Explanatory Notes Relating to the Income Tax Act, the Air Travellers Security Charge Act, the Excise Act, 2001, the Excise Tax Act and Related Acts and Regulations

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Minister of Finance

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Explanatory Notes
Preface

These explanatory notes describe proposed amendments to the Income Tax Act, the Canada Pension Plan, the Employment Insurance Act, the Universal Child Care Benefit Act, the Income Tax Regulations, the Air Travellers Security Charge Act, the Excise Act, the Excise Act, 2001, the Excise Tax Act, the Brewery Departmental Regulations, the Brewery Regulations, and the New Harmonized Value-added Tax System Regulations to implement certain tax measures for the Budget announced on March 4, 2010 and to implement certain other tax measures. 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 to the Income Tax Act and Related Acts and Regulations

Income Tax Act

Clause 2

Employment Income

ITA
6

Section 6 of the Income Tax Act (the "Act") provides for the inclusion in an employee’s income of most employment-related benefits.

ITA
6(1)(a)

Paragraph 6(1)(a) of the Act provides for the inclusion in computing the income of a taxpayer from an office or employment of the value of employment benefits received or enjoyed by the taxpayer in respect of or in the course of employment, subject to a number of specified exceptions in subparagraphs 6(1)(a)(i) to (v).

Subparagraph 6(1)(a)(i) describes benefits that are derived from an employer’s contribution to various types of plans for employees. Subparagraph 6(1)(a)(i) is amended, consequential on the introduction of the employee life and health trust (ELHT) rules, to add a reference to an employer’s contributions to an ELHT. Generally, therefore, benefits derived from such contributions are not taxable in the hands of employees.

Note that employee coverage under a group term life insurance policy is a taxable benefit because of subsection 6(4) of the Act and benefits received under certain plans of insurance are taxable because of paragraph 6(1)(f).

For more information on the ELHT rules, please refer to the commentary to new section 144.1. This amendment applies after 2009.

ITA
6(1)(f)

Paragraph 6(1)(f) of the Act provides for the inclusion in computing the income of a taxpayer from an office or employment of amounts received by the taxpayer on a periodic basis from an insurance plan for sickness or accidents, disability or income maintenance. Paragraph 6(1)(f) is amended, consequential on the introduction of the employee life and health trust (ELHT) rules, to add a reference to insurance plans of this type that are provided through an ELHT. This amendment simply clarifies that the use of an ELHT does not change the character of periodic payments already described in paragraph 6(1)(f).

This amendment applies after 2009.
Paragraph 6(1)(g) of the Act requires the inclusion in the computation of a taxpayer’s income from an office or employment of amounts received from an employee benefit plan (or from the disposition of an interest in an employee benefit plan), subject to the exceptions listed in subparagraphs (i) to (iii). Paragraph 6(1)(g) is amended to add a new exception, new subparagraph (iv), for payments of “designated employee benefits” as defined in new subsection 144.1(1).

The introduction of this rule will generally prevent payments of designated employee benefits by a “tainted” employee life and health trust that meets the definition “employee benefit plan” from being taxable to employees. Note that employee coverage under a group term life insurance policy is a taxable benefit because of subsection 6(4) of the Act and benefits received under certain plans of insurance are taxable because of paragraph 6(1)(f).

This amendment applies after 2009.

Clause 3

Employee Stock Options

Subsection 7(1) provides that an employee who acquires a security under an employee stock option agreement is considered to have received a benefit from employment equal to the difference between the fair market value of the security and the amount paid by the employee to acquire the security. The timing of the receipt of this benefit is the year in which the security is acquired, unless subsection 7(1.1) or (8) applies. Subsection 7(1) is being amended in several respects as a consequence of the Budget 2010 proposals related to the tax treatment of employee stock options.

Subsection 7(8) provides, under certain conditions, for the deferral of the recognition of an employment benefit received with respect to stock options on securities of a publicly-listed corporation granted under subsection 7(1) until the year of disposition of the securities underlying the stock option agreement. Budget 2010 announced the repeal of this deferral, along with all related provisions. Subsection 7(1) is therefore amended, consequential on the repeal of subsection 7(8) by Budget 2010, to remove the reference to paragraph 7(8) in the preamble.

Similarly, subsections 7(1.3) and (1.5) are amended to remove the reference to subsection 7(8) consequential on the repeal of the deferral provisions. Subsection 7(1.3) is also amended to remove the reference to paragraph 7(14)(c).
Subsection 7(1) is also amended by adding two new paragraphs, (b.1) and (d.1).

New paragraph 7(1)(b.1) clarifies that an employee is deemed to have received an employment benefit when the employee disposes of rights under a stock option agreement to an employer with which the employee does not deal at arm’s length (or to a person not dealing at arm’s length with such an employer). New paragraph 7(1)(d.1) provides a similar rule where an employee disposes of the rights under a stock option agreement to a person not dealing at arm’s length with the employee (e.g. a spouse) and the transferee in turn disposes of the rights to an employer with whom the employee was not dealing at arm’s length. In both paragraphs 7(1)(b.1) and (d.1), the amount of the employment benefit deemed to have been received is equal to the excess of the value of the consideration received for the disposition of the rights to the employer over the amount paid by the employee to acquire the rights.

The amendments to the preamble of subsection 7(1) and to subsections (1.3) and (1.5) apply in respect of stock options exercised after 4 p.m. Eastern Standard Time, March 4, 2010.

The amendment to subsection 7(1) to introduce new paragraphs 7(1)(b.1) and (d.1) applies to dispositions of rights occurring after 4 p.m. Eastern Standard Time, March 4, 2010.

