wind-up event

ITA
88.1(1) and (2)

New subsection 88.1(1) of the Act sets out the conditions that must be met in order for the rules in subsection 88.1(2) of the Act to apply to a trust's distribution of property to a taxpayer. Subsection 88.1(1) requires that the distribution be a "SIFT trust wind-up event", as defined in subsection 248(1) of the Act. The trust must be a "SIFT wind-up entity" that has only a taxable Canadian corporation as its beneficiary, or a trust the only beneficiary of which is such a SIFT wind-up entity. As well, the distribution must take place within 60 days of a first distribution of the property that is a SIFT trust wind-up event. Finally, paragraph 88.1(1)(*d*) provides an ordering rule with respect to the interaction of subsection 88.1(2) and subsection 107(3.1) of the Act. Where the property distributed is shares of a taxable Canadian corporation, that paragraph provides that subsection 88.1(2) will apply only if:

- the trust did not acquire the shares on a distribution to which subsection 107(3.1) applies, and
- the trust elects that section 88.1 apply to the distribution.

New subsection 88.1(2) allows many of the rules in section 88 to apply to a trust's distribution, subject to certain modifications. The modifications treat the trust as a taxable Canadian corporation that is not a private corporation, the distribution by the trust as the winding up of the corporation, and the taxpayer's interest as a beneficiary of the trust as shares of the corporation.

Since a trust does not have paid-up capital, what is in effect a synthetic paid-up capital is created for these purposes. This will be the excess, if any, of amounts received in exchange for the issuance of an interest as beneficiary over the total of all distributions other than amounts payable out of the trust's income or capital gains.

Clause 12

Dividends, etc.

ITA
89

Section 89 of the Act defines certain terms that apply to corporations and their shareholders and includes provisions related to those definitions.

Definition “general rate income pool”

ITA
89(1)

The “general rate income pool” (GRIP), the definition of which is one of those included in subsection 89(1) of the Act , is relevant for determining the extent to which a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation (DIC) can pay eligible dividends in any given taxation year. Generally, a corporation’s GRIP is calculated based on the corporation’s taxable income subject to tax at the general corporate tax rate. The formula contained in this definition contains a factor of 0.68, which is intended to approximate the after-tax earnings of the corporation, assuming a notional combined federal-provincial general corporate rate of 32%.

The definition is amended to adjust the GRIP factor to reflect the continuing reduction of the general corporate tax rate. Specifically, the decimal fraction .68 is replaced by a new variable, described in the revised formula as D. The value of D is as follows:

(*a*) for the 2009 taxation year, 0.68,

(*b*) for the 2010 taxation year, 0.69,

(*c*) for the 2011 taxation year, 0.70, and

(*d*) for taxation years after 2011, 0.72.

Due to this change, the other variables contained in the GRIP formula have been renumbered accordingly. In addition, existing variable B is rewritten as a formula. This improves clarity without effecting any substantive change.

The amendments to the definition “general rate income pool” in subsection 89(1) apply on Royal Assent.

ITA
89(1)

“paid-up capital”

The definition “paid-up capital” is contained in subsection 89(1) of the Act. Paragraph (*b*) of the definition defines “paid-up capital” in respect of a class of shares of the capital stock of a corporation. Subparagraph (*b*)(iii) of the definition provides that, after March 31, 1977, paid-up capital is to be calculated without reference to any provisions of the Act other than those listed in the subparagraph.

The definition “paid-up capital” is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The amendment adds references to new subsection 85.1(8) of the Act.

This amendment applies after December 19, 2007.

Clause 13

Foreign affiliates

ITA
95

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

Definitions

ITA
95(1)

Subsection 95(1) of the Act defines a number of terms, for the purposes of sections 90 to 93 and 95 of the Act, that are used in connection with the rules dealing with the taxation of resident shareholders of foreign affiliates.

“antecedent corporation”, “calculating currency”, “designated acquired corporation” and “specified person or partnership”

The definitions “antecedent corporation”, “calculating currency”, “designated acquired corporation” and “specified person or partnership” are added to subsection 95(1). For detail about those new definitions, readers may refer to the commentary for new paragraphs 95(2)(*f*) to (*f.15*).

Application – Foreign affiliates

ITA
95(2)

Subsection 95(2) of the Act provides rules for determining the income of a foreign affiliate resident in Canada from a particular source.

ITA
95(2)(*f*) to (*f.15*)

Current paragraph 95(2)(*f*) of the Act sets out rules for computing a taxable capital gain and an allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from a disposition of property. The rules in paragraph 95(2)(*f*) address the computation of a gain or loss from a disposition of property whether the disposition is made by the foreign affiliate itself or by a partnership of which the foreign affiliate is a member. Those rules, which consist of a “main rule”, a “reading rule”, “currency rules” and a “carve-out rule”, are relevant for the purposes of computing the foreign affiliate’s tax surpluses and deficits in respect of the taxpayer and computing the foreign affiliate’s foreign accrual property income (FAPI) or loss (FAPL) in respect of the taxpayer.

- The main rule provides that the taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer from a disposition of property is to be computed in respect of the taxpayer in accordance with Part I of the Act as though the foreign affiliate were resident in Canada.
- The reading rule provides that, in reading Part I of the Act to make that computation, Part I is to be read without reference to section 26 of the *Income Tax Application Rules*.
- The currency rules provide that the computation of such a gain or loss is to be in the currency determined by subparagraph 95(2)(*f*)(i) or (ii), as the case may be. As part of the currency rules, subparagraph 95(2)(*f*)(ii) includes a rule with respect to the reading of subsection 39(2) of the Act.

- The carve-out rule provides that, in computing any such gain or loss from the disposition of property that was owned by the foreign affiliate at the last time that the foreign affiliate became a foreign affiliate of the taxpayer resident in Canada, there is not to be included such portion of the gain or loss, as the case may be, as can reasonably be considered to have accrued during the carve-out period, i.e., the period that the foreign affiliate was not a foreign affiliate of the taxpayer resident in Canada or of a person specified in any of current subparagraphs 95(2)(*f*)(iv) to (vii).

The main rule, reading rule, currency rules and carve-out rule in current paragraph 95(2)(*f*) are replaced by the main, reading, currency and carve-out rules in new paragraphs 95(2)(*f*) to (*f.15*). Furthermore, the reference to the taxpayer and the other persons specified in current subparagraphs 95(2)(*f*)(iii) to (vii) is replaced by a reference to the persons specified in the new definition “specified person or partnership”, in respect of the taxpayer, in subsection 95(1). This definition does not include “designated acquired corporations” as newly defined in subsection 95(1) but is expanded by the deeming rules in new subsection 95(2.6).

ITA
95(2)(*f*)

New paragraph 95(2)(*f*) sets out the new version of the “main rule”. It provides that, except as otherwise provided in subdivision i of Division B of Part I of the Act and except to the extent that the context otherwise requires, a foreign affiliate of a taxpayer is deemed to be at all times resident in Canada for the purposes of determining, in respect of the taxpayer for a taxation year of the foreign affiliate, certain amounts, i.e., each amount that is the foreign affiliate’s

- capital gain, capital loss, taxable capital gain or allowable capital loss from a disposition of a property, or
- income or loss from a property, from a business other than an active business or from a non-qualifying business.

New paragraph 95(2)(*f*) deals with the computation of a broader range of amounts than under the main rule in current paragraph 95(2)(*f*), which dealt only with the computation of the foreign affiliate’s taxable capital gain or allowable capital loss from a disposition of property. Note that the mention of capital gain and capital loss in new paragraph 95(2)(*f*) is intended as a clarifying change to the law to deal with dispositions by partnerships.

ITA
95(2)(*f.1*)

New paragraph 95(2)(*f.1*) sets out the new version of the “carve-out rule”. It provides that, in computing an amount described in new paragraph 95(2)(*f*), in respect of a property or a business, there is not to be included any portion of that amount that can reasonably be considered to have accrued while no person or partnership that held the property, or carried on the business, was a “specified person or partnership” in respect of the taxpayer.

The new definition “specified person or partnership” in subsection 95(1) is relevant for new paragraph 95(2)(*f.1*). The new definition “designated acquired corporation” in subsection 95(1) is relevant for the definition “specified person or partnership”. The new definition “antecedent corporation” in subsection 95(1) is relevant for the definitions “designated acquired corporation” and “specified person or partnership” and new subsection 95(2.6) of the Act.

“Specified person or partnership”, in respect of a taxpayer, at any time, is defined in subsection 95(1) to mean a person (other than a “designated acquired corporation”), or a partnership, that is

(a) the taxpayer,

(b) a person (other than a partnership) that, at that time, is resident in Canada and does not deal at arm’s length with the taxpayer,

(c) a corporation that would, at that time, be an antecedent corporation of the taxpayer or of a person described in (b) if the reference to "subsection 87(11)" in the definition "antecedent corporation" were read as a reference to "section 87",

(d) a foreign affiliate of a person described in any of (a) to (c) or of a partnership described in (e), or

(e) a partnership a member of which is described in any of (a) to (d).

"Designated acquired corporation" of a taxpayer is defined in subsection 95(1) to mean an antecedent corporation of the taxpayer if control of the antecedent corporation was acquired by the taxpayer or another antecedent corporation and the acquiring person dealt at arm's length with the antecedent corporation immediately before the acquisition of control.

"Antecedent corporation" of a particular corporation at any time is defined in subsection 95(1) to mean a corporation that

- was a predecessor corporation (within the meaning assigned by subsection 87(1) of the Act) in respect of an amalgamation that occurred after that time, if subsection 87(11) applied to the amalgamation and the particular corporation was formed by the amalgamation, or
- was wound-up into the particular corporation in a winding-up that began after that time, if subsection 88(1) applied to the winding-up.

Example 1

The following example illustrates the operation of the definition "designated acquired corporation" in conjunction with new paragraphs 95(2)(f) and (f.1).

Facts:

1. *Parent and Target are corporations resident in Canada that deal with each other at arm's length.*
2. *FA1 and FA2 are foreign affiliates of Target. Target owns all of the shares of FA1, a non-resident corporation. FA1 owns all of the shares of FA2, also a non-resident corporation.*
3. *Parent forms Acquireco, a corporation resident in Canada. Parent owns all of the shares of Acquireco.*
4. *Acquireco purchases all of the shares of Target on May 1, 2008.*
5. *Target and Acquireco amalgamate on June 1, 2008 (under an amalgamation to which subsection 87(11) applies) to form Amalco.*
6. *At the time of the acquisition of control of Target, FA1 has an accrued capital gain of $1 million on its shares of FA2 which are not excluded property of FA1.*
7. *On June 1, 2010, FA1 disposes of the shares of FA2 and has a capital gain of $2.5 million from that disposition.*

Results:

A. Target is an antecedent corporation of Amalco (the taxpayer). As such, absent the "designated acquired corporation" rule, Target would be a "specified person or partnership" in respect of Amalco. In computing FA1's capital gain in respect of Amalco in FA1's taxation year that includes June 1, 2010, FA1 would thus, in accordance with current paragraph 95(2)(f) or new paragraphs 95(2)(f) to (f.15), be required to recognize the full gain of $2.5 million from the disposition of the FA2 shares, even though $1 million of the $2.5 million gain accrued while Parent and Target were dealing with each other at arm's length and that same gain was recognized at the time of acquisition of control by the shareholders of Target on their disposition of shares of Target.

B. The "designated acquired corporation" definition ensures that the $1 million portion of the gain accrued in Target before the takeover is excluded in computing FA1's capital gain from the disposition of the FA2 shares determined in respect of Amalco. However, that portion of the gain that accrued while FA1 was a foreign affiliate of Acquireco (i.e., from May 1, 2008 to June 1, 2008) or Amalco (i.e., after June 1, 2008) will be included in computing FA1's capital gain from the disposition of the FA2 shares determined in respect of Amalco as Acquireco and Amalco would each be a specified person or partnership in respect of Amalco and would not be a designated acquired corporation.

C. Similarly, if instead of a gain FA1 had a loss from the disposition of the FA2 shares, any portion of that loss that accrued before the acquisition of control of Target would be excluded in computing FA1's capital loss from the disposition of the FA2 shares determined in respect of Amalco.

Note that it is expected that the Income Tax Regulations will be amended to provide that FA1's surplus balances vis-à-vis Amalco would, in these circumstances, be reset to zero.

New subsection 95(2.6) contains deeming rules for the purpose of the definition "specified person or partnership". It provides that, for the purpose of that definition, if a person or partnership (the "taxpayer") is not dealing at arm's length with another person or partnership (the "particular person") at a particular time, two special rules apply:

- The taxpayer is treated as having existed and as not having dealt at arm's length with the particular person, nor with each antecedent corporation of the particular person, throughout the period that began when the particular person or the antecedent corporation, as the case may be, came into existence and that ends at the particular time, and
- The taxpayer is treated as not having dealt at arm's length with any person or partnership with which the particular person or an antecedent corporation, as the case may be, did not deal at arm's length during the period specified above.

Example 2

The following example illustrates the operation of new subsection 95(2.6) in conjunction with new paragraphs 95(2)(f) and (f.1).

Facts:

1. *From 2000 to 2007, Canco 1 (a corporation resident in Canada) owns all of the shares of Canco 2 (a corporation resident in Canada), which in turn owns all of the shares of FA (a non-resident corporation). During that time, property of FA that is not excluded property (within the meaning of subsection 95(1)) accrues a gain of $1,000,000.*
2. *In January 2008, Canco 2 is liquidated into Canco 1, thereby resulting in the shares of FA that are held by Canco 2 being transferred to Canco 1.*
3. *On June 1, 2008, Canco 1 forms Canco 3 (a corporation resident in Canada) and transfers the shares of FA to Canco 3.*

4. *Immediately after the transfer of FA shares to Canco 3, FA disposes of the non-excluded property and realizes a gain of $1,000,000.*

Results:

Because Canco 3 did not exist while the gain on the non-excluded property accrued in FA, the result (in the absence of subsection 95(2.6)) would be that the gain accrued in FA while the non-excluded property was held by a holder (Canco 2) that was not a specified person or partnership in respect of Canco 3. This would cause those gains to be excluded in computing the gains realized by FA determined in respect of Canco 3.

Subsection 95(2.6) ensures, by virtue of paragraph 95(2.6)(a), that because Canco 3 (the taxpayer) was not dealing at arm's length with Canco 1 (the particular person) on June 1, 2008 (the particular time), Canco 3 is deemed to exist, and not to be dealing at arm's length with Canco 1, in the years 2000 to 2007. As well, by virtue of paragraph 95(2.6)(b), because Canco 1 (the particular person) was not dealing at arm's length with Canco 2 (third person) in the years 2000 to 2007, Canco 3 (the taxpayer) is deemed not to be dealing at arm's length with Canco 2 (third person) in those years. As a result, those accrued gains on the non-excluded property of FA are considered to have accrued while FA was a foreign affiliate of a holder (Canco 2) that was a specified person or partnership in respect of Canco 3, and those accrued gains on the excluded property of FA would be recognized in computing the gains realized by FA determined in respect of Canco 3.

Alternatively, if subsection 88(1) of the Act applies on the liquidation of Canco 2, paragraph 95(2.6)(a) alone would cause Canco 2 to be a specified person or partnership in respect of Canco 3, by reason of Canco 2 being an antecedent corporation of Canco 1.

ITA
95(2)(*f.11*)

New paragraph 95(2)(*f.11*) incorporates the "reading rule" from current paragraph 95(2)(*f*) and provides reading rules and a deeming rule that are required by the expansion of the general rule in new paragraph 95(2)(*f*) to income or loss from property, from a business other than an active business, and from a non-qualifying business.

The new paragraph provides that, in determining an amount described in new paragraph 95(2)(*f*) for a taxation year of a foreign affiliate of a taxpayer, if the amount is described in subparagraph 95(2)(*f*)(i), the Act is to be read without reference to section 26 of the *Income Tax Application Rules*. If the amount is described in subparagraph 95(2)(*f*)(ii), two consequences follow. First, the Act is to be read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership. Second, if the foreign affiliate has, in the taxation year, disposed of a foreign resource property in respect of a country, it is treated as having designated, in accordance with subparagraph 59(1)(*b*)(ii) of the Act, the amount, if any, by which the amount determined under paragraph 59(1)(*a*) in respect of the disposition exceeds the amount determined under subparagraph 59(1)(*b*)(i) in respect of the disposition.

ITA
95(2)(*f.12*) to (*f.15*)

New paragraphs 95(2)(*f.12*) to (*f.15*) set out the new version of the currency rules.

The new definition "calculating currency" in subsection 95(1) is relevant for those paragraphs. "Calculating currency", for a taxation year of a foreign affiliate of a taxpayer resident in Canada, is defined to mean either the currency of the country in which the foreign affiliate is resident at the end of the taxation year, or any currency that the taxpayer establishes to be reasonable in the circumstances.

ITA
95(2)(*f.12*)

New paragraph 95(2)(*f.12*) provides that a foreign affiliate of a taxpayer shall determine each of the following amounts in its calculating currency for a taxation year:

- Subject to paragraph 95(2)(*f.13*), each capital gain, capital loss, taxable capital gain and allowable capital loss from the disposition of a capital property that was an excluded property;
- Its income or loss from each active business carried on by it in a country; and
- Its income or loss that is included in computing its income or loss from an active business for the taxation year because of paragraph 95(2)(*a*).

ITA
95(2)(*f.13*)

New paragraph 95(2)(*f.13*) provides that a foreign affiliate of a taxpayer shall determine the amount included in computing its foreign accrual property income that is attributable to its capital gain or taxable capital gain, from the disposition of an excluded property, in Canadian currency by converting the amount of the capital gain, or taxable capital gain, otherwise determined under subparagraph 95(2)(*f.12*)(i) in its calculating currency for the taxation year into Canadian currency using the rate of exchange quoted by the Bank of Canada at noon on the day on which the disposition was made.

ITA
95(2)(*f.14*)

New paragraph 95(2)(*f.14*) provides that a foreign affiliate of a taxpayer shall determine in Canadian currency each amount of its income, loss, capital gain, capital loss, taxable capital gain or allowable capital loss for a taxation year, other than an amount to which paragraph 95(2)(*f.12*) or (*f.13*) applies.

ITA
95(2)(*f.15*)

New paragraph 95(2)(*f.15*) is a reading rule for subsection 39(2) of the Act that replaces the reading rule contained in current subparagraph 95(2)(*f*)(ii). Subsection 39(2) sets out rules that apply when a taxpayer realizes a gain or loss because of a fluctuation in currency exchange rates. New paragraph 95(2)(*f.15*) ensures that for the purpose of applying new subparagraph 95(2)(*f*)(i), subsection 39(2) reflects the concept of a "calculating currency".

Coming-into-force

95(2)(*f*) to (*f.15*) and related provisions

New paragraphs 95(2)(*f*) to (*f.15*) and subsection 95(2.6) of the Act and the definitions "antecedent corporation", "calculating currency", "designated acquired corporation" and "specified person or partnership" in subsection 95(1) of the Act apply to taxation years of a foreign affiliate of a taxpayer that begin after October 2, 2007. However, there are three transitional rules.

First, if the taxpayer elects in writing in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the taxpayer's "election day", those provisions also apply to taxation years, of the foreign affiliates, that begin before October 2, 2007 and after one of the three following dates, as chosen by the taxpayer in its election:

1. December 31, 1994,
2. December 20, 2002, or
3. February 27, 2004.

Second, for foreign affiliate taxation years that begin before 2009, new subparagraph 95(2)(*f*)(ii) of the Act is to be read without reference to the expression "income from a non-qualifying business". This is because the definition "income from a non-qualifying business" in subsection 95(1) applies only to foreign affiliate taxation years that begin after 2008.

Third, a taxpayer may – by making a valid election – opt to have a transitional version of new subsection 95(2.6) of the Act apply to taxation years of foreign affiliates of the taxpayer that began before Announcement Date and after October 2, 2007. That transitional version is a modified version of the rule announced on October 2, 2007. It provides that, for the purpose of the definition "specified person or partnership" in subsection 95(1), in determining whether, at a particular time, a person was not, at a time (the "prior time") that is before the particular time and at which that person did not exist, dealing at arm's length with another person, where the person exists at the particular time but did not exist at the prior time,

- the person is deemed to exist at the prior time, and
- if the person is related to another person at the particular time, the person is deemed to have been related to that other person at the prior time.

In this connection, the taxpayer's "election day" means the later of (i) the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the legislation enacting these amendments receives Royal Assent and (ii) the day that is one year after Royal Assent.

Qualifying interest throughout the year

ITA
95(2.2)

Current subsection 95(2.2) of the Act provides rules for the purposes of subsection 95(2) of the Act (except paragraph 95(2)(*f*)). Those rules are essentially aimed at cases where a taxpayer acquires or ceases to have a qualifying interest in, or becomes or ceases to be related to, a non-resident corporation.

Specifically, in certain circumstances a non-resident corporation that is not a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a particular taxation year but was such a foreign affiliate at the beginning or the end of the particular year is deemed to be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout that particular taxation year.

Similarly, for foreign affiliate taxation years that end before 2009, in certain circumstances a non-resident corporation that was not related to a taxpayer and a foreign affiliate of the taxpayer throughout a particular taxation year but was so related at the beginning or the end of the particular year is deemed to related to the taxpayer and the foreign affiliate of the taxpayer throughout that particular taxation year.

These deeming rules are intended to apply only for the purposes of paragraphs 95(2)(*a*) and (*g*) of the Act. Subsection 95(2.2) is amended to confirm this intention. This amendment applies to taxation years of a foreign affiliate of a taxpayer that begin after 1994.