Disposition of Securities

ITA
7(1.3)

Subsection 7(1.3) provides, for the purposes of subsections 7(1.1) and (8), a rule for determining the order in which a taxpayer disposes of shares that are identical properties. Subsection 7(1.3) is amended, consequential on the repeal of subsection 7(8), to repeal references to subsection 7(8). Subsection 7(1.3) is also amended to replace the word “where” with the word “if”. This change is not intended to have any substantive impact. For more information, please see the commentary on subsection 7(1).

Exchange of Securities

ITA
7(1.5)

Subsection 7(1.5) contains a special rule that applies for the purposes of subsections 7(1.1) and (8). Under subsection 7(1.5), a qualifying exchange of shares acquired under an employee stock option agreement is deemed not to be a disposition for certain purposes, and the new shares are deemed to be a continuation of the old shares. Subsection 7(1.5) is amended, consequential on the repeal of subsection 7(8), to repeal its reference to subsection 7(8). For more information, please see the commentary on subsection 7(1).

Cancellation of Options

ITA
7(1.7)

Subsection 7(1.7) sets out the rules applicable when a taxpayer’s rights to acquire securities under an employee stock option agreement cease to be exercisable in accordance with the agreement and the cessation is not otherwise a transfer or disposition of rights. This could occur, for example, in the course of a corporate reorganization such as an amalgamation.
The preamble to subsection 7(1.7) is amended, consequential on the amendments to subsection 7(1), to clarify the scope of application of the provision and the determination of the taxpayer’s employment benefits for the purpose of subsection 7(1) when stock option rights cease to be exercisable.

The amendment to subsection 7(1.7) applies in respect of stock options exercised after 4 p.m. Eastern Standard Time, March 4, 2010.

Definitions

ITA 7(7)

Subsection 7(7) defines the expressions “qualifying person” and “security” for the purposes of section 7 and certain other provisions related to employee stock option agreements. Subsection 7(7) is amended to include a reference to new subsections 110(1.1) and (1.2), which relate to the election made by a qualifying person in respect of a deduction by an employee under paragraph 110(1)(d). As such, the expressions defined in subsection 7(7) will also apply for the purpose of subsections 110(1.1) and (1.2). For more information, please see the commentary on subsections 110(1.1) and (1.2).

The amendment to subsection 7(7) applies in respect of stock options exercised after 4 p.m. Eastern Standard Time, March 4, 2010.

Non-CCPC Employee Options Deferral

ITA 7(8)-(15)

Subsections 7(8) to (15) set out the rules allowing for the deferral of taxation under certain conditions on an employment benefit realized when an employee acquires securities underlying employee stock options granted by a public corporation or a mutual fund trust. These deferral measures are being repealed pursuant to proposals announced in Budget 2010.

The repeal of subsections 7(8) to (15) applies in respect of stock options exercised after 4 p.m. Eastern Standard Time, March 4, 2010.

Qualifying Acquisition – Listing Requirement

ITA 7(9.1)

Existing subsection 7(9), which is being repealed consequential on Budget 2010 proposals, sets out the requirements that must be met for the acquisition of a security under an employee stock option agreement to be considered to be a qualifying acquisition for the purposes of subsection 7(8). In particular, subparagraph 7(9)(d)(ii) requires that, if the option being exercised by the employee was acquired by the employee as a result of one or more exchanges of options under subsection 7(1.4), the shares that could be acquired under each of the previous options must also have been a publicly-listed share at the time of the exchange. In other words, the share underlying the stock option must have been a publicly-listed share throughout.

In the course of certain corporate reorganizations, this requirement cannot be satisfied and as a result, the employee cannot benefit from the deferral provision under subsection 7(8). New subsection 7(9.1) is
intended to accommodate situations where, in the course of a “butterfly reorganization”, the shares underlying the stock options are temporarily unlisted, but the shares underlying the original options and the final options are publicly-listed.

New subsection 7(9.1) applies after 1999 and before 4 p.m. Eastern Standard Time on March 4, 2010. New subsection 7(9.1) is, however, immediately repealed consequential on the Budget 2010 announcement to repeal the deferral of taxation, under certain conditions, on the exercise of stock option rights to acquire securities of a publicly-listed corporation. For more information, please see the commentary on subsections 7(8) to (15).

Clause 4
Income Inclusion – TFSA or former TFSA

ITA
12(1)(z.5)
Paragraph 12(1)(z.5) of the Act requires a taxpayer to include in income from property amounts that arise from the application of subsection 146.2(9). 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.

Paragraph 12(1)(z.5) is amended to also require that amounts described in new section 207.061 be included in computing the taxpayer’s income from property. New subsection 207.061 requires that certain distributions from TFSA’s, generally related to TFSA advantages or income earned in respect of non-qualified or prohibited investments, be included in the recipient’s income. For more details, readers may refer to the commentary on new section 207.061.

This amendment applies after October 16, 2009.

Clause 5
Prohibited Deductions

ITA
18

Section 18 of the Act lists deductions that are prohibited in computing a taxpayer’s income from a business or property.

Deduction – Election on Disposition of Stock Options

ITA
18(1)(m)

Pursuant to new subsection 110(1.1), enacted as part of the Budget 2010 employee stock option proposals, an employer may make an election with respect to the deduction that would otherwise be available in respect of the payment of an amount to an employee for the disposition of rights under an employee stock option agreement. Under the new subsection 110(1.1) election, an employer may choose to forgo this deduction in order that its employee may claim, in respect of a cash or other payment from
the employer on a disposition of stock option rights, the paragraph 110(1)(d) deduction (sometimes referred to as the “stock option deduction”) which may apply to offset 50% of the amount included in income in respect of stock option benefits. For more information, please see the commentary on new subsection 110(1.1).

New paragraph 18(1)(m) is introduced, consequential on these Budget 2010 proposals, to ensure that no deduction is available to an employer for an amount that the employer has elected not to deduct under new subsection 110(1.1). Paragraph 18(1)(m) also prohibits an employer from receiving a deduction for payments made by a related corporation (such as a parent corporation) on the employer’s behalf in respect of the disposition.

New paragraph 18(1)(m) is applicable in respect of transfers or dispositions of rights occurring after 4 p.m. Eastern Standard Time, March 4, 2010.

ITA
18(1)(o.3)

New paragraph 18(1)(o.3) specifies that contributions to an employee life and health trust are not deductible, except to the extent specified in new paragraph 20(1)(s). New paragraph 20(1)(s) in turn permits deductibility of contributions to an employee life and health trust to the extent specified in new subsections 144.1(4) to (7). For more detail, please refer to the commentary on new section 144.1.

These amendments apply after 2009.

ITA
18(9)(a)

Subsection 18(9) defers the deduction of certain prepaid expenses to the taxation year to which they relate.

Subsection 18(9)(a) is amended to add new subparagraph (iv). New subparagraph (iv) specifies that amounts paid as consideration for the provision of a designated employee benefit (as that term is used in new subsection 144.1(1)) are subject to the prepaid expense rule in subsection 18(9). New subparagraph (iv) provides an exception for payments for annual insurance coverage in respect of designated employee benefits.

This amendment to paragraph 18(9)(a) is subject to existing subparagraph 18(9)(a)(iii) dealing with consideration for group term life insurance, and to new subsections 144.1(4) to (7), which deal with the timing of deductions of employer contributions to an employee life and health trust.

This amendment applies after 2009.
Clause 6
Deductions
ITA
20(1)(s)

Subsection 20(1) permits certain deductions in computing a taxpayer’s income for a taxation year from a business or property.

New paragraph 20(1)(s) permits deductibility of contributions to an employee life and health trust to the extent specified in new subsections 144.1(4) to (7).

This amendment applies after 2009.

Clause 7
International Banking Centres - Election
ITA
33.1(6)

Section 33.1 of the Act provides rules relating to the computation of a taxpayer’s income or loss from an international banking centre business. Subsection 33.1(6) of the Act provides for an election with respect to the recording of an eligible deposit in the books of account of an international banking centre business, to be made in the taxpayer’s return of income for a taxation year or in a prescribed form filed with the Minister within 90 days following the day of mailing of a notice of assessment for the year or of a notification that no tax is payable for the year.

Subsection 33.1(6) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 8
Capital Gains
ITA
40

Section 40 provides rules for determining a taxpayer’s gain or loss from the disposition of a property.

Deemed Capital Gain
ITA
40(3.21)

New subsection 40(3.21) is introduced consequential on the introduction of new section 180.01, as announced in Budget 2010, which deals with the special relief available to taxpayers who previously deferred taxation of stock option benefits under former subsection 7(8). In general terms, the special relief mechanism in section 180.01 provides that, for a taxation year, a taxpayer may, under certain
circumstances elect, in effect, to eliminate their deferred employee stock option benefit income inclusion and replace it with a deemed capital gain equal to the lesser of the stock option benefit and the capital loss on the disposition of the optioned securities. New subsection 40(3.21) provides that if a taxpayer makes an election under subsection 180.01(1) in respect of a taxation year, this deemed capital gain is deemed to be a gain from the disposition of property for the taxation year. As such, to the extent that the taxpayer has a capital loss on the disposition of the optioned securities that has not been applied against other gains, the taxpayer can offset the deemed capital gain with the capital loss for the purposes of calculating his or her income for the taxation year.

For more information, please see the commentary on new section 180.01 and subsection 7(8).

New subsection 40(3.21) is applicable as of March 4, 2010.

**Clause 9**

**Other Income Inclusions**

**IT A 56**

Section 56 of the Act outlines certain types of income that are required to be included in the income of a taxpayer even though they may not be from a source.

**Employee Life and Health Trust**

**IT A 56(1)(z.2)**

New paragraph 56(1)(z.2) of the Act, through a reference to the income inclusion in new subsection 144.1(11), in effect requires a taxpayer to include in income an amount that is received from a current or former employee life and health trust (ELHT) to the extent that the amount received is not a payment of a “designated employee benefit”. “Designated employee benefit” is defined in new subsection 144.1(1). In most cases, taxable amounts under new paragraph 56(1)(z.2) will be amounts received on the wind-up of an ELHT because most payments to individual beneficiaries of employee life and health trusts will be payments of designated employee benefits. The majority of these designated employee benefits are tax-exempt because of existing rules on employment benefits. New paragraph 56(1)(z.2) could also apply if a former ELHT makes a payment to a beneficiary (for example, the employer) who is not a beneficiary permitted under new paragraph 144.1(2)(d). For more detail, please refer to the commentary on new section 144.1.

This amendment applies after 2009.

**Clause 10**

**Deductions in Computing Income**

**IT A 60**

Section 60 of the Act provides for various deductions in computing income.
Rollover to Registered Disability Savings Plan (RDSP)

ITA
60(m)

Section 60 provides various deductions in computing income. Where a taxpayer has received a refund of premiums out of a registered retirement savings plan (RRSP) or certain other specified amounts, new paragraph 60(m) provides a deduction for qualifying payments (not exceeding the amounts so received) made to a registered disability savings plan, if the payment (defined under new subsection 60.02(1) as a “specified RDSP payment”) meets the conditions outlined in new section 60.02. For more information, please see the commentary to new section 60.02.

New paragraph 60(m) applies after March 3, 2010. However, the applicable “specified RDSP payments” cannot be made until after June 2011.

Clause 11

Rollover to Registered Disability Savings Plan (RDSP)

ITA
60.02

New section 60.02 provides rules to allow the tax-deferred transfer (“rollover”) to a registered disability savings plan (RDSP) of certain amounts received from a registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or registered pension plan (RPP) as a consequence of the death of the annuitant or RPP plan member. In order to qualify for this rollover, the beneficiary of the RDSP must be a child or grandchild of the deceased, and have been financially dependent on the deceased by reason of infirmity. A qualifying beneficiary is referred to in new section 60.02 as an “eligible individual”. New section 60.02 also provides transitional rules that provide access to the rollover in situations where the death of the RRSP or RRIF annuitant or RPP member occurred in 2008, 2009 or 2010.