Controlled foreign affiliate throughout the year

ITA
95(2.201)

Section 95 of the Act is amended by adding new subsection 95(2.201). The new subsection provides that, for the purposes of paragraphs 95(2)(*a*) and (*g*) of the Act, a non-resident corporation is deemed to be a controlled foreign affiliate of a taxpayer throughout a taxation year of the non-resident corporation if two conditions are met. First, a person or partnership must acquire or dispose of shares of a corporation and, because of the acquisition or disposition, become or cease to be a controlled foreign affiliate of the taxpayer. Second, at either or both of the beginning and end of the taxation year, the non-resident corporation must be a controlled foreign affiliate of the taxpayer.

New subsection 95(2.201), in providing this result in connection with a controlled foreign affiliate of a taxpayer, is thus similar to current subsection 95(2.2), which provides an interpretive rule in connection with a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest.

New subsection 95(2.201) is applicable to taxation years of a foreign affiliate of a taxpayer that end after 1999. There are two transitional rules:

1. As the criterion that a non-resident corporation be a controlled foreign affiliate of a taxpayer was introduced into paragraph 95(2)(*g*) effective for taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002 (absent the Global Election mentioned below), the rules in subsection 95(2.201) apply only for the purposes of paragraph 95(2)(*a*) for foreign affiliate taxation years that begin before December 21, 2002.
2. However, if the taxpayer has made a valid election under subsection 26(46) of the *Budget and Economic Statement Implementation Act, 2007,* S.C. 2007, c. 35 (informally known as a Global Election), which invokes an earlier application of various amendments to the Act (including paragraphs 95(2)(*a*) and (*g*)), the amendment to subsection 95(2.201) will apply to taxation years of all foreign affiliates of the taxpayer that begin after 1994.

Rules for the definition "specified person or partnership"

ITA
95(2.6)

Subsection 95(2.6) is added to section 95 of the Act. For detail about this new subsection, readers may refer to the commentary for new paragraphs 95(2)(*f*) to (*f.15*).

Clause 14

Capital in a Trust

Section 107 of the Act provides certain rules relating to the disposition of a capital interest in a trust.

Distribution by personal trust

ITA
107(2)

Subsection 107(2) of the Act applies where a personal trust or a prescribed trust described in section 4800.1 of the Regulations distributes property to a beneficiary and there is a resulting disposition of part or all of the beneficiary's capital interest in the trust.

Subsection 107(2) of the Act is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The subsection is amended so that it does not apply to a distribution that is a SIFT trust wind-up event.

Other distributions

ITA
107(2.1)

Where trust property is distributed by a trust to a beneficiary in satisfaction of the beneficiary's capital interest, the rules in subsection 107(2.1) apply if certain other sections do not apply. Subsection 107(2.1) is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The amendment ensures that subsection 107(2.1) does not apply to a distribution to which new subsections 107(3) and (3.1) apply.

Distribution by SIFT wind-up entity

ITA
107(3) and (3.1)

New subsections 107(3) and (3.1) of the Act govern a distribution by a SIFT trust, subsequent to which the SIFT trust ceases to exist. These subsections are introduced as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

Subsection 107(3) sets out conditions that must be met for the rules in subsection 107(3.1) to apply. Generally, this subsection allows subsection (3.1) to apply to a “SIFT trust wind-up event” (newly defined in subsection 248(1) of the Act) provided section 88.1 does not apply, the property distributed is shares of a taxable Canadian corporation, and, if the trust is a “SIFT wind-up entity”, all distributions that are SIFT trust wind-up events occur within a 60 day period.

Subsection 107(3.1) allows for a tax-deferred distribution of a SIFT trust’s property.

This is achieved by deeming the trust being wound up to dispose of the property for proceeds of disposition equal to the adjusted cost base of the property immediately before the disposition.

The taxpayer holding the beneficial interest in the trust who receives the property is deemed to have disposed of its interest as a beneficiary of the trust for proceeds of disposition equal to the cost amount to the taxpayer of the interest immediately before the distribution.

If the taxpayer is the only beneficiary of the trust, as would happen where the trust is wholly owned by another trust or corporation, and the taxpayer is a “SIFT wind-up entity” or a “SIFT wind-up corporation” (two new definitions in subsection 248(1)), the taxpayer is deemed to have acquired the trust property at a cost equal to its the adjusted cost base to the trust immediately before the disposition.

In any other case, such as where the beneficial interests in the trust are held by the public, the property is deemed to be acquired at the cost amount to the taxpayer of the taxpayer’s interest as a beneficiary of the trust.

If the taxpayer’s interest as a beneficiary under the trust was taxable Canadian property, the new property received is deemed to continue to be taxable Canadian property of the taxpayer.

For more information, readers may refer to the notes under the definition “SIFT trust wind-up event” in subsection 248(1).

This amendment applies after Announcement Date.

Clause 15

Qualifying Dispositions

ITA
107.4

Section 107.4 of the Act provides for the income tax consequences of a qualifying disposition (also defined in that section) of property to a trust.

Tax consequences of qualifying dispositions

ITA
107.4(3)(*f*)

Subsection 107.4(3) of the Act applies where there has been a “qualifying disposition” of property to a trust within the meaning of subsection 107.4(1). Paragraph 107.4(3)(*f*) deems the transferred property to be taxable Canadian property (“TCP”) of the trust if it was – by operation of any one of a number of specified provisions that deem property to be TCP – TCP of the transferor.

Paragraph 107.4(3)(*f*) is amended to add to the list of specified deeming provisions references to new paragraphs 85.1(8)(*c*) and 107(3.1)(*d*) of the Act. Those new paragraphs apply to deem, in certain circumstances involving the conversion of a SIFT wind-up entity into a corporation, a share to be TCP of a taxpayer.

This amendment, which applies after Announcement Date, is part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

Clause 16

Definitions and Rules

ITA
108

Section 108 of the Act sets out certain definitions and rules that apply for the purposes of subdivision k, which deals with the taxation of trusts and their beneficiaries.

Definitions

ITA
108(1)

"cost amount"

The definition "cost amount" in subsection 108(1) of the Act applies, for the purposes of sections 104 to 108 (except section 107.4 and notwithstanding the definition of that expression in subsection 248(1) of the Act)), in determining the cost amount to a taxpayer of the taxpayer's capital interest in a trust.

The definition is amended as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. This amendment ensures that the references in new paragraphs 107(3.1)(*b*) and (*c*) to the cost amount to a taxpayer of the taxpayer's beneficial interest in a trust is determined without reference to the special definition "cost amount" in subsection 108(1). As a result, that cost amount is to be determined under the definition of that expression in subsection 248(1).

This amendment applies after Announcement Date.

Clause 17

ITA
111

Section 111 of the Act provides rules relating to the treatment of losses, and in particular establishes the extent to which a taxpayer is permitted to deduct, in computing taxable income for a taxation year, losses of other years.

The new definitions "exchange rate" and "foreign currency debt" are added to subsection 111(8). As well, new subsections 111(12) and (13) are added to extend the general treatment of accrued capital gains and losses on an acquisition of control of a corporation, so that that treatment applies also to a corporation's accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency.

Definitions

ITA
111(8)

"exchange rate"

The new definition "exchange rate" is relevant for the purposes of new subsections 40(10) and (11) of the Act and for new subsections 111(12) and (13), regarding capital gains and losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. The "exchange rate" at any time in respect of a foreign currency is the rate of exchange between that currency and Canadian currency quoted by the Bank of Canada at noon (often referred to as the "Noon Rate") on the day that includes that time or, if that day is not a business day, on the day before; or a rate of exchange acceptable to the Minister.

"foreign currency debt"

The new definition "foreign currency debt" is relevant for the purposes of new subsections 40(10) and (11) of the Act and for new subsections 111(12) and (13), regarding capital gains and losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. A "foreign currency debt" means a debt obligation denominated in a currency of a country other than Canada.

Foreign currency debt on acquisition of control

ITA
111(12)

Under subsection 111(4) of the Act, a corporation that undergoes an acquisition of control is required to recognize, for income tax purposes, all of its accrued capital losses on property that the corporation owns at that time. Those newly-realized capital losses, together with the corporation's existing net capital losses, cannot be used after the acquisition of control. The corporation can, however, elect to realize any accrued capital gains on other property that the corporation owns, allowing it to use some or all of its capital losses to offset those capital gains.

Unlike other accrued capital gains and losses, capital gains and losses resulting from foreign currency fluctuations on a corporation's debt liabilities have not been subject to these rules, even though in other respects the Act generally treats capital gains and losses realized in respect of foreign currency fluctuations like other capital gains and losses.

New subsection 111(12) of the Act extends the general treatment of accrued capital gains and losses on an acquisition of control of a corporation to a corporation's accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency.

New subsection 111(12) provides that for the purposes of subsection 111(4), if at any time a corporation owes a foreign currency debt, the corporation is deemed to own, immediately before that time (referred to in these notes and in new subsection 111(12) as the "measurement time") , a property with an adjusted cost base (ACB) and fair market value (FMV) determined by the formulas contained in paragraphs 111(12)(*a*) and (*b*) respectively. Establishing an ACB and an FMV for this notional property allows for the calculation of capital losses or gains, as the case may be, in respect of the foreign currency debt.

Under new paragraph 111(12)(*a*), the ACB of the notional property at the measurement time is determined by the formula:

$$A + B - C$$

A is the amount of principal owed by the corporation under the foreign currency debt at the measurement time (calculated, for greater certainty, using the exchange rate applicable at the measurement time).

B is the portion of any gain previously recognized in respect of the foreign currency debt because of section 111 that is reasonably attributable to the principal owed by the corporation as described in A.

C is the portion of any capital loss previously recognized in respect of the foreign currency debt because of section 111 that is reasonably attributable to the principal owed by the corporation as described in A.

Under new paragraph 111(12)(*b*), the FMV of the notional property at the measurement time is the amount that would be the amount of the principal owed by the corporation under the foreign currency debt at the measurement time if that amount were calculated using the exchange rate applicable at the time of the original borrowing.

New subsection 111(12) will apply to acquisitions of control that occur after March 7, 2008, other than an acquisition of control that occurs before 2009, where the persons acquiring control are obligated to acquire the control pursuant to the terms of an agreement in writing made by them on or before March 7, 2008. Corporations will also be able to elect to have new subsection 111(12) apply to acquisitions of control that occur after 2005.

Additional Amount

ITA
111(13)

New subsection 111(13) of the Act provides that for the purposes of subsection 111(12) and subsections 40(10) and (11) of the Act, if the amount of principal owed by the corporation under the foreign currency debt (expressed in the foreign currency) immediately before the particular time exceeds the amount of principal owed by the corporation under the foreign currency debt (expressed in the foreign currency) immediately before the last time that subsection 111(12) applied to the corporation in respect of the foreign currency debt, the excess is deemed to be the amount of principal owed by the corporation under a separate foreign currency debt of the corporation. That is, new borrowings under an existing credit facility after an acquisition of control will be treated as a separate debt.

New subsection 111(13) will apply to acquisitions of control that occur after March 7, 2008, other than an acquisition of control that occurs before 2009, where the persons acquiring control are obligated to acquire the control pursuant to the terms of an agreement in writing made by them on or before March 7, 2008. Corporations will also be able to elect to have new subsection 111(13) apply to acquisitions of control that occur after 2005.

Clause 18

Charitable and other gifts

ITA
118.1

Section 118.1 of the Act provides a tax credit in respect of an individual’s charitable gifts, Crown gifts, cultural gifts and ecological gifts.

Direct designation – RRSPs, RRIFs and TFSAs

ITA
118.1(5.3)

Subsection 118.1(5.3) of the Act allows the proceeds of a deceased individual’s registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or tax-free savings account (TFSA) that are donated by way of a direct designation under the terms of the arrangement to a qualified donee to be claimed as a tax credit in computing the individual's tax for the year of death. To qualify, subsection 118.1(5.3) requires that the arrangement be an RRSP, a RRIF or a TFSA at the time of the transfer.

Subsection 118.1(5.3) is amended to provide that, in the case of the donation of TFSA proceeds, the arrangement need be a TFSA only immediately before the individual’s death. This corrects a technical deficiency that arose from the fact that an arrangement ceases to be a TFSA on the death of the last holder (unlike an RRSP or a RRIF, which generally retains its character as such, after the death of the last annuitant, for as long as the arrangement remains in existence).

This amendment applies to the 2009 and subsequent taxation years.

Clause 19

SIFT trusts and SIFT partnerships

ITA
122.1

Section 122.1 of the Act sets out rules that apply in respect of the taxation of specified investment flow-through (SIFT) trusts and, in some cases, SIFT partnerships. “SIFT trust” is defined in subsection 122.1(1), and “SIFT partnership” is defined in section 197 of the Act; both definitions are made by subsection 248(1) of the Act to apply for all purposes of the Act.

Definitions

ITA
122.1(1)

Subsection 122.1(1) of the Act sets out a number of definitions that apply for the purposes of the rules for SIFT trusts and, in some cases, SIFT partnerships. The definitions in subsection 122.1(1) apply for the purposes of sections 104 and 122, as well as for the purposes of section 122.1.

Subsection 122.1(1) is amended by adding several definitions and modifying a number of others. These amendments come into force on October 31, 2006. The following notes describe the new and amended definitions in alphabetical order.

“equity”

The new definition “equity” applies for purposes of the definitions “excluded subsidiary entity”, and “publicly-traded liability”. “Equity” means a share of a corporation, a beneficial interest in a trust, an interest as a member of a partnership, any of certain liabilities of an entity that are equity-like (as described in greater detail below), and a right to, or to acquire, any of the above.

An equity-like liability of an entity means a liability of the entity (and, for the purpose of the definition “publicly-traded liability”, a security of the entity that is a liability of another entity) if:

- the liability is convertible into or exchangeable for equity of the entity or of another entity (including another equity-like debt of the entity or of another entity), or
- the amount payable on the liability is contingent or dependent on the use of or production from property, or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable, or income or capital paid or payable to a member of a partnership or a beneficiary of a trust.

“excluded subsidiary entity”

The new definition “excluded subsidiary entity” is relevant to determining whether a trust or partnership will be a SIFT trust or SIFT partnership for a taxation year. In brief, a trust or partnership that is an excluded subsidiary entity is not a SIFT trust or SIFT partnership. As defined, an excluded subsidiary entity for a taxation year is an entity the equity (as defined in subsection 122.1(1)) of which meets two conditions at all times in the taxation year. The first condition is that the equity not be listed or traded on a stock exchange or other public market. The second condition is that the equity not be held by any person or partnership other than: a real estate investment trust, a taxable Canadian corporation, a SIFT trust or a SIFT partnership (ignoring the transitional rules that otherwise suspend for a period the definitions “SIFT trust” and SIFT partnership”), another excluded subsidiary entity for the taxation year, or any combination of these qualifying interest holders.

“investment”

As currently defined, “investment” in a trust or partnership is meant to cover a broad range of properties and rights. The definition is amended to exclude an unaffiliated publicly-traded liability of a trust or partnership. For more detail, readers may refer to the commentary on the new definition “unaffiliated publicly-traded liability”.

“non-portfolio property”

Under its existing definition, a “non-portfolio property” of a trust or partnership is a property of any of three types.

The first type of non-portfolio property is comprised of certain securities of a “subject entity”. These are securities that, as described in paragraph (*a*) of the definition “non-portfolio property”, either:

- have a total fair market value that is greater than 10% of the equity value of the subject entity; or
- make up — together with any securities that the trust or partnership holds of entities affiliated with the subject entity — more than 50% of the equity value of the trust or partnership.

Paragraph (*a*) of the definition “non-portfolio property” is amended so that securities of a subject entity that is a portfolio investment entity are excluded from that paragraph. As a result that paragraph will not apply to make these securities non-portfolio property. However, securities of a portfolio investment entity may still be non-portfolio property of a trust or partnership under the remaining two types of non-portfolio property described in paragraphs (*b*) and (*c)* of the definition “non-portfolio property”.

For more detail, readers may refer to the commentary on the new definition “portfolio investment entity”.

“portfolio investment entity”

The definition “portfolio investment entity” is added. A portfolio investment entity at any time is an entity that does not at that time hold any non-portfolio property.

“publicly-traded liability”

The new definition “publicly-traded liability” applies for purposes of the definition “unaffiliated publicly-traded liability”. A publicly-traded liability of an entity means a liability that is a security of the entity that is not equity (as defined in the new definition “equity”) of the entity and that is listed or traded on a stock exchange or other public market.

For more detail, see the commentary on the new definitions “equity” and “unaffiliated publicly-traded liability”.

“qualified REIT property”

The definition “qualified REIT property” applies in determining whether a trust is a real estate investment trust (“REIT”) for purposes of the SIFT rules. In order to qualify as a REIT, a trust cannot hold any non-portfolio property other than qualified REIT property.

The existing definition “qualified REIT property” describes four types of property. The first type is real or immovable property situated in Canada. The description of this type of qualified REIT property is amended to delete the words “situated in Canada”. This amendment is part of a series of similar amendments intended to ensure that the geographic location of a trust’s real or immovable property will not be relevant in determining whether the trust is a REIT for purposes of the SIFT rules.

The third type of qualified REIT property, described in paragraph (*c*) of the definition “qualified REIT property”, consists of shares of the capital stock of a REIT’s nominee corporation; in effect, a corporation that acts as bare trustee and that holds individual real or immovable properties on behalf of the REIT. The description of this type of qualified REIT property is amended to extend qualified REIT property status to shares of a nominee corporation that acts as bare trustee, and that holds legal title to real or immovable property, on behalf of a wholly-owned subsidiary of the REIT.

“real estate investment trust”

A trust is a “real estate investment trust” (REIT) for a taxation year if it is resident in Canada throughout the year and meets a number of other conditions, including the requirement that the trust derive at least 75% of its revenues from rent from, and capital gains from the disposition of, Canadian real or immovable properties, and interest from mortgages on Canadian real or immovable properties.

The provision setting out this 75% revenue requirement is amended to delete the words “situated in Canada”. This amendment is part of a series of similar amendments intended to ensure that the geographic location of a trust’s real or immovable property will not be relevant in determining whether the trust is a REIT for purposes of the SIFT rules.

Another condition for REIT status is that at each time in the relevant trust’s taxation year the total fair market values at that time of certain qualifying assets – real or immovable property situated in Canada, cash, and certain debt securities – must equal at least 75% of the trust’s equity value at that time. The provision describing this condition is amended in a number of ways. First, the words “situated in Canada” are deleted, such that qualifying assets will now include real or immovable property wherever situated. Secondly, the reference to “cash” is replaced with a reference to money (indirectly, by way of a reference to property described in paragraph (*a*) of the definition “qualified investment” in section 204 of the Act). Finally, the list of qualifying assets is expanded to include certain cash equivalents, such as bankers’ acceptances and certain deposits with financial institutions.

“rent from real or immovable properties”

“Rent from real or immovable properties” is currently defined to include rent or similar payments for the use of, or right to use, real or immovable properties, and payment for services ancillary to the rental of real or immovable properties and customarily supplied or rendered in connection with the rental of real or immovable properties.

The definition is amended to include, as a taxpayer’s rent from real or immovable property, a payment out of the current income of a trust, but only to the extent that the payment is included in the recipient trust’s income and is paid from the part of the payer trust’s income that was derived from rent from real or immovable properties.

“SIFT trust”

A “specified investment flow-through trust” or “SIFT trust” for a taxation year means a trust that meets the following conditions at any time during the taxation year: it is resident in Canada, investments in it are listed or traded on a stock exchange or other public market, and it holds one or more non-portfolio properties. A real estate investment trust (REIT) is excluded from the definition of SIFT trust.

The definition is amended to exclude from treatment as a SIFT trust for a taxation year an entity that is an excluded subsidiary entity for the taxation year. For more information, readers may refer to the commentary on the new definition “excluded subsidiary entity”.

“unaffiliated publicly-traded liability”

The new definition “unaffiliated publicly-traded liability” is relevant to determining whether a liability is an investment in a trust or partnership. An unaffiliated publicly-traded liability of an entity at any time means a publicly-traded liability of the entity if at that time at least 90% (measured by fair market value) of all of the publicly-traded liabilities of the entity are held by persons or partnerships that are not affiliated with the entity.

Clause 20

Investment Tax Credits

ITA
127

Section 127 of the Act permits deductions in computing tax payable in respect of logging taxes, political contributions and investment tax credits (ITCs).

Transitional application of investment tax credit definition

ITA
127(9.01)(*b*)

Subsection 127(9.01) of the Act provides for a substitution of the number of taxation years referenced in paragraphs (*c*) to (*f*), (*h*) and (*i*) in the definition "investment tax credit" in subsection 127(9) of the Act in order to provide for a maximum 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

Paragraph 127(9.01)(*b*) is amended to change the reference to "2005" to "1997". This amendment in effect extends the maximum 20-year carry-forward to amounts from the 1998 to 2005 taxation years.

This amendment applies to the 2008 and subsequent taxation years.

ITA
127(9.02)(*b*)

Subsection 127(9.02) of the Act provides for a substitution of the number of taxation years referenced in paragraph (*g*) in the definition "investment tax credit" in subsection 127(9) of the Act in order to provide for a maximum 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

Paragraph 127(9.02)(*b*) is amended to change the reference to "2005" to "1997". This amendment is part of the extension of the maximum 20-year carry-forward to amounts from the 1998 to 2005 taxation years.

This amendment applies to 2008 and subsequent taxation years.