The mechanism for providing the rollover is a deduction, generally similar to the deduction provided by existing paragraph 60(l), which offsets the RRSP, RRIF or RPP income inclusion that occurred as a consequence of the death of the annuitant or member.

New section 60.02 applies after March 3, 2010. However, “specified RDSP payments” (as defined in new subsection 60.02(1)) cannot be made until after June 2011.

Definitions

ITA
60.02(1)

New subsection 60.02(1) of the Act defines a number of terms that apply for the purposes of new section 60.02.
“eligible individual”

An eligible individual is a child or grandchild of a deceased RRSP or RRIF annuitant or of a deceased RPP member who was financially dependent on the deceased, at the time of the deceased’s death, by reason of infirmity of the dependant.

“eligible proceeds”

Eligible proceeds generally means any of a refund of premiums from an RRSP, an eligible amount paid from a RRIF or a lump sum payment (other than from actuarial surplus) from an RPP, that is received by an eligible individual as a consequence of the death, after March 3, 2010, of a parent or grandparent of the eligible individual.

“specified RDSP payment”

A specified RDSP payment is an amount paid after June 2011 to an RDSP under which an eligible individual is the beneficiary, which payment complies with the conditions set out in paragraphs 146.4(4)(f) to (h) and which payment has been designated as a specified RDSP payment by the eligible individual and the RDSP holder (as defined by subsection 146.4(1)) at the time of the payment. This means that amounts deposited to an RDSP for which access to the rollover measure is sought must be identified at the time of deposit. Unlike other RDSP contributions, for which no tax deduction is available, the amount of a “specified RDSP payment” will be included in the recipient’s income on withdrawal from the RDSP.

Paragraph 146.4(4)(f) prohibits RDSP contributions if the beneficiary is not a “DTC-eligible individual” (as defined by subsection 146.4(1)) in the applicable taxation year. The application of paragraph 146.4(4)(g) will permit a specified RDSP payment only to the extent that there is room under the $200,000 limit on contributions to RDSPs under which the eligible individual is a beneficiary. Paragraph 146.4(4)(h) requires that RDSP contributions be made only by or with the consent of the RDSP holder.

“transitional eligible proceeds”

“Transitional eligible proceeds” is relevant to the transitional rules that apply in situations where the death of the RRSP or RRIF annuitant or RPP member occurred after 2007 and before 2011. This new definition, together with the rules in new subsections 60.02(3) to (6), provide transitional rules that recognize that the estate plans of individuals who die during the transitional period may not have been amended to reflect the new rules of general application. “Transitional eligible proceeds” refers to certain amounts received by a taxpayer as a consequence of the death of an RRSP or RRIF annuitant or RPP member, where that death occurred after 2007 and before 2011. In particular, “transitional eligible proceeds” will include an amount received as a consequence of that death that is:

- any of a refund of premiums from an RRSP, an eligible amount paid from a RRIF or a lump sum payment (other than an amount of actuarial surplus) from an RPP; or
- any amount that had been rolled-over under paragraph 60(l) to the taxpayer’s RRSP or RRIF (that is, the taxpayer previously claimed a 60(l) deduction in respect of the amount) and which is subsequently withdrawn from the RRSP or RRIF for the purposes of making a “specified RDSP payment”.
In the latter case, the taxpayer includes the withdrawn amount in income (under existing subsections 146(8) or 146.3(5)), but can claim an offsetting deduction for making the “specified RDSP payment” under new subsection 60.02(4). The payment must be made to an RDSP for an “eligible individual” in relation to the deceased RRSP or RRIF annuitant (from whom the taxpayer received the proceeds that were rolled-over under paragraph 60(l)).

The recipient of transitional eligible proceeds can be an individual taxpayer other than an infirm financially-dependent child or grandchild (in other words, other than an “eligible individual”).

An amount that qualifies as “eligible proceeds” (see the definition above) cannot also qualify as “transitional eligible proceeds”. Accordingly, if an “eligible individual” receives “eligible proceeds” from the RRSP, RRIF or RPP of a parent or grandparent who dies in the period after March 3, 2010 and before 2011, then those eligible proceeds cannot also be considered to be transitional eligible proceeds.

**Deduction for Rollover to RDSP**

**ITA 60.02(2)**

New subsection 60.02(2) permits an eligible individual to claim a deduction in a taxation year for specified RDSP payments made in the taxation year (or within 60 days after the end of the taxation year) not exceeding the amount of eligible proceeds that the eligible individual has included in computing taxable income for the taxation year.

The terms “eligible individual”, “eligible proceeds” and “specified RDSP payment” are defined in new subsection 60.02(1).

**Conditions – Transitional Rules**

**ITA 60.02(3)**

New subsections 60.02(3) to (6), together with the definition of “transitional eligible proceeds”, provide special transitional rules for individuals who die after 2007 and before 2011. These rules recognize that the estate plans for such individuals may not have been amended to reflect the new rules of general application. In particular, the estate plans of such individuals may not have provided for a bequest to the RDSP of an eligible individual, but instead, may have made a bequest directly to the eligible individual, the spouse or common-law partner of the deceased or another beneficiary. The transitional rules are intended to allow such a beneficiary to make a contribution to an RDSP of an eligible individual within the same limitations as apply in the rules of general application.

New subsection 60.02(3) sets out the conditions that must be met for a taxpayer to claim a deduction under the transition rules in new subsections (4) and (5). As described in the commentary on the new definition of “transitional eligible proceeds”, the transitional deductibility provisions will apply only in cases of the death of an RRSP or RRIF annuitant or RPP member that occurs after 2007 and before 2011. Further, a deduction is not available under new subsection 60.02(4) or (5) unless transitional eligible proceeds have been included in computing the income of a taxpayer (not necessarily the recipient) and were received by one of the following individuals:

- an eligible individual;
- a spouse or common-law partner of the deceased annuitant (or RPP member);
- a beneficiary of the deceased annuitant’s estate; or
- a person who directly received the proceeds as a consequence of the annuitant’s death.

The term “transitional eligible proceeds” is defined under new subsection 60.02(1).

**Example 1**

Henri died in February 2010. In September 2010, the executor of Henri’s estate made a cash payment of $25,000 from Henri’s RRSP to Henri’s adult son Patrick, who has a disability. At the time of Henri’s death, Patrick was “infirm” and dependent on Henri for financial support. Patrick does not transfer the payment to an RRSP and so must include the amount in his taxable income for 2010 as a refund of premiums. In July 2011, Patrick decides to establish an RDSP for himself and he makes a $40,000 deposit to the RDSP. Patrick can designate $25,000 of that amount as a “specified RDSP payment” and he can claim a $25,000 deduction for tax year 2010, the year in which the $25,000 bequest from Henri was included in Patrick’s income. The remaining $15,000 out of the $40,000 deposit to the RDSP is a regular non-deductible contribution to the RDSP.

**Example 2**

Michael and Mary are Jordan’s parents. Jordan is an adult who is “infirm” and dependent on his parents for financial support. Before his death in April 2009, Michael had contributed a total of $120,000 to an RDSP under which Jordan is the beneficiary. Michael was the sole contributor to Jordan’s RDSP. In December 2009, $150,000 is transferred from Michael’s RRSP to Mary’s RRSP on a rollover basis. That is, Mary was able to offset the income inclusion from a “refund of premiums” under section 146 of the Act by a deduction that she claimed under paragraph 60(l).

In August 2011, Mary withdraws $50,000 from her RRSP and contributes $50,000 to the Jordan’s RDSP. (Based on the prior $120,000 of RDSP contributions from Michael, Mary could contribute up to $80,000 to the RDSP before it reached the $200,000 contribution limit.) Mary must include the $50,000 RRSP withdrawal in her taxable income for 2011, but she may claim an offsetting deduction under new paragraph 60(m) for the contribution to Jordan’s RDSP.

**Example 3**

When Jane died in February 2010, her “infirm” financially-dependent daughter Caitlyn benefited from a tax-free rollover of $70,000 from Jane’s RRSP to Caitlyn’s RRSP. Jane’s daughters Caitlyn and Jessica were the beneficiaries of the death benefit payable from the registered pension plan (RPP) sponsored by Jane’s employer. In May 2010, the administrator of the RPP paid a $20,000 death benefit to Jessica, who included that amount in her taxable income for 2009 because of paragraph 56(1)(a). After becoming aware of the 2010 Budget measure for rollovers to RDSP, Jessica decides to make a $20,000 contribution in July 2011 to an RDSP under which her sister Caitlyn is the beneficiary. Under new paragraph 60(m) and new subsection 60.02(4), Jessica can claim a $20,000 deduction for tax year 2010, the year in which she had included the RPP death benefit proceeds in her income. In December 2011, Caitlyn decides to deposit her share of the RPP death benefit ($20,000) to her RDSP. Caitlyn can also claim a $20,000 deduction for tax year 2010 to offset the income inclusion under paragraph 56(1)(a).
Deduction - Transitional Rule

ITA
60.02(4)

New subsection 60.02(4) is relevant in circumstances where transitional eligible proceeds have been included in the taxable income of a taxpayer who is described in new paragraph 60.02(3)(c). This would occur, for example, if an eligible individual or a spouse received a “refund of premiums” (as defined in existing subsection 146(1)) from the deceased’s RRSP but did not transfer the amount into their own RRSP, RRIF or annuity, as required for the deduction under paragraph 60(l) to apply.

New subsection 60.02(4) permits the taxpayer to claim a deduction in a taxation year for specified RDSP payments made before 2012, not exceeding the amount of transitional eligible proceeds (as defined in new subsection 60.01(1)) that the taxpayer has included in computing taxable income for the taxation year. The amount of the deduction is subject to approval by the Minister of National Revenue.

This deduction is only available to the extent that the conditions in new subsection 60.02(3) are met. Please refer to the commentary above on new subsection 60.02(3) for information regarding these conditions.

Transitional Rule

ITA
60.02(5)

New subsection 60.02(5) is relevant in circumstances where transitional eligible proceeds (as defined in new subsection 60.01(1)) have been included in computing the income for a taxation year of an RRSP or RRIF annuitant or an RPP member who has died in the year. This would occur, for example, where a portion of an RRSP was left to a financially independent adult child of the deceased (either by will, on intestacy, or through a beneficiary designation). Such a recipient is not eligible to receive a “refund of premiums” under section 146.

In those circumstances, new subsection 60.02(5) provides a deduction in computing the income of the deceased taxpayer to the extent that specified RDSP payments (as defined by new subsection 60.02(1)) are made before 2012 by a beneficiary of the taxpayer’s estate or a person who directly received the proceeds as a consequence of the annuitant or member’s death. The amount of the deduction is subject to approval by the Minister of National Revenue.

This deduction is only available to the extent that the conditions in new subsection 60.02(3) are met. Please refer to the commentary above on new subsection 60.02(3) for information regarding these conditions.
Limit on Deductions – Transitional
ITA 60.02(6)

New subsection 60.02(6) specifies, for greater certainty, that the total deductions claimed under new subsections (4) and (5) may not exceed the total transitional eligible proceeds in respect of a deceased taxpayer. This rule could be necessary, for example, where two siblings received various amounts from the estate of their parent and wished to make RDSP contributions to their disabled sibling’s RDSP.