Expenditure limit determined

ITA
127(10.2)

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

The expenditure limit of a corporation for a particular taxation year is an amount from nil to $3 million, as determined by a formula set out in subsection 127(10.2). The formula includes two variables: the taxable income and the taxable capital employed in Canada of the corporation and its associated corporations, if any, for the preceding taxation year. The effects of these variables are that a corporation's $3 million maximum expenditure limit decreases by $10 for each dollar of taxable income over $400,000 in the preceding taxation year. The resulting figure is further reduced in proportion to any taxable capital employed in Canada of the corporation in excess of $10 million. This restriction ensures that the expenditure limit of the corporation is reduced $3 for every $40 in taxable capital employed in Canada in excess of $10 million.

For this purpose, the taxable capital employed in Canada by the corporation has the meaning assigned by section 181.2 of the Act and includes the taxable capital employed in Canada in the year of any associated corporation.

Subparagraphs (*a*)(i) and (ii) of the description of B in the formula in subsection 127(10.2) are amended to add a reference to section 181.3. If a corporation is a financial institution, its taxable capital employed in Canada is described in subsection 181.3. Therefore this amendment ensures the correct measurement, for the purposes of the formula in subsection 127(10.2), of the taxable capital employed in Canada by a CCPC that is a financial institution.

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

Expenditure limit – associated CCPCs

ITA
127(10.22)

Subsection 127(10.22) of the Act provides a special relieving rule that can apply for the purpose of calculating a corporation's expenditure limit for a particular taxation year under subsection 127(10.2) of the Act. If subsection 127(10.22) applies to a particular corporation in respect of another corporation, the particular corporation is considered not to be associated with the other corporation for the purpose of determining the particular corporation's expenditure limit under subsection 127(10.2), nor for the purpose of determining the particular corporation's business limit under section 125 (as applied for the purpose only of determining the particular corporation's expenditure limit under subsection 127(10.2)).

This reference to the corporation’s business limit is no longer required, since the formula for the calculation of the corporation’s expenditure limit under subsection 127(10.2), as modified by S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), no longer relies upon the corporation’s business limit. Subsection 127(10.22) of the Act is therefore amended to remove the reference .

Amended subsection 127(10.22) applies to taxation years that end on or after March 9, 2009. This is because, for a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008. No such taxation year could end after March 8, 2009.

Expenditure limit determination in certain cases

ITA
127(10.6)(*c*)

Subsection 127(10.6) of the Act provides for the increase (a “gross-up”) of a CCPC's taxable income and business limit where the CCPC’s taxation year is less than 51 weeks, which gross-up is relevant in determining the CCPC's expenditure limit for a taxation year under subsection 127(10.2) and paragraph 127(10.6)(*b*).

Paragraph 127(10.6)(*c*) is amended to remove the reference to a corporation’s business limit, because the new formula for the calculation of the corporation’s expenditure limit under subsection 127(10.2) of the Act no longer relies upon the corporation’s business limit.

Amended paragraph 127(10.6)(*c*) applies to taxation years that end on or after March 9, 2009. For a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008. No such taxation year could end after March 8, 2009.

Transitional application of investment tax credit recapture

ITA
127(36)(*b*)

Subsection 127(36) of the Act provides for a substitution of the number of taxation years and fiscal periods referenced in subsections 127(27), (28) (29), (34) and (35) of the Act, which concern the recapture of investment tax credits in certain circumstances.

Paragraph 127(36)(*b*) is amended to change the reference to “2005” to “1997”. This ensures a maximum 20-year recapture period for investment tax credits earned in the 1998 and subsequent taxation years, and is part of the extension of the maximum 20-year carry-forward to amounts from those taxation years.

This amendment applies to the 2008 and subsequent taxation years.

Clause 21

Refundable Investment Tax Credits

ITA
127.1

Section 127.1 of the Act provides for the refundability of investment tax credits under certain circumstances. A qualifying corporation may be eligible for either a 40% or 100% refund for its investment tax credits depending on the nature of its expenditures.

“qualifying corporation”

“qualifying income limit”

ITA
127.1(2)

Subsection 127.1(2) of the Act sets out definitions relevant for the purposes of section 127. 1. Subsection 127.1(2) is amended in two respects - the definition of “qualifying corporation” is replaced and a new definition of “qualifying income limit” is introduced.

Under the current definition, a "qualifying corporation" is, for a particular taxation year, a Canadian-controlled private corporation (CCPC) the taxable income of which for its preceding taxation year together with the taxable incomes of all associated corporations for their preceding taxation years does not exceed the total of the business limits (as determined under section 125 of the Act) of the corporation and its associated corporations for those preceding years.[3]

The definition of “qualifying corporation” is amended to replace the references to business limit with a reference to the “qualifying income limit”. Under the amended definition, a qualifying corporation for a particular taxation year is a CCPC the taxable income of which for its preceding taxation year, together with the taxable incomes of all associated corporations for their preceding taxation years, does not exceed the qualifying income limit of the corporation.

The new definition “qualifying income limit” of a corporation in subsection 127.1(2) of the Act is relevant for the purposes of the definition “qualifying corporation.” The qualifying income limit of a corporation is determined by a formula — $400,000 x [($40 million – A)/$40 million] — which no longer relies upon the business limit determined under section 125 of the Act.

The amount described in the formula as A is nil if the corporation’s taxable capital employed in Canada is less than or equal to $10 million. In any other case, A is equal to the excess of the corporation’s taxable capital employed in Canada over $10 million. For this purpose, the taxable capital employed in Canada by the corporation has the meaning assigned by section 181.2 or 181.3 of the Act and includes the taxable capital employed in Canada in the year of any associated corporation.

The amended definition of “qualifying corporation” applies to taxation years that end on or after February 26, 2008. The new definition of “qualifying income limit” generally applies to taxation years that end on or after February 26, 2008. For a taxation year that includes February 26, 2008, the amount by which

[3] What are described in these notes as the “preceding” taxation years are in certain cases described slightly differently – although to the same general effect – in the relevant legislation, both actual and proposed.

the new amount calculated for the qualifying income limit exceeds the business limit as described in the old definition of the qualifying corporation is pro-rated based on the number of days in that taxation year that are after February 25, 2008.

Clause 22

Former resident – replaced shares

ITA
128.3

Under the taxpayer migration rules in section 128.1 of the Act, the post-departure disposition of a property can have important tax consequences for an emigrant individual. Section 128.3 of the Act allows for a deferral of these consequences in certain circumstances, by deeming the individual not to have disposed of shares that were converted to new shares under section 51 of the Act, or subject to a share for share exchange, reorganization or amalgamation under any of sections 85.1, 86 or 87 of the Act. Section 128.3 also deems the share received by an individual to be the same as the old share for the purposes of section 119 and subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6).

Section 128.3 is amended to add to the list of specified provisions providing for tax-deferred share exchanges a reference to new subsection 85.1(7) of the Act. Subsection 85.1(7) provides, where a number of conditions are met, for a tax-deferred exchange of SIFT wind-up entity equity in exchange for a share of a taxable Canadian corporation.

This amendment to section 128.3 is part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

This amendment applies after December 19, 2007.

Clause 23

Qualifying Exchange

Section 132.2 of the Act provides rules to allow two mutual fund trusts, or a mutual fund trust and a mutual fund corporation to merge on a tax deferred basis, provided that the transferee fund is a mutual fund trust. The merger is accomplished in part through a transfer of property from one fund (the “transferor fund”) to the other (the “transferee fund”),

Definitions

ITA
132.2(2)

“qualifying exchange”

The definition “qualifying exchange” in subsection 132.2(2) of the Act is amended to ensure that it does not apply if the transferor fund is a SIFT wind-up corporation. Because of a related amendment to paragraph 87(2)(*s.1*) of the Act, a SIFT wind-up corporation includes a corporation that results from an amalgamation (within the meaning assigned by subsection 87(1)) of corporations one of which is a SIFT wind-up corporation or from the winding-up of a SIFT wind-up corporation into its parent in circumstances to which subsection 88(1) of the Act applies.

This amendment applies after Announcement Date.

Clause 24

Cooperative corporations

ITA
136

Section 136 of the Act defines the term “cooperative corporation” and provides that a cooperative corporation is, except for certain purposes, deemed not to be a private corporation.

Indirect shareholdings – TFSAs

ITA
136(2)

Subsection 136(2) of the Act sets out conditions that a corporation must meet in order to be a cooperative corporation. The condition in paragraph 136(2)(*d*) requires at least 90% of the corporation’s shares, if any, to be held by its members who are individuals, other cooperative corporations, or corporations or partnerships that carry on the business of farming. For this purpose, any shares that are held by the members indirectly through their RRSPs, RRIFs or registered education savings plans (RESPs) are counted in the same way as though held by the members directly.

Paragraph 136(2)(*d*) is amended to extend the special rule for indirect shareholdings so that it applies to shares held in TFSAs.

This amendment applies to the 2009 and subsequent taxation years.

Clause 25

Insurance Corporations

ITA
138

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations. Section 138 is amended to provide transitional rules for insurers in respect of their life insurance businesses as a result of changes to accounting rules.

The new transitional rules in section 138 are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period. As such, they generally replicate the effect of new sections 12.5 and 20.4 of the Act, with appropriate modifications to reflect their application to life insurers. Instead of providing what would be largely repetitious specific descriptions of the new rules in section 138, the following table sets out these correspondences.

Subject	Section 138 amendment	Compare to
Definitions “base year”, “reserve transition amount”, “transition year”	138(12)	12.5(1)
Transition year income inclusion	138(16)	12.5(2)
Transition year income deduction	138(17)	20.4(2)
Transition year income inclusion reversal	138(18)	20.4(3)
Transition year income deduction reversal	138(19)	12.5(3)
Winding-up	138(20)	12.5(4)
Amalgamations	138(21)	12.5(5)
Transfer of business	138(22), (23)	12.5(6), (7)
Ceasing to carry on business	138(24)	12.5(8), 20.4(4)
Ceasing to exist	138(25)	12.5(9)

Application of financial institution rules

ITA
138(10)

Subsection 138(10) of the Act provides that, in computing the income of a life insurer that carries on business in Canada and outside of Canada from its insurance business carried on in Canada, the financial institution rules in sections 142.2 to 142.5 apply only in respect of the insurer’s designated insurance property in respect of the business.

Subsection 138(10) is amended to add a reference to new section 142.51 of the Act. New section 142.51 provides transitional rules for financial institutions as a result of changes to accounting rules that may result in changes to the manner in which these financial institutions calculate their income under sections 142.2 to 142.6. For more detail readers may refer to the commentary on subsection 142.51.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 26

Definitions

ITA
142.2

Sections 142.2 to 142.6 of the Act contain rules for the tax treatment of most shares and debt obligations held by financial institutions. Subsection 142.2 of the Act defines several terms for the purposes of these sections (and in other provisions of the Act).

Definitions

ITA
142.2(1)

Subsection 142.2(1) of the Act defines several terms for the purposes of the rules in sections 142.2 to 142.6 of the Act relating to securities held by financial institutions. Subsection 142.2(1) is amended by modifying some of the existing definitions and by adding new ones.

“excluded property”

The new definition “excluded property” subsection 142.2(1) identifies property specifically exempted from classification as “mark-to-market property” for purposes of the rules in sections 142.2 to 142.6 of the Act.

Under this new definition, excluded property of a taxpayer for a taxation year is property, held at any time in the taxation year by the taxpayer, that is

- a share of a corporation if, at any time in the taxation year, the taxpayer has a significant interest in the corporation,
- a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed payment card corporation share of the taxpayer,
- if the taxpayer is an investment dealer, a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed securities exchange investment of the taxpayer,
- a share of a corporation if
  - control of the corporation is, at any time (the “acquisition of control time”) in the 24-month period that begins immediately after the end of the year, acquired by
    - the taxpayer,
    - one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*) of the Act), or
    - the taxpayer and one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)), and
  - the taxpayer elects in writing that this provision apply and files the election with the Minister of National Revenue on or before the taxpayer’s filing-due date for the taxpayer’s taxation year that includes the acquisition of control time, or
- a prescribed property.

The definition “excluded property” applies to taxation years that begin on or after October 1, 2006.

“fair value property”

The new definition “fair value property” in subsection 142.2(1) is relevant to determining whether a tracking property or a specified debt obligation is mark-to-market property (as those expressions are defined in subsection 142.2(1)). Fair value property of a taxpayer for a taxation year is defined as property, held at any time in the taxation year by the taxpayer, that is — or it is reasonable to expect would, if the taxpayer held the property at the end of the taxation year, be — valued (otherwise than solely because its fair value was less than its cost to the taxpayer or, if the property is a specified debt obligation, because of a default of the debtor) in accordance with generally accepted accounting principles, at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year.

This definition applies to taxation years that begin on or after October 1, 2006.

“mark-to-market property”

The existing definition “mark-to-market property” in subsection 142.2(1) is amended consequential to changes in accounting rules.

Specifically, the definition “mark-to-market property” is amended to reflect the addition of the new definitions “excluded property”, “fair value property” and “tracking property” in subsection 142.2(1). As well, properties specifically excluded from treatment as mark-to-market property have been removed from the definition and will now be listed in the new definition “excluded property” in subsection 142.2(1). (For more detail, readers may refer to the commentary on that definition.)

In conjunction with the addition of the term "fair value property" it should be noted that a specified debt obligation held by a taxpayer (other than an investment dealer) will be mark-to-market property of the taxpayer where it is fair value property of the taxpayer for the taxation year, regardless of the taxpayer's treatment of the property in previous taxation years.

Property qualifying as tracking property is added as mark-to-market property to ensure that a financial institution will not be able to avoid mark-to-market treatment on properties by investing through an intermediary or through the use of another financial instrument (such as a derivative). For more detail, readers may refer to the commentary on the definition "tracking property" in subsection 142.2(1).

As a result of these changes to the definition, mark-to-market property of a taxpayer for a taxation year will be property (other than an excluded property) held at any time in the taxation year by the taxpayer that is

- a share,
- if the taxpayer is not an investment dealer, a specified debt obligation that is a fair value property of the taxpayer for the taxation year,
- if the taxpayer is an investment dealer, a specified debt obligation, and
- a tracking property of the taxpayer that is a fair value property of the taxpayer for the taxation year,

These amendments apply to taxation years that begin on or after October 1, 2006, except that, for taxation years that begin before November 7, 2007, mark-to-market property does not include tracking property.

In addition to the above amendments, the definition "mark-to-market property" is also amended, for taxation years that end after February 22, 1994, to exclude the following property from treatment as mark-to-market property:

- property that is, at every time in the year at which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer,
- if the year begins after 1998 and the taxpayer is an investment dealer, a property that is, at every time in the year at which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer, and
- a share of a corporation held, at any time in the year, by the taxpayer if
    - control of the corporation is, at any time (referred to in this paragraph as the "acquisition of control time") that is after 2001 and is in the 24-month period that begins immediately after the end of the year, acquired by
        - the taxpayer,
        - one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*) of the Act), or
        - the taxpayer and one or more such persons, and
    - the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time.

“tracking property”

The new definition “tracking property” in subsection 142.2(1) of the Act applies in determining whether property is a mark-to-market property of a taxpayer. Under this definition, property is tracking property of a taxpayer if the fair market value of the property is determined primarily by reference to one or more specified criteria in respect of property (referred to in this definition as “tracked property”) that, if owned by the taxpayer, would be mark-to-market property of the taxpayer. The specified criteria are the fair market value of the tracked property, the profits or gains from the disposition of the tracked property, the revenue, income or cash flow from the tracked property, or any other similar criteria in respect of the tracked property.

This definition applies to taxation years that begin on or after October 1, 2006.

Significant interest

ITA
142.2(2)

The definition “mark-to-market property” in subsection 142.2(1) of the Act excludes a share of a corporation in which a taxpayer has a significant interest. Subsections 142.2(2) to (5) of the Act contain the definition “significant interest” and related rules.

Subsection 142.2(2) of the Act provides that a taxpayer has a significant interest in a corporation at any time if the taxpayer is related to the corporation at that time (ignoring any rights described in paragraph 251(5)(*b*) of the Act) or if the taxpayer holds shares of the corporation carrying at least 10% of the votes, and representing at least 10% of the fair market value, of all issued shares of the corporation.

For greater certainty, subsection 142.2(2) is amended to specifically provide that it applies for the purposes of the definitions “excluded property” and “specified debt obligation” in subsection 142.2(1).

This amendment applies to taxation years that begin on or after October 1, 2006.

Extended meaning of “related”

ITA
142.2(4)

Subsection 142.2(4) of the Act extends the concept of relatedness (as defined in section 251 of the Act) for the purpose of establishing whether a taxpayer has a significant interest in a corporation. Subsection 142.2(4) identifies a number of assumptions to apply in conjunction with section 251 in determining whether a person or partnership is related to any other person or partnership.

Subsection 142.2(4) is amended to provide that, for the purposes of subsections 142.2(2) to (4), in determining if, at a particular time, a person or partnership is related to another person or partnership, the rules in section 251 are to be applied as if,

- a partnership were a corporation having capital stock of a single class divided into 100 issued shares and each member of the partnership owned, at the particular time, that proportion of the issued shares of that class that the fair market value of the member’s partnership interest in the partnership at the particular time is of the fair market value of all partnership interests in the partnership at the particular time, and
- a trust were a corporation having capital stock of a single class divided into 100 issued shares and each beneficiary under the trust owned, at the particular time, that proportion of the issued shares of that class that the fair market value of the beneficiary’s beneficial interest in the trust at the particular time is of the fair market value at that time of all beneficial interest in the trust.

The above rules will not apply to a partnership or a trust in respect of which any amount of the income or capital of the partnership or trust that any entity may receive directly from the partnership or trust at any time as a member of the partnership or beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.

This amendment applies to taxation years that begin on or after October 1, 2006.

Clause 27

Marked-to market

ITA
142.5

Section 142.5 of the Act requires shares and certain debt obligations to be marked to market each year, and puts the profit or loss on income account.

Rules applicable to first deemed disposition of debt obligation

ITA
142.5(8.1) and (8.2)

New subsection 142.5(8.2) of the Act applies to a taxpayer for the taxpayer's first taxation year that begins on or after October 1, 2006 (the "first taxation year") where

- subsection 142.5(2) deems the taxpayer to have disposed of a particular specified debt obligation immediately before the end of the first taxation year (the "particular disposition"), and
- the particular specified debt obligation was owned by the taxpayer at the end of the taxation year immediately preceding the first taxation year and was not a mark-to-market property of the taxpayer for that preceding taxation year.

Where subsection 142.5(8.2) applies to a taxpayer for the first taxation year, the following rules apply to the taxpayer in respect of the particular disposition:

- subsection 20(21) of the Act does not apply to the taxpayer in respect of the particular disposition, and
- if section 12.4 of the Act does not apply to the taxpayer in respect of the particular disposition, there shall be included in computing the taxpayer's income for the first taxation year the amount, if any, by which
  - the total of all amounts each of which is
    - an amount deducted under paragraph 20(1)(*l*) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the taxation year immediately preceding the first taxation year,
    - an amount deducted under paragraph 20(1)(*p*) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for a taxation year that preceded the first taxation year,

  exceeds

  - the total of all amounts each of which is
    - an amount included under paragraph 12(1)(*d*) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year, or
    - an amount included under paragraph 12(1)(*i*) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the first taxation year or a preceding taxation year.

Clause 28

Transition

ITA
142.51

New section 142.51 of the Act provides transitional rules for financial institutions as a result of changes to accounting rules.

New section 142.51 is part of a package of amendments involving also sections 12.5, 20.4 and 138 of the Act.

Definitions

ITA
142.51(1)

New subsection 142.51(1) of the Act contains definitions that apply for the purposes of section 142.51.

The definitions in subsection 142.51(1) apply to taxation years that begin on or after October 1, 2006.

"base year"

The new definition "base year" in subsection 142.51(1) provides that the base year of a taxpayer is the taxpayer's taxation year that immediately precedes its transition year. Certain amounts determined in respect of the taxpayer's base year are relevant to determining the taxpayer's transition amount, as described in greater detail below.

"transition amount"

The "transition amount" of a taxpayer for the taxpayer's transition year is defined as the positive or negative amount determined by the formula A – B.

In applying the formula, element A is the total of all amounts each of which is the fair market value, at the end of the taxpayer's base year, of a transition property of the taxpayer.

Element B is the total of all amounts each of which is the cost amount to the taxpayer, at the end of the taxpayer's base year, of a transition property of the taxpayer.

"transition property"

A "transition property" of a taxpayer is defined as a property that

- was a specified debt obligation held by the taxpayer at the end of the taxpayer's base year,
- was not a mark-to-market property of the taxpayer for the taxpayer's base year, but would have been a mark-to-market property of the taxpayer for the taxpayer's base year if the property had been carried at the property's fair market value in the taxpayer's balance sheet as at the end of each taxation year of the taxpayer that ends after the taxpayer last acquired the property (otherwise than by reason of a reacquisition under subsection 142.5(2)) and before the commencement of the taxpayer's transition year, and
- was a mark-to-market property of the taxpayer for the transition year of the taxpayer.

"transition year"

The "transition year" of a taxpayer is defined as the taxpayer's first taxation year that begins after September 30, 2006.

Transition year income inclusion

ITA
142.51(2)

New subsection 142.51(2) of the Act provides that, if a taxpayer is a financial institution in its transition year, the taxpayer must include in computing its income, for its transition year, the absolute value of the negative amount, if any, of the taxpayer's transition amount for its transition year.

For further details, readers may refer to the commentary to the definition of "transition amount" and "transition property" in proposed subsection 142.51(1) of the Act.

New subsection 142.51(2) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction

ITA
142.51(3)

New subsection 142.51(3) of the Act provides that, if a taxpayer is a financial institution in its transition year, the taxpayer must deduct in computing its income, for its transition year, the positive amount, if any, of its transition amount for its transition year.