Clause 12
Exploration and Development Expenses
ITA 66

Section 66 provides rules in respect of Canadian and foreign exploration and development expenses.

Definitions
ITA 66(15)

Subsection 66(15) contains various definitions for the purposes of section 66.

“principal-business corporation”

A “principal-business corporation” is defined in subsection 66(15) as a corporation whose principal business is any of, or a combination of, a number of activities specified in the definition. In addition, a corporation is a principal-business corporation if all or substantially all of its assets are shares in the capital stock of one or more other related corporations the principal businesses of which consist of such activities.

Paragraphs (h) of the definition “principal-business corporation” in subsection 66(15) is amended to ensure that the definition includes a corporation whose principal business is the distribution of energy or the production of fuel using property described in Class 43.1 or 43.2. In addition a reference to “regulations” in paragraph (i) of the definition is changed to a reference to the “Income Tax Regulations.”

These amendments to the definition “principal-business corporation” apply to the 2004 and subsequent taxation years which is consistent with the announcement in the 2010 budget.

Clause 13
Amounts Receivable – Rights or Things
ITA 70(2)

Section 70 of the Act provides certain rules that apply on the death of an individual. Subsection 70(2) of the Act provides for an election by the deceased taxpayer’s legal representative to file a separate return
with respect to “rights or things” receivable at the date of death, to be made by the taxpayer’s representative not later than the day that is the later of one year after the date of death of the taxpayer and the day that is 90 days after the mailing of any notice of assessment in respect of the tax of the taxpayer for the year of death.

Subsection 70(2) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 14

Attribution Rules – Trusts – Exceptions

ITA
75(3)(b)

Subsection 75(3) of the Act exempts a number of trusts from the attribution rule in subsection 75(2), under which any income or loss from trust property held by certain reversionary trusts can be attributed for tax purposes to the persons from whom the property was received.

Paragraph 75(3)(b) is amended to exclude employee life and health trusts from the application of subsection 75(2). For more detail, please refer to the commentary on new section 144.1.

This amendment applies after 2009.

Clause 15

Amalgamations – Employee Life and Health Trust Contributions

ITA
87(2)(j.3)

Paragraph 87(2)(j.3) of the Act provides that a corporation formed as the result of an amalgamation is considered to be a continuation of its predecessor corporations for the purposes of a number of provisions in the Act relating to employee benefit plans (EBPs), salary deferral arrangements (SDAs) and retirement compensation arrangements (RCAs). Because of paragraph 88(1)(e.2), this continuity rule generally also applies on the wind up of a subsidiary into its parent under section 88.

Paragraph 87(2)(j.3) is amended to add references to paragraph 20(1)(s) and subsections 144.1(4) to (7), which are the new provisions relating to deductibility of employer contributions to employee life and health trusts.

This amendment applies to amalgamations that occur, and windings-up that begin, after 2009.
Clause 16  
Deduction in Computing Income of Trust  
ITA  
104(6)  

Subsection 104(6) of the Act generally permits a trust to deduct, in computing its income for a taxation year, any income payable in the year to a beneficiary under the trust. Paragraphs 104(6)(a) to (a.3) apply to various special kinds of trusts. New paragraph 104(6)(a.4) permits an employee life and health trust to deduct amounts that became payable by it in the year as “designated employee benefits”. For more information regarding employee life and health trusts, please refer to the commentary on new section 144.1.  

This amendment applies after 2009.  

Clause 17  
Distribution by Employee Trust, Employee Benefit Plan or Similar Trust  
ITA  
107.1  

Section 107.1 of the Act provides rules to deal with a distribution to a taxpayer of property by an employee trust or a trust governed by an employee benefit plan under which the taxpayer is a beneficiary. Section 107.1 is amended to add a reference to an employee life and health trust (ELHT) in the preamble and in paragraph 107.1(a). As a result, in the unusual circumstance that property other than money is distributed by an ELHT, the ELHT will be treated as having disposed of the property at fair market value immediately before the distribution so that any gain may be recognized in the trust. The beneficiary is considered to acquire the property at fair market value.  

This amendment applies after 2009.  

Clause 18  
Qualifying Disposition  
ITA  
107.4(1)(j)  

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

Paragraph 107.4(1)(j) is amended so that it also applies to transfers between employee life and health trusts.
This amendment applies after 2009.

Clause 19
Trusts – Definitions
ITA 108(1)

“trust”

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.

For the purposes of the 21-year deemed disposition rule and other specified measures, subsection 108(1) defines “trust” to exclude certain trusts. Under paragraph (a), trusts governed by RRSPs and a number of other special income plans are among the excluded trusts for these purposes.

Paragraph (a) is amended to add to the list of exclusions an employee life and health trust. For more information regarding employee life and health trusts, please refer to the commentary on new section 144.1.

This amendment applies after 2009.

Clause 20
Deductions
ITA 110

Section 110 provides various deductions that a taxpayer may claim in computing the taxpayer’s taxable income for a taxation year.

Employee Stock Options
ITA 110(1)

Paragraph 110(1)(d) provides a 50% deduction in computing taxable income if certain conditions are met when an employee exercises, transfers or disposes of rights under an employee stock option agreement. Under existing paragraph 110(1)(d), when an employee transfers or disposes (“cashes out”) rights under a stock option agreement, the employee is entitled to this 50% deduction. This deduction is not denied even if the consideration for the disposition is fully deductible by the employer. In such a case, both the employee and the employer would be generally entitled to a deduction in respect of the same employment benefit.

Paragraph 110(1)(d) is amended to include a requirement that the employee (or a person not dealing at arm’s length with the employee in circumstances, such as the death of the employee, described in paragraph 7(1)(c)) exercise the employee’s rights under the stock option agreement and acquire the securities underlying the agreement in order for the deduction in computing taxable income to be
available. This new requirement is set out as subparagraph 110(1)(d)(i) and, in conjunction with existing paragraph 7(3)(b) (which effectively prevents an employer, on the issuance of securities in relation to an employee stock option agreement, from claiming a deduction in relation to the issuance of securities), ensures that only one deduction is available in respect of an employment benefit. In other words, if employee stock option rights are surrendered to an employer for cash or an in-kind payment, then (subject to new subsections 110(1.1) and (1.2)) the employer may deduct the payment but the employee cannot claim the stock option deduction. Conversely, where an employer issues securities pursuant to an employee’s exercise of stock options, the employer cannot deduct an amount in respect of the issuance, but the employee may be eligible to claim a deduction under paragraph 110(1)(d).

The requirements of new subparagraph 110(1)(d)(i) are generally waived to the extent that an employer gives up its deduction on the cash or in-kind payment to the employee by making an election under new subsection 110(1.1). For more information, please see the commentary on new subsection 110(1.1).

As a consequence of the addition of new subparagraph 110(1)(d)(i), the existing subparagraph 110(1)(d)(i) has been renumbered as subparagraph (i.1).

New subparagraph 110(1)(d)(i) applies in respect of acquisitions of securities and transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010.

**Election**

ITA

110(1.1)

New subsection 110(1.1) is introduced consequential on the Budget 2010 proposal to require that securities that are the subject of an employee stock option agreement be acquired in order for the employee to be eligible to claim the stock option deduction under paragraph 110(1)(d). As an alternative to the employee being ineligible for the stock option deduction on disposition of rights under a stock option agreement, Budget 2010 announced the creation of an employer election to forgo its deduction for the payment to its employees on a disposition of those rights.

New subsection 110(1.1) provides that an employee may claim the 50% stock option deduction that might otherwise be available under paragraph 110(1)(d) only if the employer makes an election that neither the employer, nor a person with whom the employer does not deal at arm’s length, will deduct any amount in respect of a payment to or for the benefit of the employee in respect of the disposition (a “cash out”) of the employee’s rights under a stock option agreement. The use of the phrase “in respect of” is intended to ensure that electing employers renounce the deduction of all related amounts, including, for example, a make-whole payment made to a foreign parent corporation. An exception is provided to preserve an employer’s deduction of any “designated amounts” described in new subsection 110(1.2). Please see the commentary on that subsection for more information.

Subsection 110(1.1) also sets out the rules for making and supporting an election in this respect made by the employer. In particular, the employer is required to file the election with the Minister of National Revenue and provide the employee with evidence in writing of the election. In addition, the employee is required to file the evidence with the Minister with his or her return of income for the year in which he or she claims a deduction under paragraph 110(1)(d).
Designated Amount

ITA 110(1.2)

New subsection 110(1.2) defines a “designated amount” for the purposes of new subsection 110(1.1). In order for an amount to be a designated amount, and therefore potentially be deductible by an employer with respect to an employee’s disposition of rights under a stock option agreement, three conditions must be met. In general terms, these are as follows:

- the amount must be otherwise deductible, in the absence of subsection (1.1), in computing the employer’s income;
- the amount must be payable to a person that deals at arm’s length with the employer and is not an employee of the employer nor of a person that deals not at arm’s length with the employer, and
- the amount must be payable in respect of an arrangement entered into for the purpose of managing the employer’s financial risk associated with a potential increase in value of the securities underlying the stock option agreement.

The purpose of new subsection 110(1.2) is to ensure that the tax treatment of financial risk management arrangements entered into by employers in relation to employee stock option plan risk exposure is generally not affected by the employer’s election to give up deductions for payments made to employees under new subsection 110(1.1).

New subsections 110(1.1) and (1.2) apply in respect of transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010.

Clause 21

Loss Carryovers

ITA 111

Section 111 of the Act contains rules that generally determine the extent to which a taxpayer is permitted to deduct, in computing taxable income, losses of other years.

Acquisition of Control

ITA 111(4)(e)

Paragraph 111(4)(e) provides generally that, if control of a corporation has been acquired, the corporation may elect to treat itself as having disposed of certain capital properties in its tax year that is deemed to have ended immediately before the acquisition of control if a prescribed form is filed with the Minister of National Revenue on or before the date that is 90 days after the day on which a notice of assessment of tax payable for the year, or a notification that no tax is payable for the year, is mailed to the corporation.

Paragraph 111(4)(e) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Under the amended definition “non-capital loss” in subsection 111(8), employee life and health trusts will be able to create or increase a non-capital loss with payments of “designated employee benefits” (as defined in new subsection 144.1(1)). This mechanism is being introduced in recognition that the income of an ELHT for a year will not always reflect its obligations to provide designated employee benefits for the year. However, the effect of this amendment to the definition “non-capital loss” will also be to enable such a trust to create a loss in relation to a distribution of the capital of the trust. Consequently, a shorter carry-forward period is provided, which it is anticipated will be sufficient to allow employee life and health trusts to avoid paying income tax in most situations where they have not been overfunded.

New subsection 111(7.3) provides that the normal loss carryover rules in paragraph 111(1)(a) do not apply to an ELHT.

New subsection 111(7.4) establishes a three-year carryforward and three-year carryback period for non-capital losses of an ELHT.

New subsection 111(7.5) prevents certain trusts from deducting any amount in respect of their non-capital losses from years in which they were ELHTs. In particular, a trust that was an employee life and health trust but which does not meet the conditions in new subsection 144.1(2) for a taxation year, or that is, under new subsection 144.1(3), not operated in accordance with the terms required by new subsection 144.1(2) or that is operated primarily for the benefit of key employees) during the taxation year, may not deduct, in the taxation year, any amount in respect of its non-capital losses from years when it was an ELHT (to which new subsection 144.1(3) did not apply). ELHT status, and the application of new subsection 144.1(3), are year-by-year determinations.