For further details, readers may refer to the commentary to the definition of "transition amount" and "transition property" in proposed subsection 142.51(1) of the Act.

New subsection 142.51(3) applies to taxation years that begin on or after October 1, 2006.

Transition year income inclusion reversal

ITA
142.51(4)

New subsection 142.51(4) of the Act provides that, where an amount has been included under subsection 142.51(2) of the Act in computing a taxpayer's income for its transition year, there is to be deducted in computing the taxpayer's income for each particular taxation year of the taxpayer that ends after the beginning of the transition year and in which the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 142.51(2) in computing the taxpayer's income for the transition year, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(4) applies to taxation years that begin on or after October 1, 2006.

Transition year income deduction reversal

ITA
142.51(5)

New subsection 142.51(5) of the Act provides that, where an amount has been deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year, there is to be included in computing the taxpayer's income, for each particular taxation year of the taxpayer that ends after the beginning of the transition year and in which the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 142.51(3) in computing the taxpayer's income for the transition year, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(5) applies to taxation years that begin on or after October 1, 2006.

Winding-up

ITA
142.51(6)

New subsection 142.51(6) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 142.51(6) provides that, where a taxpayer has (in a winding-up to which subsection 88(1) of the Act has applied) been wound-up into another corporation (the "parent"), and immediately after the winding-up the parent is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the taxpayer and that of the parent for particular taxation years that end on or after the first day (the "start day") on which assets of the taxpayer were distributed to the parent on the winding-up,

- the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the taxpayer in respect of
  - any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act by the taxpayer in computing the taxpayer's income for its transition year,
  - any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the start day, and
  - any amount that, in the absence of subsection 142.51(6) — and assuming that the taxpayer is a financial institution on each day (that is the start day or a subsequent day) that the parent is a financial institution — would be required to be deducted or included, in respect of days that are on or after the start day, under subsection 142.51(4) or (5) in computing the taxpayer's income for its transition year, and
- the taxpayer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsections 142.51(4) and (5) without reference to the start day and days after the start day.

New subsection 142.51(6) applies to taxation years that begin on or after October 1, 2006.

Amalgamations

ITA
142.51(7)

New subsection 142.51(7) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(7) provides that, where there is an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of a taxpayer with one or more other corporations to form one corporation (referred to in this subsection as the "new corporation"), and immediately after the winding-up the new corporation is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the new corporation for particular taxation years of the new corporation that begin on or after the day on which the amalgamation occurred, the new corporation is, on and after that day, deemed to be the same corporation as and a continuation of the taxpayer in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year of the taxpayer,
- any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred, and
- any amount that, in the absence of subsection 142.51(7) — and assuming that the taxpayer is a financial institution on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation is a financial institution — would be required to be included or deducted, in respect of any of those days, under subsection 142.51(4) or (5) in computing the taxpayer's income.

New subsection 142.51(7) applies to taxation years that begin on or after October 1, 2006.

Transfer of business

ITA
142.51(8) and (9)

New subsections 142.51(8) and (9) of the Act are part of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(8) provides that subsection 142.51(9) applies if, at a particular time, a taxpayer (the "transferor") transfers, to a related corporation (the "transferee"), property in respect of a business carried on by the transferor in Canada (the "transferred business") and

- subsection 138(11.5) or (11.94) of the Act applies to the transfer, or
- subsection 85(1) of the Act applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee is a financial institution.

In these circumstances, subsection 142.51(9) provides that in respect of the transfer:

- the transferee is, at and after the particular time, deemed to be the same corporation as and a continuation of the transferor in respect of
  - any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the transferor's income for its transition year that can reasonably be attributed to the transferred business,
  - any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the transferor's income for a taxation year of the transferor that begins before the particular time that can reasonably be attributed to the transferred business, and
  - any amount that — in the absence of subsection 142.51(9) and assuming that the transferor is a financial institution on each day (that includes that time or is a subsequent day) that the transferee is a financial institution — would be required to be deducted or included, under subsection 142.51(4) or (5) in computing the transferor's income that can reasonably be attributed to the transferred business, and
- in determining, in respect of the day that includes the particular time or any subsequent day, any amount that is required under subsection 142.51(4) or (5) to be deducted or included in computing the transferor's income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

New subsections 142.51(8) and (9) apply to taxation years that begin on or after October 1, 2006.

Transfer to new partnership

ITA
142.51(10)

New subsection 142.51(10) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(10) provides that, if subsection 98(6) of the Act deems a partnership (the "new partnership") to be a continuation of another partnership (the "predecessor partnership"), and at the time that is immediately after the predecessor partnership ceases to exist, the new partnership is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the new partnership for particular taxation years of the new partnership that begin on or after the day on which the new partnership comes into existence, the new partnership is, in respect of those days, deemed to be the same partnership as and a continuation of the predecessor partnership in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the predecessor partnership's income for its transition year,
- any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the predecessor partnership's income for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence, and
- any amount that, in the absence of subsection 142.51(10) — and assuming that the predecessor partnership is a financial institution on each day (that is the day on which the new partnership comes into existence or a subsequent day) that the new partnership is a financial institution — would be required to be deducted or included, in respect of days that are on or after the day on which the new partnership comes into existence, under subsection 142.51(4) or (5) in computing the predecessor partnership's income.

New subsection 142.51(10) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA
142.51(11)

New subsection 142.51(11) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(11) applies if at a particular time a taxpayer ceases to be a financial institution.

In these circumstances, the subsection requires that the taxpayer deduct, in computing its income for its taxation year that includes the time that is immediately before the particular time, the amount determined by the formula A-B. Element A of the formula is the amount included under subsection 142.51(2) of the Act in computing the taxpayer's income for its transition year. Element B of the formula is the total of all amounts each of which is an amount deducted under subsection 142.51(4) of the Act in computing the income of the taxpayer for a taxation year that began before the particular time.

The subsection can also apply, where a taxpayer ceases at a particular time to be a financial institution, to require the taxpayer to include in computing its income for the taxation year of the taxpayer that includes the time that is immediately before the particular time the amount determined by the formula C – D. Element C of this formula is the amount deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year. Element D of the formula is the total of all amounts each of which is an amount included under subsection 142.51(5) of the Act in computing the taxpayer's income for a taxation year that began before the particular time.

Readers may also refer to the commentary for subsection 142.51(12) of the Act.

New subsection 142.51(11) applies to taxation years that begin on or after October 1, 2006.

Ceasing to carry on business

ITA
142.51(12)

New subsection 142.51(12) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(12) provides that, where at any time a taxpayer that carried on a business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a continuation to which subsection 98(6) of the Act applies), for the purposes of subsection 142.51(11) of the Act, the taxpayer is deemed to have ceased to be a financial institution at the earlier of

- the time (determined without reference to this subsection) at which the taxpayer ceased to be a financial institution, and
- the time that is immediately before the end of the last taxation year of the taxpayer that ended at or before the time at which the taxpayer ceased to exist.

New subsection 142.51(12) applies to taxation years that begin on or after October 1, 2006.

Clause 29

Securities held by financial institutions

ITA
142.6

Section 142.6 of the Act contains rules dealing with special situations involving securities held by financial institutions.

Change in status — prescribed payment card corporation share

ITA
142.6(1.4)

New subsection 142.6(1.4) of the Act applies where a property ceases, at a particular time in a taxation year, to be a prescribed payment card corporation share of a taxpayer and, as a result, becomes mark-to-market property of the taxpayer for the taxation year. In these circumstances, subsection 142.6(1.4) deems the taxpayer

- to have disposed of the property (this being a disposition to which subsection 142.5(1) of the Act does not apply) immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and
- to have acquired the property, at the particular time, at a cost equal to those proceeds,

New subsection 142.6(1.4) applies to taxation years that begin after February 24, 1994.

Change in status — prescribed securities exchange investment

ITA
142.6(1.5)

New subsection 142.6(1.5) of the Act applies where a property ceases, at a particular time in a taxation year, to be a prescribed securities exchange investment of a taxpayer and, as a result, becomes mark-to-market property of the taxpayer for the taxation year.

In these circumstances, subsection 142.6(1.5) deems the taxpayer

- to have disposed of the property (this being a disposition to which subsection 142.5(1) of the Act does not apply) immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and
- to have acquired the property, at the particular time, at a cost equal to those proceeds,

New subsection 142.6(1.5) applies for taxation years that begin after 1998.

Change in status — significant interest

ITA
142.6(1.6)

New subsection 142.6(1.6) of the Act applies if, at the end of a particular taxation year, a taxpayer holds shares of the capital stock of a corporation, because of that holding the taxpayer has a significant interest in that corporation at any time in that taxation year, and the taxpayer did not, at any time in the following taxation year, have a significant interest in that corporation.

In these circumstances, subsection 142.6(1.6) deems the taxpayer to have

- disposed of those shares immediately before the end of the particular taxation year for proceeds equal to the shares' fair market value, and
- acquired those shares at the end of the particular taxation year at a cost equal to those proceeds.

New subsection 142.6(1.6) applies for taxation years that begin on or after October 1, 2006.

Deemed disposition not applicable

ITA
142.6(2)

Subsection 142.6(2) of the Act provides that, for the purposes of the Act, a deemed disposition and reacquisition of a share under certain rules relating to securities held by financial institutions does not affect the time at which a taxpayer is considered to have acquired the share.

Subsection 142.6(2) is amended to add a reference to new subsections 142.6(1.4), (1.5) and (1.6) the amendment applies to taxation years that begin on or after October 1, 2006.

Clause 30

Tax-free Savings Accounts

ITA
146.2

Section 146.2 of the Act provides rules relating to tax-free savings accounts (TFSAs). Several amendments are being made to section 146.2 to respond to issues identified after the introduction of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), which contained the original legislation to implement TFSAs. These amendments are discussed in the commentary below.

Consequential to these amendments, subsections 146.2(3) to (6) are renumbered as subsections 146.2(5) to (8) and subsections 146.2(7) to (9) are renumbered as subsections 146.2(10) to (12). References in these notes are to the subsections as renumbered. For ease of reference, the effects of the renumbering are outlined in the following Table of Concordance.

Former 146.2 Subsection		New 146.2 Subsection	
(1)	Definitions	(1)	Definitions
(2)	Qualifying arrangement conditions	(2)	Qualifying arrangement conditions
		(3)	Paragraphs (2)(*a*), (*b*) and (*e*) not applicable
		(4)	Using TFSA interest as security for a loan
(3)	TFSA	(5)	TFSA
(4)	Trust not taxable	(6)	Trust not taxable
(5)	Amount credited to a deposit	(7)	Amount credited to a deposit
(6)	Trust ceasing to be a TFSA	(8)	Trust ceasing to be a TFSA
		(9)	Trust ceasing to be a TFSA on death of holder
(7)	Annuity contract ceasing to be a TFSA	(10)	Annuity contract ceasing to be a TFSA
(8)	Deposit ceasing to be a TFSA	(11)	Deposit ceasing to be a TFSA
(9)	Arrangement is TFSA only	(12)	Arrangement is TFSA only
		(13)	Regulations

The amendments to section 146.2 apply to the 2009 and subsequent taxation years.

Definitions

ITA
146.2(1)

“qualifying arrangement”

The definition “qualifying arrangement” in subsection 146.2(1) of the Act is relevant primarily for subsection 146.2(5) of the Act. Under that subsection, an arrangement can become a tax-free savings account (TFSA) only if it is a qualifying arrangement at the time it is entered into, and ceases to be a TFSA if it subsequently ceases to be a qualifying arrangement.

An annuity contract with a licensed annuities provider is one of the three types of qualifying arrangements. To qualify, subparagraph (*b*)(ii) of the definition requires that the annuity contract not be adjoined to another contract or arrangement. This condition was intended to preclude contracts commonly referred to as “split dollar” arrangements due to potential concerns about shared-ownership and cross-subsidization between arrangements. However, this condition may have overly broad effects in some instances.

Given that the policy concerns that the condition was intended to address are generally addressed by other provisions in section 146.2 and Part XI.01 of the Act, subparagraph (*b*)(ii) is amended to eliminate this condition.

Using TFSA interest as security for a loan

ITA
146.2(3) and (4)

New subsections 146.2(3) and (4) of the Act are introduced to clarify that none of the rules in paragraphs 146.2(2)(*a*), (*b*) and (*e*) of the Act apply to prevent the holder of a tax-free savings account (TFSA) from using his or her interest in the TFSA as security for a loan or other indebtedness. To guard against the “sale” or “rental” of TFSA contribution room, the relief conferred by these subsections will apply only if the debt agreement is on arm's length terms and it is reasonable to conclude that none of its main purposes is to enable another person or partnership to benefit from the exemption from tax provided in respect of the TFSA.

TFSA

ITA
146.2(5)

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

Subsection 146.2(5) is amended in two respects. First, the filing deadline for the election is changed to the last day of February of the year following the year in which the arrangement is entered into. This corresponds to the filing deadline for the TFSA annual information return required under new subsection 223(1) of the *Income Tax Regulations*. It is expected that the filing of the first information return for a TFSA will constitute a valid election, provided that the return is filed on time. Second, subsection 146.2(5) is amended to clarify the precise timing as to when an arrangement ceases to be a TFSA.

Trust ceasing to be a TFSA on death of holder

ITA
146.2(9)

Subsection 146.2(5) of the Act provides that an arrangement ceases to be a tax-free savings account (TFSA), and thus loses its tax-exempt status, on the death of the last holder of the TFSA. In the case of a trusteed arrangement, subsection 146.2(8) of the Act treats the trust as having disposed of and reacquired all of its property for the property's fair market value (FMV). This ensures that the trust is taxed only on income accruing after the holder's death, and that capital gains and losses arising from any subsequent dispositions of property reflect only increases or decreases in value occurring after the holder's death.

New subsection 146.2(9) is introduced to prevent this treatment of trusteed TFSAs from causing undue administrative and reporting difficulties. The new subsection provides several rules that modify the tax treatment of trusteed TFSAs on the death of the holder, and bring the tax treatment of trusteed TFSAs into closer alignment with the tax treatment of trusteed RRSPs on the death of the annuitant.

New paragraph 146.2(9)(*a*) deems the trusteed arrangement to continue to be a TFSA for specified provisions of the Act and Regulations. (For all other purposes, it is no longer a TFSA.) The main effect of this deeming rule is to allow the trust to continue to maintain its tax-exempt status under subsection 146.2(6) of the Act until the end of the year following the year in which the holder dies. If it is still in existence at the beginning of the second year following the holder's death, the trust will become taxable from that point forward and, by virtue of subsection 146.2(8) of the Act, will be treated as having disposed of, and reacquired, its property for its FMV at that time.

New paragraph 146.2(9)(*b*) requires that any payments made from the trust during the exempt period in full or partial satisfaction of a taxpayer's beneficial interest in the trust be included in the taxpayer's income for the year of receipt, except to the extent designated by the trust as being attributable to the FMV of the TFSA at death. In other words, to the extent that the payment represents the distribution of income earned on, or appreciation in the value of, the trust's property during the exempt period, that amount will be included in the taxpayer's income. As with RRSPs, there are no specific rules in the Act for the trust to follow in determining the extent to which any given payment made following the death of the TFSA holder is attributable to post-death income or appreciation in value. The only constraint imposed on the trust is that the total amounts designated as being non-taxable cannot exceed the FMV of the trust's assets at death.

New paragraph 12(1)(*z.5*) of the Act requires that the income inclusion determined under paragraph 146.2(9)(*b*) be included in the determining the taxpayer's income from property. With the exception of payments to non-residents, there is no requirement for the issuer to withhold tax on the payments.

New paragraph 146.2(9)(*c*) is relevant only if the trust continues to exist after the end of the exempt period. It provides that the trust is required to include in its income for its first taxable year any post-death exempt period income or appreciation that was not paid out during the exempt period. Paragraph 12(1)(*z.5*) requires this amount to be included in the trust's income as income from property, which may be flowed out to the beneficiaries of the trust under regular trust taxation rules.

Regulations

ITA
146.2(13)

New subsection 146.2(13) of the Act allows the Governor in Council to make regulations requiring issuers to file information returns relating to tax-free savings accounts (TFSAs). In this regard, new subsection 223(1) of the Regulations requires TFSA issuers to file annual information returns. For further details, refer to the commentary on that subsection below.

Clause 31

Definitions

ITA
149.1(1)

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered charity status. Budget 2007 introduced an excess corporate holdings regime for private foundations that requires a private foundation to divest itself of excessive shareholdings in corporations.

The definitions in subsection 149.1(1) of the Act apply for the purposes of sections 149.1 and 149.2 and Part V of the Act. Certain definitions in subsection 149.1(1) are amended or replaced concurrently with amendments to section 149.2, generally to provide an exception in respect of certain shares, not listed on a designated stock exchange, acquired by a private foundation before March 19, 2007.

These amendments to subsection 149.1(1) apply after March 18, 2007.

"divestment obligation percentage"

The "divestment obligation percentage" of a private foundation for a taxation year generally represents the percentage of outstanding shares of a class of the capital stock of a corporation that must be divested by the private foundation before the end of the year in order to avoid the application of a penalty under subsection 188.1(3.1) of the Act. The definition is amended to provide that the percentage otherwise determined cannot be greater than the amount by which the percentage of shares of a class that are held by the foundation exceeds the "exempt shares percentage" of the foundation. As such, a foundation is not required in a taxation year to divest of corporate shares if, at the end of the year, the foundation holds no shares other than exempt shares.

For more information, readers may refer to the commentary for the definitions "exempt shares" and "exempt shares percentage".

"entrusted shares percentage"

Where a private foundation has an entrusted shares percentage greater than 20 per cent, the excess corporate holdings percentage is calculated by using the entrusted shares percentage instead of the 20 per cent threshold. Entrusted shares are shares of a class of the capital stock of a corporation, held by a foundation at a particular time, that were acquired (generally before March 19, 2007) by way of a gift that is subject to a trust or direction that the foundation may not dispose of them before that time.

The definition “entrusted shares percentage” is repealed and replaced with paragraph (*a*) of the new definition “exempt shares”, which applies for the purpose of the new definition of the “exempt shares percentage” of a private foundation. For more information, readers may refer to the commentary for those definitions.

“equity percentage”

The new definition “equity percentage” applies for the purpose of the new definition of “exempt shares”. Generally, the excess corporate holdings regime does not require a private foundation to divest of exempt shares that it held on March 19, 2007. Such exempt shares may include corporate shares that are not listed on a designated stock exchange: however, an exception is unlisted shares of a corporation that holds an equity percentage in a public corporation.

In this regard, “equity percentage” has, subject to subsection 149.2(2.1), the same meaning as defined in subsection 95(4) of the Act. However, for the purpose of identifying exempt shares under the excess corporate holdings regime, it is not necessary to calculate the amount of the percentage: rather, it is only necessary to determine that the percentage would be greater than zero.

It is thus sufficient to know that a particular corporation (some unlisted shares of which are held by the private foundation) holds either directly or indirectly through its shareholdings in another corporation an interest in the shares of a public corporation. If this is the case, then the particular corporation will have an equity percentage in the public corporation.

For this purpose, new subsection 149.2(2.1) of the Act generally treats a right to acquire shares, or to control voting rights in respect of shares, as an interest in the shares.

For more information, readers may refer to the commentary for subsection 149.2(2) and to the example under the commentary for the definition “exempt shares”.

“exempt shares”

The new definition “exempt shares” applies for the purpose of the new definition of “exempt shares percentage” of a private foundation. In general, under the excess corporate holdings regime, no obligation is imposed on a private foundation to divest of shares, previously described as “entrusted shares”, that were

- donated to the foundation before March 19, 2007 and that are subject to a condition that they be retained by the foundation; or
- donated on or after March 19, 2007 and before March 19, 2012, pursuant to the terms of a will signed, or an inter vivos trust settled, before March 19, 2007 that included such a condition and that was not amended after that date.

The new definition of exempt shares also includes shares acquired by a private foundation in exchange for other shares that were exempt shares. For more information, readers may refer to the commentary for the definition of “substituted shares”.

Further, exempt shares include certain shares held by a private foundation as of March 18, 2007 that are not listed on a designated stock exchange (“unlisted shares”). This exemption does not, however, extend to unlisted shares in a particular corporation through which the foundation has, directly or indirectly, an interest in shares of a public corporation. More specifically, unlisted shares in a particular corporation held by the foundation will not be exempt if

1. the particular corporation has an “equity percentage” in the shares of a public corporation (discussed further below); and
2. the particular corporation, or a third corporation through which the particular corporation indirectly holds its equity percentage in the public corporation, is controlled by relevant persons in respect of the foundation or by the foundation alone or together with relevant persons;

unless

3. the foundation, even if it held directly the shares of the public corporation that give rise to the equity interest, would not have an excess corporation holdings percentage in respect of the class of those public corporation shares; or
4. the foundation, alone or together with any controlled corporation referred to in no.2 above, holds no more than 2% of all the issued and outstanding shares of that class of the public corporation.

Unlisted shares that are not exempt shares, and all listed shares, held on March 18, 2007 are subject to the transitional excess corporate holdings rules in subsection 149.2(8) of the Act.

An “equity percentage” of a particular corporation in the shares of a public corporation is, in general, an interest held directly or indirectly through its shareholdings in another corporation. For further detail, readers may refer to the commentary on the definitions “equity percentage”. A “relevant person” in respect of a private foundation is defined in subsection 149.1(1) of the Act, and is generally a person that does not deal at arm’s length with the private foundation.

Example 1 – direct interest of corporation

Mr. X is the sole trustee of the X Family Foundation. On March 18, 2007, the X Family Foundation held 48% of the voting shares of X Corporation, a private corporation of which Mr. X owned the other 52% of the voting shares.

On November 1, 2008, X Corporation acquired 16% of the Class A shares of PubCo, a public corporation, and the X Family Foundation purchased 5% of the same class of shares. None of these shareholdings had changed as of December 31, 2008.

The X Family Foundation must determine whether, on December 31, 2008, its unlisted shares in X Corporation are exempt from the excess corporate holdings regime or, in the alternative, are subject to the transitional rules that apply to corporate shares held by a private foundation on March 18, 2007.

- *X Corporation has an equity percentage in PubCo, because it holds shares in PubCo. It is not necessary to calculate the amount of the equity percentage.*
- *The X Family Foundation does not control X Corporation (the owner of the PubCo shares), but X Corporation is controlled by Mr. X, who is a relevant person in respect of the X Family Foundation because he controls the foundation.*
- *The X Family Foundation, if it held the PubCo Class A shares itself, would hold 21% of that class of shares, and therefore would have an “excess holdings percentage” in respect of those shares of 1% (calculated without reference to the transitional rules).*
- *The X Family Foundation, together with X Corporation (the “controlled corporation”), holds more than 2% of the PubCo Class A shares.*

Even though the X Family Foundation’s shares of X Corporation were acquired before March 19, 2007, they are not “exempt shares” as of December 31, 2008 because on that date X Corporation (being a corporation controlled by a relevant person, Mr. X) has an interest in a public corporation.

Example 2 – indirect interest of corporation

As with Example 1, Mr. X is the sole trustee of the X Family Foundation. On March 18, 2007, the X Family Foundation held 48% of the voting shares of Y Corporation, a private corporation of which Mr. X owned the other 52% of the voting shares.

On July 1, 2008, Y Corporation purchased 25% of the voting shares of AA Corporation, a private corporation of which Mrs. X (spouse of Mr. X) held the other 75%.

On November 1, 2008, AA Corporation acquired 16% of the Class A shares of PubCo, a public corporation, and the X Family Foundation purchased 5% of the same class of shares. None of these shareholdings had changed as of December 31, 2008.

The X Family Foundation must determine whether, on December 31, 2008, its unlisted shares in Y Corporation are exempt from the excess corporate holdings regime or, in the alternative, are subject to the transitional rules that apply to corporate shares held by a private foundation on March 18, 2007.

- *Y Corporation has an equity percentage in PubCo, because it holds shares of AA Corporation, which in turn holds shares in PubCo. It is not necessary to calculate the amount of the equity percentage.*
- *The X Family Foundation does not control A Corporation (the owner of the PubCo shares). But AA Corporation is controlled by Mrs. X, who is a relevant person in respect of the X Family Foundation because she is related to Mr. X, who controls the foundation.*
- *The X Family Foundation, if it held the PubCo Class A shares itself, would hold 21% of that class of shares, and therefore have an "excess holdings percentage" in respect of those shares of 1% (calculated without reference to the transitional rules).*
- *The X Family Foundation, together with AA Corporation (the "controlled corporation"), holds more than 2% of the PubCo Class A shares.*

Even though the X Family Foundation shares of Y Corporation were acquired before March 19, 2007, they are not "exempt shares" as of December 31, 2008 because on that date Y Corporation has an indirect interest in a public corporation, via its interest in AA Corporation (being a corporation controlled by a relevant person).

Example 3– no excess holdings percentage

Assume that, in Example 2, AA Corporation had acquired only a 12% interest in Pubco. The Y Corporation shares held by the foundation would remain exempt shares, because the combined shareholdings in PubCo of the foundation, relevant persons and AA Corporation would be only 17%. That is, the foundation would not, even if it owned all those shares directly, have an excess (over 20%) holdings percentage.

"exempt shares percentage"

The new definition "exempt shares percentage" of a private foundation applies for the purpose of calculating the "divestment obligation percentage" of a private foundation, as defined in subsection 149.1(1) of the Act. The exempt shares percentage of a private foundation is the percentage of issued and outstanding shares of a corporation that are exempt shares held by the foundation. A private foundation may cease to have an exempt shares percentage if shares that it holds cease to be exempt shares. Similarly, a private foundation may commence to have an exempt shares percentage if unlisted shares that it held on March 18, 2007 have ceased to be exempt shares as defined in subsection 149.1(1).

If a private foundation holds identical shares of a class of capital stock of a corporation, some of which were held on March 18, 2007, and others of which were acquired after that day, the disposition of some shares is considered not to reduce the exempt shares percentage except to the extent that the number disposed of exceeds the number of shares acquired after March 18, 2007. However, where exempt shares are disposed of, a later acquisition of identical shares will not restore the foundation's exempt shares percentage.

For more information, readers may refer to the commentary for the definitions "divestment obligation percentage" and "exempt shares".

"substituted shares"

The new definition "substituted shares" applies for the purpose of the definition of "exempt shares". In general, certain shares acquired by a private foundation in exchange for exempt shares will themselves be exempt. The new shares must be acquired in the course of a transaction to which section 51, subsection 85.1(1), or section 86 or 87 of the Act applies.

Clause 32

ITA
149.2

Section 149.2 of the Act includes some of the rules relevant to the excess corporate holdings regime in respect of private foundations, such as for the calculation of the divestment obligation percentages of a private foundation in respect of its excess holdings of the shares of the capital stock of a corporation.

Ownership

ITA
149.2(2.1)

New subsection 149.2(2.1) of the Act applies for the purposes of the definition “equity percentage” in subsection 149.1(1) of the Act, applicable after March 18, 2007. That definition applies for the purpose of determining whether certain shares, held by a private foundation on March 18, 2007, are exempt from divestment under the excess corporate holdings regime.

In general, a particular corporation has an equity percentage in another corporation if the particular corporation has an interest in the shares of the other corporation (held either directly or indirectly through the particular corporation’s shareholdings in a third, intermediary corporation). For example, if the particular corporation owns shares in a second corporation, which in turn owns shares in a public corporation, then the particular corporation has an equity interest in the public corporation.

Subsection 149.2(2.1) extends this definition such that a “right under a contract” described in paragraph 251(5)(*b*) of the Act will be considered to represent ownership of shares. Such a right under a contract could include, for instance, a right to acquire shares or to control the voting rights of shares, a right to cause a corporation to redeem, acquire or cancel the shares of another shareholder, or a right to cause a reduction to the voting rights of another shareholder.

As such, in the example described above, if the second corporation held a right to control the voting rights of shares in the public corporation, rather than the shares themselves, the particular corporation would still have an equity interest in the public corporation.

Shares held through a trust on March 18, 2007

ITA
149.2(9) to (11)

New subsections 149.2(9) to (11) of the Act apply for the purpose of the excess corporate holdings regime for private foundations. These provisions attribute to a foundation, in certain circumstances, shares held by a trust on March 18, 2007.

New subsection 149.2(10) deems a foundation to own shares held by a trust on March 18, 2007, in proportion to the value of the foundation’s proportionate interest in the trust, where the following conditions in subsection 149.2(9) are met:

- the foundation is the sole trustee of the trust; or
- the foundation is a “majority interest beneficiary” (as that term is defined in subsection 251.1(3) of the Act) of the trust, and a majority of the trustees of the trust consist of the foundation and relevant persons in respect of the foundation.

Where the foundation is deemed to hold shares that meet the conditions of the definition “exempt shares” in subsection 149.1(1) of the Act, the foundation may not, as a consequence, have a divestment obligation in respect of those shares.

For the purpose of simplifying the valuation of a foundation's interest in a discretionary trust, subsection 149.2(11) removes the significance of a person exercising, or failing to exercise, a discretionary power in respect of the allocation of income or capital of the trust.

These amendments apply for taxation years of private foundations that begin on or after February 26, 2008.

Allocation of net increase in excess corporation holdings percentage

ITA
149.2(5)(*b*) and (*c*)

Subsection 149.2(5) of the Act allocates the increase, in a taxation year, in a private foundation's "excess corporation holdings percentage" in respect of corporate shares. The increase is allocated to the divestment obligation percentage for a taxation year in accordance with the manner in which the foundation acquired shares of that class.

The divestment obligation percentage is effectively a "pool" of excess acquisitions of the current year or prior years.

Subsection 149.2(5) is amended to provide a relieving technical amendment that applies to registered charities that were private foundations on March 19, 2007. In applying paragraphs 149.2(5)(*b*) and (*c*) of the Act to the first taxation year of the foundation that begins after that date, the phrase "in the current year" in those paragraphs is to be read as the phrase "in the period that begins on March 18, 2007 and ends at the end of the current year".

This amendment ensures that longer divestment periods for bequests and arm's length gifts of shares are retained for shares acquired by the foundation in the "stub period" from March 18, 2007 to the end of the taxation year of the foundation that includes that date.

Clause 33

Assessment

ITA
152

Section 152 of the *Income Tax Act* contains rules relating to assessments (including reassessments) of tax, interest and penalties payable by a taxpayer.

Assessment and Reassessment – Limitation Period

ITA
152(4)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may not reassess tax payable by a taxpayer for a taxation year after the normal reassessment period for the taxpayer in respect of the year unless certain conditions described in paragraph 152(4)(*a*) or (*b*) have been met.

Subsection 152(4) is amended by adding new paragraph (*c*), consequential on the *Canada-Ontario Memorandum of Agreement Concerning a Single Administration of Ontario Corporate Tax*. New paragraph (*c*) provides for an extension of the normal reassessment period to one year after the later of two dates. These two dates are the day on which the Minister is advised of a provincial reassessment and the day that is 90 days after the mailing of a provincial reassessment notice.

"Provincial reassessment" is used in new paragraph 152(4)(*c*) to refer to a specific type of assessment or reassessment. Generally, a provincial reassessment is an assessment, reassessment or additional assessment of tax payable by a corporation for a taxation year under the law of a province that imposes a corporate income tax, where that assessment or reassessment is made because of a change in the allocation of the corporation's taxable income earned in a province.

This amendment applies on Royal Assent.

Extended reassessment period

ITA
152(6.2)

New subsection 152(6.2) of the Act is added as a consequence of the new definition "excluded property" in subsection 142.2(1) of the Act. Subsection 152(6.2) requires that the Minister of National Revenue reassess a taxpayer's tax for a particular taxation year, in order to take into account the application of paragraph (*d*) of the definition "excluded property" in subsection 142.2(1) in respect of shares held by the taxpayer in the particular taxation year, if

- the taxpayer has filed for the particular taxation year the return of income required by section 150, and
- the taxpayer has filed with the Minister, on or before the filing-due date of the taxpayer's taxation year that includes the acquisition of control time referred to in paragraph (d) of the definition "excluded property", a prescribed form amending the return.

This change applies for taxation years that begin after 2001. However, for taxation years that begin before October 1, 2006, the reference to "paragraph (*d*) of the definition of excluded property" is to be read as a reference to "paragraph (*d.3*) of the definition of mark-to-market property".

Clause 34

Large corporations

ITA
181.3

Section 181.3 of the Act provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of a financial institution (as defined in subsection 181(1)) for the purposes of the former large corporation tax. Although that tax no longer applies, various aspects of its calculation are used for other purposes under the Act.

Taxable capital employed in Canada of financial institution

ITA
181.3(1)(*c*)(ii)(B)

Subsection 181.3(1) of the Act provides the rules for determining the amount of a financial institution's "taxable capital employed in Canada" for the purposes of the former large corporation tax in Part I.3.

In the case of an insurance corporation, a "reserve adjustment" under clause 181.3(1)(*c*)(ii)(B) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in clause 181.3(1)(*c*)(ii)(B) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin on or after October 1, 2006.

Clause 35

Penalty

ITA
188.1

Section 188.1 of the Act applies penalties to charities. The penalties generally apply in respect of activities that charities are not permitted to undertake.

ITA
188.1(3.2)(*c*)

188.1(3.3) to (3.5)

Subsection 188.1(3.2) of the Act is an anti-avoidance rule that addresses any attempt by a private foundation to circumvent the reporting and divestment obligation requirements of the excess corporate holdings regime.

New subsections 188.1(3.3) to (3.5) of the Act add an anti-avoidance provision in respect of the indirect holding by a private foundation or relevant person, through an interest in a trust, of shares or certain other interests in a corporation. Subsection 188.1(3.5) deems a foundation (or, in some circumstances, a relevant person in respect of the foundation) to own shares that are actually held by a trust, in proportion to the value of the foundation's proportionate interest in the trust, where the following conditions in subsection 188.1(3.3) are met:

- the private foundation or relevant person (each of which is referred to as an "insider") is a beneficiary under the trust;
- it may reasonably be considered that one of the purposes of the establishment of a trust is to hold or acquire shares or other interests or rights in a corporation; and
- the private foundation would have a divestment obligation in respect of the particular class of shares if the private foundation held (in addition to any shares of the class that it actually owns) the shares (or deemed shares – see below) that are owned by the trust.

In this regard, where the trust owns an interest, other than shares, in a corporation, and that interest is associated with a "right under a contract" in respect of shares described in paragraph 251(5)(*b*) of the Act, the trust is deemed by paragraph 188.1(3.4)(*a*) to own shares of the same class that correspond to the value of the actual non-share interest in the corporation. Such a right under a contract could include, for instance, a right to acquire shares or to control the voting rights of shares, a right to cause a corporation to redeem, acquire or cancel the shares of another shareholder, or a right to cause a reduction to the voting rights of another shareholder.

For the purpose of the valuation of a foundation's interest in a discretionary trust, paragraph 188.1(3.4)(*b*) removes the significance of a person exercising, or failing to exercise, a discretionary power in respect of the allocation of income or capital of the trust.

Paragraph 188.1(3.2)(*c*) is amended to clarify that the fair market value of a share deemed to be issued by a corporation under this subsection is determined as that of an actual share and without reference to this subsection. This amendment is made concurrently with the inclusion of identical language in new paragraph 188.1(3.5)(*c*).

These amendments apply to taxation years of private foundations that begin on or after February 26, 2008.

Clause 36

Part VI – Tax on Capital of Financial Institutions

Taxable capital employed in Canada

ITA
190.11

Section 190.11 of the Act contains rules for determining the taxable capital employed in Canada by a resident life insurance corporation for the purposes of Part VI of the Act.

Taxable capital employed in Canada

ITA
190.11(*b*)(ii)

In the case of a life insurance corporation that was resident in Canada throughout the year, a "reserve adjustment" under subparagraph 190.11(*b*)(ii) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.11(*b*)(ii) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin on or after October 1, 2006.

Clause 37

Part VI – Tax on Capital of Financial Institutions

Capital

ITA
190.13

Section 190.13 of the Act contains rules for determining the taxable capital employed in Canada by a financial institution for the purposes of Part VI of the Act.

Capital

ITA
190.13(*c*)(iv)

In the case of a life insurance corporation that was non-resident throughout the year, a "reserve adjustment" under subparagraph 190.13(*c*)(iv) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.13(*c*)(iv) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin on or after October 1, 2006.

Clause 38

SIFT partnerships

ITA
197

Section 197 of the Act applies a tax on certain earnings of a SIFT partnership.

Definitions

ITA
197(1)

"SIFT partnership"

A "SIFT partnership", being a specified flow-through investment partnership, for a taxation year means a Canadian resident partnership if, at any time in the taxation year, the partnership holds non-portfolio property and its securities are listed on a stock exchange or other public market.

The definition is amended to exclude from treatment as a SIFT partnership for a taxation year an entity that is an excluded subsidiary entity for the taxation year. For more information, readers may refer to the commentary on the new definition "excluded subsidiary entity" in subsection 122.1(1) of the Act.

This amendment comes into force on October 31, 2006.

Clause 39

Definitions

ITA
204

Section 204 of the Act sets out a number of definitions that apply for the purposes of Part X of the Act.

“qualified investment”

The definition “qualified investment” in section 204 of the Act sets out the types of property that a trust governed by a deferred profit sharing plan is permitted to hold. The definition is also relevant for RRSPs, RESPs, RRIFs, registered disability savings plans (RDSPs) and tax-free savings accounts (TFSAs), as the definitions “qualified investment” in each of subsections 146(1), 146.1(1), 146.3(1), 205(1) and 207.01(1) largely adopt the list of investments described by the definition in section 204. It is also relevant for investment intermediaries that are registered investments (RIs) under any of paragraphs 204.4(2)(*b*), (*d*) or (*f*) of the Act and that, as a result, are required to limit their investments to qualified investments.

Paragraph (*c.1*) of the definition includes a debt obligation that has, at the time of acquisition, an investment grade rating with a prescribed credit rating agency and that is part of a minimum $25 million issuance. In the case of debt obligations that are issued on a continuous basis, the $25 million issuance requirement can be satisfied by having regard to all of the issuer's outstanding debt obligations of that type.

Paragraph (*c.1*) is amended in three respects. First, it is amended so that the investment grade rating condition may be satisfied either at the time of acquisition or on an on-going basis. This amendment is intended, in particular, to provide a means for an issuer of a previously non-rated debt obligation that had been a qualified investment under another provision of the Act or Regulations, but that later ceases to qualify under that provision, to retain qualified investment status by obtaining an investment grade rating for the debt obligation.

Second, paragraph (*c.1*) is amended to waive the investment grade rating condition in the case of debt obligations that are acquired pursuant to a court-approved proposal under Canadian insolvency legislation in exchange for debt obligations that previously had an investment grade rating. This amendment is intended, in particular, to ensure that any RIs or registered plan trusts that held third-party asset-backed commercial paper are not adversely impacted under the income tax rules by the restructuring plan developed by the Pan-Canadian Investors Committee.

Third, paragraph (*c.1*) is amended to clarify the application of the $25 million issuance condition. The existing wording caused some uncertainty in its application to debt issuance programs that involve multiple series of debt obligations. As amended, the condition looks to the issuer’s outstanding debt obligations issued under the particular debt issuance program, rather than to the issuer’s outstanding debt obligations of the same type.

These amendments apply in determining qualified investment status at any time after March 18, 2007, which corresponds to the introduction of paragraph (*c.1*).

Clause 40

Taxes in respect of TFSAs

ITA
Part XI.01

Part XI.01 of the Act imposes special taxes relating to tax-free savings accounts (TFSAs), including a tax on excess contributions and taxes on supplementary advantages and non-qualified or prohibited investments.

Several amendments are being made to Part XI.01 to respond to issues identified after the introduction of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), which contained the original legislation to implement TFSAs. These amendments are discussed in the commentary below.

The amendments to Part XI.01 apply to the 2009 and subsequent taxation years.

Definitions

ITA
207.01(1)

Subsection 207.01(1) of the Act defines a number of expressions that apply for the purposes of Part XI.01.

“advantage”

Section 207.05 of the Act imposes a special tax if an advantage in relation to a tax-free savings account (TFSA) is extended to any person who is, or who does not deal at arm’s length with, the holder of the TFSA. An “advantage” is defined as any benefit, loan or indebtedness that is, in any way, dependent on the existence of the TFSA, with certain exceptions.

The definition “advantage” is amended in two respects. First, it is amended to confirm, for greater certainty, that a distribution from a TFSA is not an advantage. “Distribution” is defined by subsection 146.2(1) of the Act as any payment made out of or under the TFSA in full or partial satisfaction of the holder’s interest in the TFSA.

Second, it is amended to provide that an advantage includes any increase in the value of the TSFA that can reasonably be considered to be attributable, directly or indirectly, to:

- a transaction or event (or series of transactions or events) that does not reflect commercial terms and a main purpose of which is to enable the holder (or other person or partnership) to benefit from the tax-exempt status of the TFSA; or
- a payment received in substitution for either (i) a payment for services rendered by the holder or non-arm’s length person, or (ii) a payment of a return on investment or proceeds of disposition in respect of property held outside of the TFSA by the holder or non-arm’s length person.

This provision is intended to guard against transactions designed to artificially shift taxable income away from the holder and into the shelter of a TFSA or to circumvent the TFSA contribution limits.

The definition “advantage” also includes a prescribed benefit. At this time, it is not anticipated that any amendments will be made to the regulations to prescribe a benefit for the purpose of the definition “advantage”.

“excess TFSA amount”

The expression “excess TFSA amount” is relevant primarily for the special tax imposed under section 207.02 of the Act on excess TFSA contributions. The amount of the tax is determined on the basis of an individual’s highest excess TFSA amount (determined by a formula) in a particular month.

Under variable E of the formula, an individual’s excess TFSA amount is reduced by the total amount of distributions made in the year, and at or before the time, under tax-free savings accounts (TFSAs) of the individual – other than distributions made by way of a qualifying transfer and prescribed distributions. For this purpose, it had been intended that a particular distribution be prescribed to the extent that it was not required to reduce or eliminate the individual’s excess TFSA amount.

The definition “excess TFSA amount” is amended to incorporate, directly into the description of variable E, what had been intended to be dealt with by regulation. As amended, variable E includes only the “qualifying portion” of a distribution, and defines “qualifying portion” as the lesser of the amount of the distribution and the amount that would have been the individual’s excess TFSA amount at the time of the distribution had the distribution not been made. To illustrate, assume that an individual with an $8,000 excess TFSA amount makes a $10,000 TFSA withdrawal. Since only $8,000 is required to eliminate the excess TFSA amount, only $8,000 is included in determining the value of variable E.

In the case of a distribution that is a "qualifying transfer" (as defined in subsection 207.01(1)) or a prescribed distribution, the qualifying portion is defined by variable E to be nil. At this time, it is not anticipated that any amendments will be made to the regulations to prescribe a distribution for the purpose of variable E.

These amendments to variable E do not represent any change in policy, but are rather intended solely to improve the ease with which these rules can be applied.

The expression "excess TFSA amount" is also relevant for the purposes of paragraph 74.5(12)(*c*) of the Act, subparagraph (*d*)(iii) of the new definition "exempt contribution" in subsection 207.01(1) and subsection 207.01(3) of the Act, which all depend on whether an individual has an excess TFSA amount at a particular time. For the purpose of applying these provisions, it is important to note that the inclusion of the words "if any" in the preamble of the existing definition indicates that an individual is not considered to have an excess TFSA amount where the amount determined by the formula in the definition is nil (either in fact or because of the application of section 257 of the Act).

"exempt contribution"

Subsection 207.01(2) of the Act defines an "exempt contribution" for the purpose of the definition "excess TFSA amount" in subsection 207.01(1). In general terms, an exempt contribution is a TFSA contribution made by an individual (the "survivor") with proceeds received from an arrangement that ceased to be a tax-free savings account (TFSA) because of the death of the survivor's spouse or common-law partner (the "deceased"). Exempt contributions are disregarded in determining if the survivor has an excess TFSA amount.

To be an exempt contribution, the contribution must be made during the period (referred to as the "rollover period") that begins when the deceased dies and that ends on the second anniversary of that death (or at any later time that is acceptable to the Minister), and the survivor must designate the contribution as an exempt contribution in their return of income for the taxation year in which the contribution is made.

The definition "exempt contribution" is amended in several ways. First, it is moved from subsection 207.01(2) to subsection 207.01(1).

Second, the deadline for making an exempt contribution without having to obtain the approval of the Minister is modified to correspond to the post-death exempt period provided under new paragraph 146.2(9)(*a*) of the Act for TFSA trusts – i.e., the end of the calendar year following the year of death (rather than the second anniversary of the death).

Third, to simplify administration, the definition is amended to require that the contribution designation be made by filing a prescribed form in prescribed manner within 30 days after the day on which the contribution is made (rather than on the survivor's return of income).

Finally, the definition is amended to reflect the renumbering of subsections 146.2(6), (7) and (8) of the Act as subsections 146.2(8), (10) and (11), respectively.

"prohibited investment"

The definition "prohibited investment" is relevant for the special taxes imposed under section 207.04 of the Act. The definition specifically excludes a prescribed property and specifically includes a restricted property, which is defined in subsection 207.01(1) as having the meaning assigned by regulation. To date, no regulations have been made with respect to either prescribed property or restricted property.

The definition "prohibited investment" is amended to replace the expression "prescribed property" with the expression "prescribed excluded property" and to replace the expression "restricted property" with the expression "prescribed property". The definition "restricted property" is repealed. These amendments are made for drafting convenience and do not represent any change in policy.

New section 5000 of the Regulations sets out the property that is prescribed for these two purposes. For details, readers may refer to the commentary on that section.

Survivor as successor holder

ITA
207.01(3)

Subsection 207.01(3) of the Act provides a special rule that applies for the purpose of the tax on excess TFSA contributions where an individual becomes a successor holder of a tax-free savings account (TFSA) on the death of the individual's spouse or common-law partner. Subsection 207.01(3) is amended to reflect the movement of the definition "exempt contribution" from subsection 207.01(2) of the Act to subsection 207.01(1) of the Act.

Clause 41

Tax payable on prohibited or non-qualified investment

ITA
207.04

Section 207.04 of the Act imposes taxes on the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a non-qualified or prohibited investment. The references in that section to subsection 146.2(4) of the Act are amended to reflect the renumbering of that subsection as subsection 146.2(6).

Clause 42

Waiver of tax payable

ITA
207.06

Section 207.06 of the Act allows the Minister to waive all or part of any tax imposed under sections 207.02, 207.03, 207.04 and 207.05 in connection with tax-free savings accounts (TFSAs).

Waiver of tax payable

ITA
207.06(2)

Subsection 207.06(2) of the Act allows the Minister to waive all or part of any tax imposed under sections 207.04 and 207.05 in connection with tax-free savings accounts (TFSAs), where it is just and equitable to do so. Among these special taxes is a tax imposed on a TFSA holder under subsection 207.04(6) of the Act on income and capital gains derived from prohibited investments.

Subsection 207.06(2) is amended to remove the Minister's authority to waive the tax on prohibited investment income. This is consistent with the fact that no authority is given to the Minister to waive the tax imposed under subsection 146.2(6) of the Act on income and capital gains derived from non-qualified investments.

Clause 43

Tax on investment income of life insurers

ITA
211

Section 211 of the Act sets out definitions and related rules the purposes of Part XII.3 of the Act, which imposes a special tax on the taxable Canadian life investment income of a life insurer. "Registered life insurance policies", which include among other things a life insurance policy that is issued as a tax-free savings account (TFSA), are specifically excluded from the scope of this tax.

“Registered life insurance policy”

ITA
211(1)

The definition “registered life insurance policy” in subsection 211(1) of the Act is amended to delete the reference to a tax-free savings account (TFSA), as it is redundant. An annuity contract, which is the only type of insurance product that is eligible to be issued as a TFSA, is already excluded from the scope of Part XII.3 tax by virtue of being specifically excluded from the definition “taxable life insurance policy” in subsection 211(1).

This amendment applies to the 2009 and subsequent taxation years.

Clause 44

Tax on non-residents

ITA
212

Section 212 of the Act imposes an income tax on various types of property income earned by non-residents from sources in Canada. Because the tax is usually required to be withheld and remitted by the payers of the amounts, it is commonly referred to as a “non-resident withholding tax”.

Former TFSA

ITA
212(1)(*p*)

Paragraph 212(1)(*p*) of the Act provides for non-resident withholding tax on payments out of a registered home ownership savings plan (RHOSP).

With the elimination of RHOSPs in 1986, paragraph 212(1)(*p*) is now obsolete and is repealed. In its place, new paragraph 212(1)(*p*) is introduced to provide for non-resident withholding tax on certain payments made out of a trust governed by a former tax-free savings account (TFSA) after the death of the holder of the TFSA. The withholding tax applies only to the portion of the payment that would have been included in computing the recipient’s income because of paragraph 12(1)(*z.5*) of the Act if the recipient had been resident in Canada.

These amendments apply to the 2009 and subsequent taxation years.

Clause 45

Communication of Information

ITA
241

Section 241 of the Act prohibits officials and other persons from using or communicating taxpayer information obtained under the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 241(1), (2), (5), (6), (10), and paragraph 241(4)(*l*) of the Act are amended and new subsections 241(9.2) to (9.4) of the Act are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Provision of information

ITA
241(1)

Subsection 241(1) of the Act prohibits the use or communication of taxpayer information by an official, except as authorized by section 241. The preamble to subsection 241(1) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition “representative” in subsection 241(10). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of taxpayer information. The amendment also ensures that the offence for contravening subsection 241(1), provided for in subsection 239(2.2) of the Act, applies to a representative of a government entity as well.

For more information regarding the new definition “representative” of a government entity readers may refer to the explanatory notes below.

This amendment applies on Royal Assent.

Evidence

ITA
241(2)

Subsection 241(2) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any taxpayer information in connection with any legal proceedings. (This prohibition is overridden in certain cases described in subsection 241(3) of the Act). Subsection 241(2) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Disclosure of personal information

ITA
241(4)(*l*)

Subsection 241(4) of the Act sets out circumstances in which, and the purpose for which, taxpayer information may be disclosed.

Paragraph 241(4)(*l*) allows an official (as defined in subsection 241(10) of the Act) to provide the business number, name, address, telephone number and facsimile number of the holder of the business number to another official of a department or agency of the government of Canada or of a province solely for the purpose of the administration and enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 241(4)(*l*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection (10)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- “contact information”, “corporate information” and “registration information” – all as defined in subsection (10) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available such as through provincial corporate registries.

An official may provide information contained in paragraph 241(4)(*l*) to a representative of a government entity in connection with a program, an activity or service provided or undertaken by the entity only if the business number is used as an identifier in connection with the program, activity or service.

To protect the privacy of individuals who do not own a business, an official cannot share under this paragraph information regarding "excluded individuals" (as defined in subsection (10)).

The amendments to paragraph 241(4)(*l*) apply on Royal Assent.

Appeal from order or direction

ITA
241(5)

Subsection 241(5) of the Act provides that an official may provide taxpayer information relating to a taxpayer to the taxpayer or to other persons, if the taxpayer consents to the disclosure.

Subsection 241(5) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Disclosure to taxpayer or on consent

ITA
241(6)

Subsection 241(6) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose taxpayer information. Subsection 241(6) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Public disclosure and restriction

ITA
241(9.2), (9.3) and (9.4)

New subsection 241(9.2) of the Act precludes an official from disclosing information described in paragraph 241(4)(*l*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 241(10) of the Act) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 241(9.3) of the Act allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 241(9.4) of the Act allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if the representative of the government entity was provided with that information pursuant to paragraph 241(4)(*l*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsections (9.2), (9.3) and (9.4) apply on Royal Assent.

Definitions

ITA
241(10)

Subsection 241(10) of the Act provides definitions that apply for the purposes of section 241. The amendments to section 241 change the definition “taxpayer information” and add new definitions “aboriginal government”, “contact information”, “corporate information”, “excluded individual”, “government entity”, “registration information”, and “representative” of a government entity.

“taxpayer information”

“Taxpayer information” generally refers to information of any kind and in any form relating to one or more taxpayers that is obtained by or on behalf of the Minister of National Revenue (the “Minister”) for the purposes of the Act, or prepared from such information.

The definition “taxpayer information” is amended to specify that for the purposes of applying subsections (2), (5) and (6) to a representative of a government entity, taxpayer information includes only the information provided in paragraph 241(4)(*l*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

“aboriginal government”

The new definition “aboriginal government” has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the “council of the band” as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

“contact information”

The new definition “contact information” in respect of the holder of a business number defines one subset of information that an official may, under amended paragraph 241(4)(*l*), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder’s trustees, members or officers, as appropriate.

“corporate information”

The new definition “corporate information” in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 241(4)(*l*). “Corporate information” means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“excluded individual”

The new definition “excluded individual” refers to an individual who holds a business number for non business-related reasons. An excluded individual includes, for example, a person who has a business number solely because he or she employs a nanny or a gardener, or solely because she or he is a foster parent.

An excluded individual is specifically excluded from the application of paragraph 241(4)(*l*), so that an official cannot share the business number-related information with a representative of a government entity under that paragraph.

“government entity”

The new definition “government entity” means any of several types of federal, provincial, municipal and aboriginal entities. A “government entity” includes a department or agency of the Government of Canada or of a province, a municipality in Canada or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty in right of Canada, Her Majesty in right of a province, a municipality in Canada or another such corporation. It further includes a board or commission established by Her Majesty in right of Canada or Her Majesty in right of a province, that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition “representative” of a government entity.

“registration information”

The new definition “registration information” in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 241(4)(*l*). “Registration information” in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed, and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

“representative”

The new definition “representative” of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 241(4)(*l*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 241(1), (2), (5) and (6) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 241(1), the offence provided in subsection 239(2.2) of the Act applies to them as well.

These amendments apply on Royal Assent.

Clause 46

Interpretation - definitions

ITA
248

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

Definitions

ITA
248(1)

Subsection 248(1) sets out a number of definitions for the purposes of the Act. The subsection is amended by modifying the existing definitions of “personal trust” and “TFSA” and by adding several new definitions.

“SIFT trust wind-up event”

The new definition “SIFT trust wind-up event” is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The definition sets out conditions that must be met in order for a distribution of property by a trust to qualify for tax-deferred treatment under the new rules in subsections 88.1(2) and 107(3.1) of the Act, and for the rules in subsection 80.01(5.1) of the Act to apply to a settlement of debt in consequence of such a distribution.

A trust’s distribution of all of its property to a taxpayer is a SIFT trust wind-up event if the distribution occurs before 2013 and the following additional conditions are met:

- there is a resulting distribution of all of the taxpayer’s interest as a beneficiary under the trust; and
- the trust is either a SIFT wind-up entity or a trust the only beneficiary under which is – at all times after Announcement Date and before the distribution – a SIFT wind-up entity.

The new definition “SIFT trust wind-up event” applies after December 19, 2007.

“SIFT wind-up corporation”

The new definition “SIFT wind-up corporation” is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The expression is used in subparagraph 7(1.4)(*b*)(iv), paragraph 87(2)(*s.1*), subsection 107(3.1) and the definition “qualifying exchange” in section 132.2 of the Act, which are also included in that series of amendments.

A SIFT wind-up corporation at any time is a public corporation a share of the capital stock of which has before that time

- under paragraph (a) of this definition, been issued as consideration for the disposition to the corporation of a unit of a trust that is a SIFT wind-up entity, provided that the disposition was part of a series of transactions under which the corporation became the only beneficiary under the trust; or
- under paragraph (b) of this definition, been distributed, on a SIFT trust wind-up event, by a trust that is a SIFT wind-up entity to the public (more precisely, to one or more taxpayers that are neither SIFT wind-up entities nor SIFT wind-up corporations because of paragraph (*a*)).

This new definition applies after December 19, 2007.

“SIFT wind-up entity”

The new definition “SIFT wind-up entity” in subsection 248(1) of the Act is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The related amendments include new subparagraph 7(1.4)(b)(iv), subsections 80.01(5.1), 85.1(7) and (8), 88.1(1) and (2), 107(3) and (3.1) of the Act and the new definitions “SIFT wind-up corporation” and “SIFT trust wind-up event” in subsection 248(1) of the Act.

"SIFT wind-up entity" means a trust or partnership that at any time in the period that begins on October 31, 2006 and that ends on Announcement Date is a SIFT trust, a SIFT partnership, or a REIT. For this purpose, the definitions "SIFT trust" and "SIFT partnership" are treated as applying effective October 31, 2006 (i.e., read without reference to the special transitional rules that would otherwise suspend their application in respect of a given trust or partnership to no later than the end of 2010).

This new definition applies after December 19, 2007.

"SIFT wind-up entity equity"

The new definition "SIFT wind-up entity equity" in subsection 248(1) of the Act is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The expression is used, in respect of trusts that are SIFT wind-up entities, in new subparagraph 7(1.4)(*b*)(vi) and the new definition "SIFT wind-up corporation" in subsection 248(1), and it is also used, in respect of trusts or partnerships that are SIFT wind-up entities, in respect of new subsections 85.1(7) and (8) of the Act.

Under this definition, SIFT wind-up entity equity (including a reference to equity in a SIFT wind-up entity) means, in the case of a SIFT wind-up entity that is a trust, a capital interest in the trust determined without reference to subsection 248(25) of the Act. In the case of a SIFT wind-up entity that is a partnership, the expression refers to the membership interest of a limited partner in its capacity as a limited partner member of the partnership, with the result that the membership interest of the general partner in its capacity as a general partner member of the partnership is not included in the reference. Note, however, that paragraph (c) of the definition "SIFT wind-up entity equity" will generally apply in describing these interests. That paragraph provides that where the capital interests in the trust or the member interests of limited partners in the partnership, as the case may be, are described by reference to units, a reference to SIFT wind-up entity equity means the part of the interest represented by the unit.

This new definition applies after December 19, 2007.

"personal trust"

A "personal trust" is defined in subsection 248(1) of the Act as a testamentary trust or an *inter vivos* trust no beneficial interest in which was acquired for consideration (as determined by subsection 108(7) of the Act) payable to the trust or to a contributor to the trust. However, after 1999, a personal trust does not include a unit trust (within the meaning assigned by subsection 108(2) of the Act).

The definition "personal trust" is amended in two ways as one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The first amendment provides that a trust is disqualified from personal trust status if it is, or at any time after 1999 was, a unit trust. The second amendment clarifies that, for purposes of the rule disqualifying a trust from personal trust status if a beneficial interest has been acquired for consideration payable in any way to a contributor to the trust, a contributor includes a partnership.

These amendments apply after Announcement Date.

"TFSA"

Subsection 248(1) of the Act includes the definition "TFSA" for purposes of the Act. A TFSA is a tax-free savings account and has the meaning assigned by subsection 146.2(3) of the Act. The definition TFSA is amended to reflect the renumbering of subsection 146.2(3) as subsection 146.2(5).

This amendment applies to the 2009 and subsequent taxation years.

Certain arrangements under civil law

ITA
248(3)

Subsection 248(3) of the Act contains a number of rules that apply for the purposes of applying the Act in a civil law context.

Paragraph 248(3)(*c*) applies to arrangements that are marketed in Quebec as trusteed registered retirement savings plans (RRSPs) or registered retirement income funds (RRIFs), but that do not qualify as trusts under the *Civil Code of Québec* (CCQ). Provided such an arrangement is entered into before 2010 (and certain other conditions are satisfied), paragraph 248(3)(*c*) deems it to be a trust for purposes of the Act.

Paragraph 248(3)(*c*) was introduced in response to the judgment of the Supreme Court of Canada in the *Bank of Nova Scotia v. Thibault, [2004] 1 S.C.R. 785*. In that judgment, which involved the seizability of an arrangement that had been marketed as a self-directed trusteed RRSP, the Court concluded that a trust had not been created under the CCQ. This created uncertainty as to whether the arrangement in question was in fact an RRSP under the Act and, if not, whether the status of similar arrangements purporting to be RRSPs or RRIFs was also in jeopardy.

By ensuring the continued RRSP/RRIF status of arrangements entered into before 2010, paragraph 248(3)(*c*) gave financial institutions marketing individual retirement products in Quebec time to assess the impact of the *Thibault* decision, and to make any adjustments necessary to ensure that such products issued after 2009 qualified as trusts under the CCQ. In the course of making this assessment, financial institutions expressed concern that, in order for RRSPs and RRIFs sold in Quebec to qualify as trusts under the CCQ, the ability of the annuitant to access funds held in the arrangement might have to be significantly curtailed.

To address this concern, paragraph 248(3)(*c*) is amended to eliminate the sunset clause. Accordingly, arrangements entered into in Quebec after 2009 that are not trusts under the CCQ will be deemed to be trusts for purposes of the Act provided they satisfy the requirements set out in that paragraph. Paragraph 248(3)(*c*) is also amended so that it applies to tax-free savings accounts (TFSAs), registered education savings plans (RESPs) and registered disability savings plans (RDSPs).

These amendments apply to taxation years that begin after October 30, 2003.

Trust-to-trust transfer

ITA
248(25.1)

Subsection 248(25.1) of the Act applies to a transfer of a property from a particular trust to another trust (other than to a trust governed by a RRSP or RRIF) to which paragraph (f) of the definition “disposition” in subsection 248(1) of the Act applies. The result of that paragraph (f) is that the transfer does not constitute a disposition. Where this is the case, subsection 248(25.1) deems the other trust to be after the particular time the same trust as, and a continuation of, the particular trust, and, for greater certainty, ensures that where the transferred property is deemed under a number of specified provisions to be taxable Canadian property of the particular trust, the property continues to be taxable Canadian property of the other trust.

Subsection 248(25.1) is amended to add to the list of specified provisions that deem property to be taxable Canadian property a reference to new paragraphs 85.1(8)(*c*) and 107(3)(*d*) of the Act. Those two paragraphs are added to the Act as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

This amendment applies after December 19, 2007.

Clause 47

Investments in limited partnerships

ITA
253.1

Section 253.1 of the Act provides that, for specified provisions of the Act and Regulations (including subsection 146.2(4) relating to tax-free savings accounts), a trust or corporation will not, solely because of its acquisition and holding of an interest as a limited partner in a limited partnership, be considered to carry on any business or other activity of the partnership. Section 253.1 is amended to reflect the renumbering of subsection 146.2(4) as subsection 146.2(6).

This amendment applies to the 2009 and subsequent taxation years.

Clause 48

Associated Corporation Rules

ITA
256

Section 256 of the Act provides rules for determining whether corporations are considered to be associated and whether control of a corporation has been acquired for the purposes of the Act.

Acquiring control

ITA
256(7)(*c.1*)

Subsection 256(7) sets out rules for determining in special circumstances whether there has been an acquisition of control for the purposes of certain provisions of the Act.

New paragraph 256(7)(*c*.1) of the Act is introduced as one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Paragraph 256(7)(*c.1*) applies in respect of the distribution by a trust ("the distributing trust") of property to another trust ("the particular trust"), where the property distributed is shares of the capital stock of a corporation and the distribution qualifies as a "SIFT trust wind-up event" (newly defined in subsection 248(1) of the Act). Paragraph 256(7)(*c.1*) responds to the possibility that, if control of the corporation is determined to be with the trustees of the distributing trust, the distribution could result in an acquisition of control of the corporation by the trustees of the particular trust. Under paragraph 256(7)(*c.1*) the particular trust is deemed, if certain additional conditions are met, not to acquire control of the corporation solely because of the distribution.

The additional conditions that must be met in order for paragraph 256(7)(*c.1*) to apply are that:

- the corporation be controlled by the trustees of the distributing trust immediately before the distribution;
- the particular trust be the only beneficiary under the distributing trust;
- the particular trust be described in paragraph (*c*) of the new definition "SIFT trust wind-up event" in subsection 248(1) (in effect, the particular trust be a SIFT wind-up entity or a trust the only beneficiary of which is another trust that is a SIFT wind-up entity); and
- the particular trust would, in the absence of paragraph 256(7)(*c.1*), have acquired control of the corporation on the SIFT trust wind-up event.

New paragraph 256(7)(*c.1*) of the Act applies after Announcement Date.

Clause 49

Proportional holdings in trust property

ITA
259

Section 259 of the Act provides, for specified provisions of the Act (including subsection 146.2(4) relating to tax-free savings accounts (TFSAs)), a "look-through" rule that applies where a registered plan trust acquires units of a "qualified trust".

ITA
259(1)

Subsection 259(1) of the Act, which is the main substantive element of the section 259 "look-through", is amended to reflect the renumbering of subsection 146.2(4) of the Act as subsection 146.2(6).

This amendment applies to the 2009 and subsequent taxation years.

Budget Implementation Act, 2008

Clause 50

Budget Implementation Act, 2008

19(5)

Subsection 19(5) of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*) enacted a transitional version of the formula used in subsection 127(10.2) of the *Income Tax Act* to determine the expenditure limit of a corporation for investment tax credit purposes. The description of the amount B in that transitional version of the formula is amended as a consequence of the amendments made by subclause 20(3) of this Act to subparagraphs (*a*)(i) and (ii) of that description. Those amendments add references to section 181.3 of the *Income Tax Act*, and this consequential amendment ensures that those references apply in the context of the transitional version of the formula.

Income Tax Regulations

Clause 51

Information returns

Part II

Part II of the *Income Tax Regulations* sets out a wide variety of information and reporting requirements.

Payments to non-residents

ITR
202(2)(*h*)

Section 202 of the Regulations provides rules setting out the circumstances under which information returns are required in connection with payments to non-residents. Paragraph 202(2)(*h*) requires the filing of a return in connection with payments made to non-residents out of a registered home ownership savings plan (RHOSP).

With the elimination of RHOSPs in 1986, paragraph 202(2)(*h*) is now obsolete and is repealed. In its place, new paragraph 202(2)(*h*) is introduced to require an issuer of a trusteed tax-free savings account (TFSA) who makes a payment of a taxable amount under paragraph 212(1)(*p*) of the Act to a non-resident beneficiary of the trust, after the death of the holder of the TFSA and before the end of the tax-exempt period, to file an information return reporting the amount.

This amendment applies to the 2009 and subsequent taxation years.

Clause 52

Estates and trusts

ITR
204(3)

Section 204 of the Regulations generally requires that a person receiving income, gains or profits in a fiduciary capacity file an information return in respect of such amounts within 90 days from the end of the taxation year in which the amounts arose.

Paragraph 204(3)(*f*) is added so that this requirement does not apply to a trust governed by a tax-free savings account (TFSA) or by an arrangement that is deemed by paragraph 146.2(9)(*a*) of the Act to be a TFSA. TFSA trusts are required to file information returns under the reporting rules in section 223 of the Regulations that apply specifically to TFSA issuers.

If a trust governed by a former TFSA continues to exist after the tax-exempt period provided under paragraph 146.2(9)(*a*), the filing exclusion would no longer apply and thus the trust would be required to begin filing regular trust returns under section 204.

This amendment applies to the 2009 and subsequent taxation years.

Clause 53

Distribution of taxpayers' portions of returns

ITR
209(1)

Subsection 209(1) of the Regulations requires issuers of T4 slips and other specified information returns to provide two copies of the relevant portion of the return to the taxpayer to whom the return relates.

Subsection 209(1) is amended to replace the reference to section 223 of the Regulations with a reference to subsection 223(2). For details, readers may refer to the commentary on subsection 223(2).

This amendment applies to the 2009 and subsequent taxation years.

Clause 54

Qualified investments

ITR
221(2)

Subsection 221(2) of the Regulations requires any of certain types of corporations and trusts to file an information return whenever the corporation or trust claims that its shares or units are a qualified investment for registered retirement savings plans (RRSPs) or other registered plans.

Subsection 221(2) is amended to extend the requirement for filing an information return to a corporation or a trust that claims that its shares or units are a qualified investment for tax-free savings accounts (TFSAs). This amendment, which applies to the 2009 and subsequent taxation years, is consequential on the introduction of TFSAs.

Clause 55

TFSAs

ITR
223

Section 223 of the Regulations provides rules setting out the circumstances under which information returns are required in connection with registered home ownership savings plans (RHOSPs).

With the elimination of RHOSPs in 1986, section 223 is now obsolete and is repealed. In its place, new section 223 is introduced to provide reporting rules for issuers of tax-free savings accounts (TFSAs).

New subsection 223(1) requires the issuer of a TFSA (including an arrangement that is deemed to be a TFSA by paragraph 146.2(9)(*a*) of the Act) to file an annual information return in respect of the TFSA. The return is required to be filed on or before the last day of February of the following calendar year (by virtue of existing subsection 205(1) of the Regulations). It is expected that the information required by the CRA to be reported on the return will include:

- account identification information;
- information on whether the account was entered into or wound-up in the year;
- the date and amount of each contribution to, and distribution from, the TFSA in the year;
- the amount of any qualifying transfers in the year into, or out of, the TFSA as a result of a breakdown of a marriage or common-law partnership;
- the fair market value of the account at year-end; and
- information on any non-qualified investments held by the TFSA in the year.

This information will be used for calculating TFSA contribution room, identifying TFSA overcontributions and other potential non-compliance situations, and collecting statistical information for program evaluation.

New subsection 223(2) requires an issuer of a trusteed TFSA who, after the death of the holder of the TFSA and before the end of the tax-exempt period, makes a payment from the trust of an amount that is taxable under paragraph 146.2(9)(*b*) of the Act to file an information return reporting the amount. For further details, refer to the commentary on paragraph 146.2(9)(*b*).

New subsection 223(3) applies if, at any time, a TFSA trust acquires or disposes of a non-qualified investment or property held by a TFSA trust becomes or ceases to be a non-qualified investment. Subsection 223(3) requires the issuer of the TFSA to so notify the holder of the TFSA in prescribed form and manner on or before the last day of February of the following year. This notification requirement is intended to ensure that the holder is provided with sufficient information to comply with their tax obligations under Part XI.01 of the Act in connection with the non-qualified investment. It is expected that the issuer will be required to report the same information to the CRA on the TFSA annual information return.

These amendments apply to the 2009 and subsequent taxation years.

Clause 56

Annuities and Life Insurance Policies

Part III

Part III of the Regulations sets out prescribed rules for annuities and life insurance corporations.

Prescribed annuity contracts

ITR
304(1)

Section 304 of the Regulations prescribes certain annuity contracts for exclusion from the rules in section 12.2 of the Act that require income from life insurance policies to be reported on an accrual basis.
Paragraph 304(1)(*a*) provides an exclusion for annuity contracts purchased pursuant to a registered retirement savings plan (RRSP) or any of certain other registered plans.

Paragraph 304(1)(*a*) is amended to extend the exclusion from the accrual rules to annuity contracts issued as a tax-free savings account (TFSA) or a registered retirement income fund (RRIF). This change is implemented by referring to annuity contracts issued as or pursuant to an arrangement described in any of paragraphs 148(1)(*a*) to (*b.2*) or (*d*) of the Act (which exclude TFSA, RRIF and other registered plan annuity contracts from the rules in subsection 148(1) that require an income inclusion on the disposition of a life insurance policy). Paragraph 304(1)(*a*) is also amended to update the language for consistency with subsection 148(1).

This amendment applies to annuity contracts issued after 2008.

Clause 57

Taxable income earned in a province, etc.

Part IV

Part IV of the *Income Tax Regulations* provides prescribed rules for determining the amount of a corporation's taxable income earned in a year in a province for the purposes of the provincial abatement in section 124 of the *Income Tax Act*.

ITR
414 and 415

Sections 414 and 415 of the Regulations set out the prescribed meaning of terms that were once defined in subsection 123(2) of the Act. With the repeal of subsection 123(2) of the Act (for taxation years that begin after December 22, 1989), sections 414 and 415 of the Regulations no longer have effect.

New section 414 of the Regulations sets out the manner for determining the prescribed amount that is the "provincial SIFT tax rate", defined in subsection 248(1) of the Act, in respect of a SIFT trust or SIFT partnership for a taxation year. The provincial SIFT tax rate is used in calculating the tax payable under Part I of the *Income Tax Act* on the taxable SIFT trust distributions of a SIFT trust or the taxable non-portfolio earnings of a SIFT partnership.

This amendment applies to the 2007 and subsequent taxation years.

Definitions

ITR
414(1)

New subsection 414(1) of the Regulations provides three definitions that apply for purposes of section 414 of the Regulations. These new definitions apply to the 2007 and subsequent taxation years.

"general corporate income tax rate"

The definition "general corporate income tax rate" in subsection 414(1) of the Regulations is relevant to applying the allocation formula in subsection 414(3) of the Regulations, in particular variable D of the formula in paragraph 414(3)(*c*).

Under the definition, for the province of Quebec the general corporate income tax rate is set at 0%. This will ensure that a SIFT trust or SIFT partnership that has a permanent establishment (as defined in Part IV of the Regulations) in Quebec and that is subject to Quebec's provincial SIFT tax in respect of amounts attributable to that permanent establishment will not be subject to the provincial component of the federal tax in respect of those amounts.

For each other province, the general corporate income tax rate for a taxation year means the highest corporate income tax rate applicable to public corporations in that province for that taxation year.

"province"

The definition "province" is added to ensure that that expression as used in section 414 of the Regulations has the same meaning that it has in applying Part IV of the regulations to corporations. (Part IV applies to corporations in the context of the provincial abatement under section 124 of the Act.) To this end, the definition “province” in subsection 414(1) provides that a reference to province has the meaning it has under section 124 of the Act.

It should be noted that a similar definition is not needed in Part IV of the Regulations for the purposes of applying those regulations to a corporation because the definition “province” in section 124 of the Act – which is the provision that confers the power to make the regulations in Part IV that apply to corporations – applies automatically for those purposes by operation of the federal *Interpretation Act*.

“taxable SIFT distributions”

The definition “taxable SIFT distributions” provides the allocable tax base for purposes of applying the allocation formula for SIFT trusts and SIFT partnerships in subsection 414(3).

For a SIFT partnership, taxable SIFT distributions for a taxation year means the partnership’s taxable non-portfolio earnings (which is defined in section 197 of the Act) for the taxation year. This is the same amount that is the taxable base on which the SIFT tax is imposed upon the SIFT partnership under Part IX.1 of the Act.

For a SIFT trust, taxable SIFT distributions for a taxation year means its non-deductible distributions amount (which is defined in section 122 of the Act, by reference to subsection 104(16) of the Act) for the taxation year.

Rules of Application

ITR 414(2)

Subsection 414(2) of the Regulations provides a number of rules of application to ensure the proper integration of section 414 with the rest of Part IV of the Regulations in determining the amount of a SIFT trust’s or SIFT partnership’s taxable SIFT distributions for a taxation year earned in a province. These rules apply to the 2007 and subsequent taxation years.

Because a SIFT trust or SIFT partnership is intended to use, in applying the formula in paragraph 414(3)(*c*), only the general allocation rules in subsection 404(3) of the Regulations, paragraph 414(2)(*b*) provides that subsection 400(1), section 401, subsections 402(1) and (2), and sections 403 to 413 do not apply in determining the amount of a SIFT trust’s or SIFT partnership’s taxable SIFT distributions for a taxation year earned in a province.

With the exception of the provisions identified in paragraph 414(2)(*b*), the rules in Part IV of the Regulations will otherwise apply, as modified by paragraph 414(2)(*a*), in determining the amount of a SIFT trust’s or SIFT partnership’s taxable SIFT distributions for a taxation year earned in a province. More particularly, in applying the relevant provisions of Part IV of the Regulations for that determination:

- a reference to “corporation” (other than in the expression “subsidiary controlled corporation”) is to be read as a reference to “SIFT trust” or “SIFT partnership” as the case may be,
- a reference to “taxable income” is to read as a reference to “taxable SIFT distributions”, and
- a reference to “subsidiary controlled corporation” in respect of a SIFT trust or a SIFT partnership is to be read as meaning a corporation more than 50% of the issued share capital of which (having full voting rights under all circumstances) belongs to the SIFT trust or SIFT partnership.

These modifications will, among other things, ensure that the meaning of “permanent establishment” in subsection 400(2) of the Regulations applies to a SIFT trust or SIFT partnership, in applying subsection 414(3), as it applies for purposes of Part IV generally to a corporation carrying on similar activities.

Prescribed provincial SIFT tax rate

ITR 414(3)

Subsection 414(3) of the Regulations provides rules for determining the prescribed amount under the definition “provincial SIFT tax rate” in subsection 248(1) of the Act. This amendment applies to the 2007 and subsequent taxation years.

Subsection 414(3) contemplates three different rules for determining the prescribed amount. The first rule, contained in paragraph 414(3)(*a*), applies if the SIFT trust or SIFT partnership has no permanent establishment in a province in the taxation year. If this is the case, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is 10%.

The second rule, contained in paragraph 414(3)(*b*), applies if the SIFT trust or SIFT partnership has a permanent establishment in a single province, but no permanent establishment outside that province, in a taxation year. If this is the case, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is the general corporate income tax rate in the province for the taxation year.

The final rule, contained in paragraph 414(3)(*b*), applies if the SIFT trust or partnership has a permanent establishment in a province in a taxation year and a permanent establishment outside that province (whether inside or outside Canada) in that taxation year. In these circumstances, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is the positive amount determined by the formula A + B described in that paragraph. This formula, which applies in conjunction with the application rules in subsection 414(2), computes the prescribed amount using the factors from the general corporate allocation formula in subsection 402(3) of the Regulations. The intended effect is to arrive at a rate for the provincial component of the federal SIFT tax that represents a weighted average of the corporate income tax rates of each province in which the SIFT trust or SIFT partnership has a permanent establishment in the relevant taxation year. Note that the formula applies a 10% rate to that portion of the SIFT trust or partnership's taxable SIFT distributions that is not allocated to a permanent establishment in a province in the relevant taxation year.

Variable A of the formula applies to determine the weighted average portion of the prescribed amount that is attributable to the SIFT trust's or partnership's taxable SIFT distributions earned in a year in a province in which it has a permanent establishment for the taxation year. The nested formula within variable A determines the proportion of the SIFT trust's or SIFT partnership's allocable base in the province, and multiplies that amount by the general corporate income tax rate in that province. More specifically, variable A is the total of all amounts each of which is in respect of a province in which the SIFT trust or partnership has a permanent establishment in the taxation year and is the positive amount determined by the formula C/D x E, where

- C is the trust's or partnership's taxable SIFT distributions for the taxation year earned in the province; this is determined in respect of each relevant province by making an allocation of the trust's or partnership's taxable SIFT distributions for the year (as defined in subsection 414(1) of the Regulations) using the rules in subsections 402(3) to (8) of the Regulations, as modified by subsection 414(2) of the Regulations;
- D is its total taxable SIFT distributions for the taxation year, and
- E is the decimal fraction equivalent of the general corporate income tax rate (as defined in subsection 414(1) of the Regulations) in the province for the taxation year.

Variable B of the formula applies to determine the weighted average portion of the prescribed amount that is not attributable to the SIFT trust's or partnership's taxable SIFT distributions earned in a year in a province in which it has a permanent establishment for the taxation year. The nested formula in variable B calculates the proportion of the SIFT trust's or SIFT partnership's allocable base not attributable to a province, and multiplies that amount by 10%. More specifically, variable B is the amount determined by the formula (1 – F/D) x 0.1, where F is the total of all amounts each of which is an amount determined under the description of C in respect of a province in which the SIFT trust or SIFT partnership has a permanent establishment in the taxation year.

The total of A +B provides the corresponding weighted average rate that, expressed as a decimal fraction, is the prescribed amount for a SIFT trust or partnership in circumstances in which paragraph 414(3)(*c*) applies.

The following examples illustrate the intended application of the formula in paragraph 414(3)(*c*).

Example 1

A SIFT trust has permanent establishments in Province A, Province B, and outside of Canada in the year. The SIFT trust's taxable SIFT trust distributions for the year are $100,000. Pursuant to section 402 of the Regulations, as modified by subsection 414(2), the SIFT trust has $30,000 of taxable SIFT distributions earned in Province A in the year and $60,000 earned in Province B. The remaining $10,000 in taxable SIFT distributions are not attributable to any province in which the trust has a permanent establishment in the year. Province A has a general corporate income tax rate for the year of 16% and Province B, 12%.

Variable A is determined adding together the results of C/D x E for each province in which there is a permanent establishment.

Province A:	*$30,000 / $100,000 x 0.16 = 0.048*
Province B:	*$60,000 / $100,000 x 0.12 = 0.072*
Total	*0.12*

Variable B is determined by the formula (1- F/D) x 0.1

Therefore, variable B is

(1- $90,000 / $100,000) x 0.1 = 0.01

The provincial SIFT tax rate, expressed as a decimal fraction, is the sum of A and B, which is 0.12 + 0.01 = 0.13, or 13%. Therefore, the SIFT trust will pay $13,000 in federal tax as its provincial component of the SIFT tax, and this will be distributed to the provinces as follows: $4,800 to Province A and $7,200 to Province B.

Example 2

A SIFT partnership has permanent establishments in Quebec and outside of Canada in the year. The SIFT partnership's taxable SIFT distributions earned in Quebec for the year are $30,000. The remaining $70,000 of taxable SIFT distributions are not attributable to any province in which the partnership has a permanent establishment in the year.

In determining variable A, Quebec's general corporate income tax rate for the year is 0%. Therefore, A will be $30,000 / $100,000 x 0 = 0.

Variable B is determined by the formula (1- F/D) x 0.1, which is (1-$30,000 / $100,000) x 0.1 = 0.07.

The provincial SIFT tax rate, expressed as a decimal fraction, is the sum of A and B, which provides the SIFT partnership with a rate of 0.07. Therefore, the SIFT Partnership will pay $7,000 in federal tax as its provincial component of the SIFT tax. None of this tax will be distributed to the provinces.

Clause 58

Part XIV of the Regulations provides rules in respect of insurance business policy reserves.

Policy reserves for pre-1996 policies

ITR
1401

Section 1401 establishes the amount that a life insurer is permitted to deduct as a policy reserve under subparagraph 138(3)(*a*)(i) in respect of its pre-1996 life insurance policies.

The preamble of section 1401 is amended by deleting the references to subsection 138(3)(*a*)(i) of the Act. For the purposes of calculating a life insurer's pre-1996 life insurance policy reserves, policies that were previously considered to be "pre-1996 life insurance policies" will now be subject to the same policy reserve rules as "post-1995 life insurance policies" (as described in section 1404 of the Regulations). Accordingly, paragraphs 1401(1)(*d.1*), (*d.2*), (*e*), and subsections 1401(1.1), (3), and (4) of the Regulations are no longer needed and are being repealed.

The remaining portions of subsection 1401(1) will apply for the purposes of calculating the Part XII.3 tax on investment income accruing to fund insurance liabilities of a life insurance corporation and the calculation of a policy's accumulating fund in section 307 of the Regulations. Therefore, the preamble to subsection 1401(1) of the Regulations, and paragraphs 1401(1)(*a*) to (*d*), will continue to apply and have been modified to give effect to this restricted application.

The amendments to section 1401 apply to taxation years that begin on or after October 1, 2006.

Clause 59

Policy reserves

ITR
1404

Section 1404 of the Regulations establishes the basis for determining the amount an insurer may deduct under subparagraph 138(3)(*a*)(i) of the Act as a policy reserve in respect of its life insurance policies that are post-1995 life insurance policies.

Section 1404 is amended to remove the reference to "post-1995 life insurance policies", consequential to amendments to section 1401 of the Regulations. Section 1404 will apply in respect of all life insurance policies of an insurer as a consequence of the amendments.

For further details, readers may refer to the commentary to proposed amendments to section 1401.

This change applies for taxation years that begin on or after October 1, 2006.

Clause 60

Definitions

ITR
1408

Section 1408 of the Regulations provides a number of definitions and interpretative rules that apply for purposes of the rules in Part XIV of the Regulations dealing with the determination of an insurer's policy reserves.

The definitions "life insurance policy in Canada" and "life insurance policy" in subsection 1408(1) of the Regulations are amended to state that each of these terms has, for the purposes of Part XIV of the Regulations, the same meaning as for the purposes of section 138 of the Act.

This amendment applies to taxation years that begin after November 7, 2007.

Clause 61

Part XXIV of the Regulations sets out special rules for the computation of an insurer’s income.

Definitions

ITR
2400(1)

Subsection 2400(1) of the Regulations provides definitions for the purposes of Part XXIV of the Regulations, which applies, among other things, in determining which properties of a life insurer are properties used or held by the insurer in the course of carrying on an insurance business.

A number of new definitions are added for the purposes of new subsection 2400(8) of the Regulations, and are consequential on the introduction of that new subsection.

“base year”

The “base year” of an insurer is the insurer’s taxation year that immediately precedes its transition year.

“transition year”

The “transition year” of an insurer is the insurer’s first taxation year that begins after September 30, 2006.

Each of these definitions applies to taxation years that begin on or after October 1, 2006.

Transition year

ITR
2400(8)

Certain of the accounting rules that insurance corporations must follow are being changed effective for fiscal years beginning on or after October 1, 2006. These changes impact the tax rules that apply to insurance corporations for taxation years commencing on or after October 1, 2006.

In order to ensure that no inconsistencies arise under Part XXIV of the Regulations in respect of the tax treatment of insurance corporations as a result of these changes, new subsection 2400(8) of the Regulations provides that, a computation that is required to be made under Part XXIV in respect of an insurer’s base year and that is relevant to a computation (the “transition year computation”) that is required to be made under Part XXIV in respect of the insurer’s transition year shall, for the purposes only of the transition year computation, be made using the same definitions, rules and methodologies that are used in the transition year computation. These would include accounting rules required to be complied with by the insurer in its transition year.

New subsection 2400(8) applies to taxation years that begin on or after October 1, 2006.

Clause 62 and 63

Deferred income plans – Qualified investments
Part XLIX

Part XLIX of the Regulations lists a number of types of property that are prescribed to be qualified investments for trusts governed by RRSPs and other registered plans.

Qualified investments

ITR
4900 and 4901

Section 4900 of the Regulations lists a number of types of property that are prescribed to be qualified investments for trusts governed by registered retirement savings plans (RRSPs) and other registered plans. Section 4901 contains several interpretive provisions for the purposes of these rules.

Sections 4900 and 4901 are amended, effective for the 2009 and subsequent taxation years, to apply for the purposes of the definition "qualified investment" in subsection 207.01(1) of the Act that applies for trusts governed by tax-free savings accounts (TFSAs). With the exception of property described in subsection 4900(6) of the Regulations, the amendments provide that the types of property that are prescribed to be qualified investments for a TFSA trust correspond to those that are prescribed for an RRSP trust. (For details on new subsection 4900(14) of the Regulations, readers may refer to the commentary on new section 5000 of the Regulations.)

Section 4900 is also amended to introduce new paragraph 4900(1)(*p.1*) to provide that an American Depositary Receipt (ADR) is a qualified investment for a registered plan trust, provided that the underlying security that the ADR represents is listed on a designated stock exchange. This amendment is intended to ensure, in particular, that the de-listing of an ADR will not, in and of itself, result in the ADR becoming a non-qualified investment. (An ADR that is itself listed on a designated stock exchange is also covered by the general rule for listed securities in paragraph (*d*) of the definition "qualified investment" in section 204 of the Act.) This amendment applies in determining qualified investment status at any time after 2005.

Finally, several housekeeping amendments are being made to subsection 4900(1), effective for property acquired after Royal Assent.

- Paragraphs 4900(1)(*i.3*) (asset-backed securities), (*l*) (debt issued by the World Bank and other supra-national institutions) and (*o*) (investment-grade debt issued by foreign governments) are repealed. The types of property described by these paragraphs are covered by the general rule for investment grade debt in paragraph (*c.1*) of the definition "qualified investment" in section 204 of the Act.
- Paragraphs 4900(1)(*k*) (pre-1981 qualified investments) and (*s*) (pre-2002 over-the-counter securities) are repealed. These transitional provisions have no application to property acquired after Royal Assent.
- Paragraphs 4900(1)(*j.2*) (mortgage-backed certificates) is amended to replace the reference to a bond rating agency that rates debt in the ordinary course of its business with a reference to a credit rating agency referred to in subsection 4900(2).

Clause 64

Tax-free savings accounts – Prohibited investments
Part L

ITR
5000

Section 207.04 of the Act imposes special taxes on the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a non-qualified investment or a prohibited investment (as defined in subsection 207.01(1) of the Act). The qualified investment regime sets out the basic investment framework for TFSA trusts; whereas the prohibited investment regime represents an overriding investment restriction for

TFSA trusts that is intended to guard against tax planning opportunities with respect to closely-held investments. Responsibility for compliance with the qualified investment rules generally lies with TFSA issuers; whereas responsibility for compliance with the prohibited investment rules lies with TFSA holders. This distinction recognizes the practical difficulties that TFSA issuers would have in obtaining the necessary information to ensure compliance with the prohibited investment rules on an on-going basis.

The definition “prohibited investment” specifically excludes a “prescribed excluded property” and specifically includes a “prescribed property”. New section 5000 of the Regulations sets out the property that is prescribed for these two purposes.

Prescribed excluded property

New subsection 5000(1) provides that property described in paragraph 4900(1)(*j.1*) of the Regulations – a debt obligation that is secured by a mortgage or hypothecary claim in respect of real or immovable property situated in Canada, insured either under the *National Housing Act* or by an approved private insurer – is prescribed excluded property. This will allow individuals (once they have accumulated sufficient TFSA funds) to hold their own mortgage loan as an investment in their TFSA.

Prescribed property

New subsection 5000(2) is relevant where a TFSA trust holds shares of a specified small business corporation or a specified cooperative corporation (as defined in subsection 4901(2) of the Regulations) or a venture capital corporation described in any of sections 6700, 6700.1 or 6700.2 of the Regulations and those shares are a qualified investment for the trust solely because of new subsection 4900(14) of the Regulations.

Subsection 4900(14) generally provides that a share of such a corporation is a qualified investment for a TFSA trust if the share is not a prohibited investment for the trust. As is the case with subsection 4900(12) (which is a comparable provision that applies for registered retirement savings plans, registered retirement income funds and registered education savings plans), the qualification conditions in subsection 4900(14) apply only at the time of acquisition. Consequently, shares that are a qualified investment under that subsection retain their qualified investment status for as long as they are held by the TFSA trust.

New subsection 5000(2) provides that, if a share of a corporation that is a qualified investment for a TSFA trust solely because of subsection 4900(14) ceases to be described in paragraph 4900(14)(*a*), it is a prescribed property for the TFSA trust. In other words, if a corporation whose shares are held by a TFSA trust subsequently ceases to satisfy the relevant conditions to be a specified small business corporation, specified cooperative corporation or Regulation 6700, 6700.1 or 6700.2 venture capital corporation (as the case may be), the shares become a prohibited investment for the TFSA trust. Consequently, the holder of the TFSA will be liable for tax under section 207.04 of the Act.

Clause 65 and 66

Medical expense tax credit

Part LVII

Part LVII of the Regulations provides rules related to the medical expense tax credit.

The heading “Medical Devices and Equipment” for Part LVII is replaced by “Medical Expense Tax Credit” to reflect the introduction of new section 5701, which identifies prescribed drugs, medicaments, preparations or substances.

Prescribed drugs, medicaments etc.

ITR
5701

New section 5701 of the Regulations describes the type of drugs, medicaments, preparations or substances that are prescribed for the purpose of subparagraph 118.2(2)(*n*)(ii) of the Act. S.C. 2008, c. 28 (the *Budget*

Implementation Act, 2008) amended paragraph 118.2(2)(*n*) of the Act to clarify the types of drugs and medications the cost of which is eligible for the medical expense tax credit (METC). Under subparagraph 118.2(2)(*n*)(ii), eligible drugs and medications include such substances that are prescribed by regulation.

New section 5701 stipulates that a substance is prescribed for this purpose if it

(*a*) is manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder or abnormal physical state, or its symptoms, or in restoring, correcting or modifying an organic function;

(*b*) is prescribed for a patient by a medical practitioner; and

(*c*) may, in the province in which it is acquired, be lawfully acquired for use by the patient only with the intervention of a medical practitioner.

This means that a medication that is available without a prescription, but only with the intervention of a medical practitioner (e.g. a pharmacist) may qualify for the METC but only if it is prescribed for the patient by a medical practitioner.

These amendments apply after February 26, 2008.

Clause 67

ITR
Part LIX

Part LIX of the Regulations provides rules for the provisions in the Act relating to foreign affiliates of a taxpayer.

ITR
5907

Section 5907 of the Regulations provides definitions and interpretation rules for the purposes of Part LIX.

ITR
5907(11) and (11.11)

Subsection 5907(11) of the Regulations defines “designated treaty country” for the purposes of Part LIX. The subsection currently defines “designated treaty country” for a taxation year of a foreign affiliate of a corporation to mean a country with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income that has entered into force and has effect for that taxation year of the foreign affiliate. The subsection goes on to provide that any territory, possession, department, dependency or area of that country to which that agreement or convention does not apply is not considered to be part of that sovereign state or jurisdiction.

Subsection 5907(11) is amended to address comprehensive tax information exchange agreements as well as comprehensive agreements and conventions for the elimination of double taxation on income. As amended, the subsection defines “designated treaty country” for a taxation year of a foreign affiliate of a corporation to mean a sovereign state or other jurisdiction if Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income, or a comprehensive tax information exchange agreement, in respect of that sovereign state or jurisdiction, that has entered into force and has effect for that taxation year of the foreign affiliate. The amended subsection similarly extends the second rule described above: any territory, possession, department, dependency or area of that sovereign state or jurisdiction to which that agreement or convention does not apply is not included in that designated treaty country.

New subsection 5907(11.11) is added to section 5907. It provides that, for the purpose of applying subsection 5907(11) in respect of a foreign affiliate of a corporation, where a comprehensive tax information exchange agreement enters into force on a particular day, the agreement is deemed to enter into force and to come into effect on the first day of the foreign affiliate's taxation year that includes the particular day. It is thus analogous to the rule in current subsection 5907(11.1) in connection with comprehensive agreements and conventions for the elimination of double taxation on income.

New subsections 5907(11) and (11.11) apply after 2007.

Clause 68

Prescribed Amounts and Areas

Part LXXIII

Part LXXIII of the Regulations sets out prescribed amounts and prescribed areas for a variety of purposes under the Act.

Automobile benefits

ITR
7305.1

Section 7305.1 of the Regulations prescribes the automobile benefit rates that apply to calculate taxable benefits related to employer-provided automobiles. Proposed changes to these rates are announced each year by news release.

On December 24, 2007 the Minister of Finance announced that the prescribed rate used to determine the taxable benefit relating to the personal portion of automobile operating expenses paid by employers for 2008 would increase by 2 cents to 24 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, it was announced that the prescribed rate would increase by 2 cents to 21 cents per kilometre.

Section 7305.1 of the Regulations is amended to give effect to these increases.

This amendment applies to taxation years that end after 2007.

Clause 69

Automobile deduction limits

ITR
7306

Section 7306 of the Regulations prescribes the automobile deduction limits that apply to per-kilometre allowances paid by employers. Proposed changes to these limits are announced each year by news release.

On December 24, 2007 the Minister of Finance announced that the limit on the deduction of tax-exempt allowances paid by employers to employees using their personal vehicle for business purposes for 2008 would be increased by 2 cents to 52 cents per kilometre for the first 5,000 kilometres driven and 46 cents for each additional kilometre. It was also announced that for the Yukon Territory, Northwest Territories and Nunavut, the tax-exempt allowance would rise by 2 cents to 56 cents for the first 5,000 kilometres driven and 50 cents for each additional kilometre.

Paragraph 7306(a) of the Regulations is amended to give effect to these increases.

This amendment applies to taxation years that end after 2007.

Clause 70

Financial Institutions — Prescribed Entities

Parts XC to XCII of the Regulations contain provisions relating to the tax treatment of securities held by financial institutions.

ITR
9001 and 9002

Each of the references in subsections 9001(2), 9002(1), (2) and (3) of the Regulations to the definition “mark-to-market property” in subsection 142.2(1) of the *Income Tax Act* (the “Act”) is being replaced with a reference to the term “excluded property”. These changes reflect that the statutory references to property that is specifically excluded from being mark-to-market property are being moved from the definition “mark-to-market property” to the new definition “excluded property” in subsection 142.2(1) of the Act.

Clause 71

Prescribed Payment Card Corporation Shares

ITR
9002.1

New section 9002.1 of the Regulations prescribes, for the purposes of paragraph (*b*) of the definition “excluded property” in subsection 142.2(1) of the Act, certain property as prescribed payment card corporation shares.

A prescribed payment card corporation share of a taxpayer at any time means a share of the capital stock of a particular corporation if, at that time, the particular corporation is MasterCard International Incorporated, MasterCard Incorporated, or Visa Inc., and the share meets the following conditions:

- it is of a class of shares that is not listed on a stock exchange,
- it is not convertible into or exchangeable for a share of the class of the capital stock of a corporation that is listed on a stock exchange, and
- it was issued by the particular corporation to the taxpayer or to a person related to the taxpayer.

This amendment applies to taxation years that begin after February 24, 1994, except that, for taxation years that begin before October 1, 2006, the reference in the section to “paragraph (*b*) of “excluded property” in subsection 142.2(1) of the Act” is to be read as a reference to “paragraph (*d.1*) of the definition “mark-to-market property” in subsection 142.2(1) of the Act”.

Prescribed Securities Exchange Investments

ITR
9002.2

New section 9002.2 of the Regulations prescribes, for the purposes of paragraph (*c*) of the definition “excluded property” in subsection 142.2(1) of the Act, certain property as a prescribed securities exchange investment of a taxpayer.

A prescribed securities exchange investment of a taxpayer at any time means a share of the capital stock of a corporation if, at that time, the corporation is a corporation (other than a public corporation) that is The Toronto Stock Exchange Inc., TSX Inc., TSX Group Inc., Bourse de Montréal Inc., or Canadian Venture Exchange Inc.

New section 9002.2 applies to taxation years that begin after 1998 and before 2008, except that, for taxation years that begin before October 1, 2006, the reference in the section to “paragraph (*c*) of the definition” excluded property” in subsection 142.2(1) of the Act” is to be read as a reference to “paragraph (*d.2*) of the definition “mark-to-market property” in subsection 142.2(1) of the Act”.

Part 2

Amendments in respect of Sales and Excise Taxes

Excise Act, 2001

Clause 72

Definition "officer"

EA, 2001
2

Section 2 of the *Excise Act, 2001* (the "Act") defines terms that apply for the purposes of the Act.

Except for the purposes of sections 167, 226 and 296, "officer" is currently defined under the Act to mean a person engaged in the administration or enforcement of the Act. It includes a member of the R.C.M.P. and a member of a police force designated under subsection 10(1). In sections 167, 226 and 296, the general meaning of officer applies.

The definition "officer" is amended to exclude its application from the new definition "contact information" and consequently have the general meaning of officer applied to it. This change is consistent with other amendments to the Act to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners) (see clause 73).

This amendment comes into force on Royal Assent.

Clause 73

Communication of information

EA, 2001
211

Section 211 of the Act prohibits officials and other persons from using or communicating confidential information obtained in the course of administering the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 211(1) to (3), (6), (8) and (9) are amended and new subsections 211(6.1) to (6.3) are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Subclauses 73(1) and (2)

Definitions

EA, 2001
211(1)

Subsection 211(1) of the Act provides definitions that apply for the purposes of section 211. The amendments to section 211 change the definition "confidential information" and add new definitions "aboriginal government", "contact information", "corporate information", "government entity", "municipality", "registration information", and "representative".

“confidential information”

“Confidential information” generally refers to information of any kind and in any form relating to one or more persons that is obtained by or on behalf of the Minister of National Revenue (the “Minister”) for the purposes of the Act, by or on behalf of the Minister of Public Safety and Emergency Preparedness for the purposes of section 68, or prepared from such information.

The definition “confidential information” is amended to specify that for the purposes of applying subsections (3), (8) and (9) to a representative of a government entity, confidential information includes only the information provided in paragraph 211(6)(*j*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

“aboriginal government”

The new definition “aboriginal government” has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the “council of the band” as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

“contact information”

The new definition “contact information” in respect of a holder of a business number defines one subset of information that an official may, under amended paragraph 211(6)(*j*), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder’s trustees, members or officers, as appropriate.

“corporate information”

The new definition “corporate information” in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 211(6)(*j*). “Corporate information” means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“government entity”

The new definition “government entity” means any of several types of federal, provincial, municipal and aboriginal entities. A “government entity” includes a department or agency of the Government of Canada or of a province, a municipality or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty, Her Majesty in right of a province, a municipality or another such corporation. It further includes a board or commission established by Her Majesty or Her Majesty in right of a province that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition “representative” of a government entity.

“municipality”

The new definition “municipality” means an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated.

This definition is used for the purposes of amended paragraph 211(6)(*j*) and the definition “government entity”.

“registration information”

The new definition “registration information” in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 211(6)(*j*). “Registration information” in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

“representative”

The new definition “representative” of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 211(6)(*j*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 211(2), (3), (8) and (9) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 211(2), the offence provided in subsection 221(1) of the Act applies to them as well.

These amendments come into force on Royal Assent.

Subclause 73(3)

Provision of information

EA, 2001
211(2)

Subsection 211(2) of the Act prohibits the use or communication of confidential information by an official, except as authorized by section 211. The preamble to subsection 211(2) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition “representative” in subsection 211(1). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of confidential information. The amendment also ensures that the offence for contravening subsection 211(2), provided for in subsection 221(1) of the Act, applies to a representative of a government entity as well.

This amendment comes into force on Royal Assent.

Subclause 73(4)

Evidence

EA, 2001
211(3)

Subsection 211(3) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any confidential information in connection with any legal proceedings. (This prohibition is overridden in certain cases described in subsection 211(4) of the Act). Subsection 211(3) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 73(5)

Disclosure of personal information

EA, 2001
211(6)(*j*)

Subsection 211(6) of the Act sets out circumstances in which, and the purpose for which, confidential information may be disclosed. Paragraph 211(6)(*j*) allows an official (as defined in subsection 211(1)) to provide the business number, name, address, telephone number and facsimile number of the holder of a business number to another official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration and enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 211(6)(*j*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection 211(1)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- “contact information”, “corporate information” and “registration information” – all as newly defined in subsection 211(1) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available such as through provincial corporate registries.

These amendments come into force on Royal Assent.

Subclause 73(6)

Public disclosure and restriction

EA, 2001
211(6.1), (6.2) and (6.3)

New subsection 211(6.1) of the Act precludes an official from disclosing information described in paragraph 211(6)(*j*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 211(1)) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 211(6.2) allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 211(6.3) allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if a representative of the government entity was provided with that information pursuant to paragraph 211(6)(*j*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

These amendments come into force on Royal Assent.

Subclause 73(7)

Disclosure to person or on consent

EA, 2001
211(8)

Subsection 211(8) of the Act provides that an official may provide confidential information relating to a person to the person or to other persons, if the person consents to the disclosure. Subsection 211(8) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 73(8)

Appeal from order or direction

EA, 2001
211(9)

Subsection 211(9) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose confidential information. Subsection 211(9) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Excise Tax Act

Clause 74

Communication of Information

ETA
295

Section 295 of the *Excise Tax Act* (the “Act”) prohibits officials and other persons from using or communicating confidential information obtained in the course of administering Part IX of the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 295(1) to (3), (5), (6) and (7) are amended and new subsections 295(5.01) to (5.03) are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Subclauses 74(1) and (2)

Definitions

ETA
295(1)

Subsection 295(1) of the Act provides definitions that apply for the purposes of section 295. The amendments to this subsection change the definition “confidential information” and add new definitions “aboriginal government”, “contact information”, “corporate information”, “government entity”, “municipality”, “registration information”, and “representative”.

“confidential information”

“Confidential information” generally refers to information of any kind and in any form relating to one or more taxpayers that is obtained by or on behalf of the Minister of National Revenue (the “Minister”) for the purposes of Part IX of the Act, or prepared from such information.

The definition “confidential information” is amended to specify that for the purposes of applying subsections (3), (6) and (7) to a representative of a government entity, confidential information includes only the information provided in paragraph 295(5)(*j*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

“aboriginal government”

The new definition “aboriginal government” has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the “council of the band” as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

“contact information”

The new definition “contact information” in respect of the holder of a business number defines one subset of information that an official may, under amended paragraph 295(5)(*j*), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder’s trustees, members or officers, as appropriate.

“corporate information”

The new definition “corporate information” in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 295(5)(*j*). “Corporate information” means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“government entity”

The new definition “government entity” means any of several types of federal, provincial, municipal and aboriginal entities. A “government entity” includes a department or agency of the Government of Canada or of a province, a municipality or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty in right of Canada, Her Majesty in right of a province, a municipality or another such corporation. It further includes a board or commission established by Her Majesty in right of Canada or Her Majesty in right of a province that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition “representative” of a government entity.

“municipality”

The new definition “municipality” restricts, for the purposes of section 295, the meaning of “municipality” as defined in section 123(1) of the Act by excluding a local authority determined by the Minister to be a municipality.

“registration information”

The new definition “registration information” in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 295(5)(*j*). “Registration information” in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

“representative”

The new definition “representative” of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 295(5)(*j*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 295(2), (3), (6) and (7) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 295(2), the offence provided in subsection 328(1) of the Act applies to them as well.

These amendments come into force on Royal Assent.

Subclause 74(3)

Provision of information

ETA
295(2)

Subsection 295(2) of the Act prohibits the use or communication of confidential information by an official, except as authorized by section 295. The preamble to subsection 295(2) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition “representative” in subsection 295(1). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of confidential information. The amendment also ensures that the offence for contravening subsection 295(2), provided for in subsection 328(1) of the Act, applies to a representative of a government entity as well.

This amendment comes into force on Royal Assent.

Subclause 74(4)

Evidence

ETA
295(3)

Subsection 295(3) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any confidential information in connection with any legal proceedings. (This prohibition is overridden in certain cases described in subsection 295(4) of the Act). Subsection 295(3) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 74(5)and (6)

Disclosure of personal information

ETA
295(5)

Subsection 295(5) of the Act sets out circumstances in which, and the purpose for which, confidential information may be disclosed. Paragraph 295(5)(*j*) allows an official (as defined in subsection 295(1)) to provide the business number, name, address, telephone number and facsimile number of the holder of the business number to another official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration and enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 295(5)(*j*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection 295(1)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- “contact information”, “corporate information” and “registration information” – all as newly defined in subsection 295(1) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available such as through provincial corporate registries.

Subparagraph 295(5)(*d*)(i) is amended to refer to the new definition of “aboriginal government” in subsection 295(1).

These amendments come into force on Royal Assent.

Subclause 74(7)

Public disclosure and restriction

ETA
295(5.01), (5.02) and (5.03)

New subsection 295(5.01) of the Act precludes an official from disclosing information described in paragraph 295(5)(*j*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 295(1)) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 295(5.02) allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 295(5.03) allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if a representative of the government entity was provided with that information pursuant to paragraph 295(5)(*j*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

These amendments come into force on Royal Assent.

Subclause 74(8)

Disclosure to taxpayer or on consent

ETA
295(6)

Subsection 295(6) of the Act provides that an official may provide confidential information relating to a taxpayer to the taxpayer or to other persons, if the taxpayer consents to the disclosure. Subsection 295(6) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 74(9)

Appeal from order or direction

ETA
295(7)

Subsection 295(7) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose confidential information. Subsection 295(7) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.