These amendments apply after 2009.

Subsection 111(8) of the Act contains definitions that apply for the purpose of loss carryovers.

Variable E in the definition “non-capital loss” is amended to allow an employment life and health trust to include, in calculating its non-capital loss for a year, amounts payable in the year as “designated employee benefits”. A non-capital loss of an employee life and health trust or a former employee life and health trust is subject to special rules under new subsections 111 (7.3) to (7.5). For more information, please refer to the commentary on those provisions.

This amendment applies after 2009.
Clause 22

Annual Adjustment

ITA 117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index (CPI). Subsection 117.1(1) is amended to provide for the indexing of certain amounts that are relevant to the computation of the Working Income Tax Benefit (WITB), in subsections 122.7(2) and (3), which were amended in Budget 2009.

This amendment applies to the 2009 and subsequent taxation years.

Clause 23

GST/HST Credit

ITA 122.5

Section 122.5 of the Act provides rules for determining the Goods and Services Tax/Harmonized Sales Tax Credit (GSTC) for individuals. This refundable credit is delivered to an eligible individual in quarterly payments based on adjusted income and family circumstances, including the number of qualified dependants of the individual.

“adjusted income”

ITA 122.5(1)

Subsection 122.5(1) defines a number of terms for the purpose of the GST credit. The definition “adjusted income” is amended, consequential on the introduction of new subsections 40(3.21) and 180.01(2), to exclude amounts in respect of a deemed gain on the disposition of securities on which the recognition of an employment benefit was deferred under subsection 7(8). As such, the deemed gain will not be included in computing income for certain income-tested benefits. For further information, please see the commentary on subsections 7(8) and 40(3.21) and section 180.01.

Similar amendments are made to the definition “adjusted income” in section 122.6 for the purpose of determining the Canada Child Tax Benefit and in subsection 180.2(1) for the purpose of recovering Old Age Security benefits, as well as to the definition “adjusted net income” in subsection 122.7(1) for the purpose of determining the Working Income Tax Benefit.

These amendments apply to the 2000 and subsequent taxation years.
Shared-custody Parent

ITA
122.5(3.01) and (6)

Subsection 122.5(3) of the Act provides for the calculation of the GSTC and subsection 122.5(6) of the Act provides the rules for determining who is entitled to the credit in respect of a qualified dependant. Under the existing rules, only one individual can receive the credit in respect of a qualified dependant each quarter.

To improve the distribution of the GSTC for parents who share custody of a child, new subsection 122.5(3.01) of the Act modifies the calculation of the credit for shared-custody parents, and subsection 122.5(6) is amended to allow two shared-custody parents to claim the credit in the same quarter with respect to the same qualified dependant.

New subsection 122.5(3.01) provides a formula for the computation of the credit if an eligible individual is a “shared-custody parent” at the beginning of a month. The new definition “shared-custody parent” is added to section 122.6 of the Act. If an eligible individual is a shared-custody parent of a qualified dependant, that parent will now be entitled to one-half of the credit with respect to that qualified dependant that the parent would have received if the parent were the only eligible individual of that qualified dependant. The amount determined by subsection 122.5(3.01) replaces the amount that would otherwise be the amount deemed to have been paid by subsection 122.5(3). For more information on the new definition “shared-custody parent”, see the commentary under section 122.6.

Variable A in the formula in new subsection 122.5(3.01) represents the amount that the parent would be entitled to receive if the parent were the only eligible individual with respect to all of the qualified dependants of whom the parent is a shared-custody parent. New subparagraph (b)(ii) of the definition “eligible individual” in section 122.6 provides that a shared-custody parent of a qualified dependant can be an eligible individual in respect of the qualified dependant.

Variable B in the formula in new subsection 122.5(3.01) represents the amount that the parent would be entitled to receive if the parent were not an eligible individual with respect to any of the qualified dependants of whom the parent is a shared-custody parent. By determining the amount in variable B without reference to new subparagraph (b)(ii) of the definition “eligible individual” in section 122.6, a shared-custody parent will not meet the definition of eligible individual in section 122.6 in respect of a qualified dependant of whom they are a shared-custody parent and, as a result, will not be an eligible individual in respect of the qualified dependant for the purposes of variable B.

Subsection 122.5(6) of the Act stipulates who is eligible to collect a GSTC in respect of a qualified dependant if more than one person would otherwise be eligible. Paragraph 122.5(6)(a) allows those persons to agree as to which of them will be eligible for the credit. If no such agreement exists, amended paragraph 122.5(6)(b) provides that two parents may be eligible to collect a credit in respect of a qualified dependant if they are both eligible individuals of the qualified dependant. In any other case, paragraph 122.5(6)(c) permits the Minister of National Revenue to designate who is eligible to collect the credit.

For the purposes of amended paragraph 122.5(6)(b), “eligible individual” has the meaning assigned by section 122.6, except that the words “qualified dependant” in that definition have the meaning assigned by subsection 122.5(1). Two parents will be eligible individuals with respect to the qualified dependant in relation to a month only if both of the individuals are shared-custody parents of the qualified dependant. For information on the amended definition “eligible individual” under section 122.6, see the commentary under that section.
These amendments apply for amounts credited after June 2011.

Clause 24
Canada Child Tax Benefit – Definitions
ITA
122.6

Section 122.6 of the Act defines a number of terms for the purposes of the Canada Child Tax Benefit.

“eligible individual”

Paragraph (b) of the definition “eligible individual” in section 122.6 of the Act requires that in order to be an eligible individual, an individual must be the parent of a qualified dependant who primarily fulfils the responsibility for the care and upbringing of the qualified dependant.

This definition is amended to permit a “shared-custody parent” in respect of the qualified dependant, referred to in new subparagraph (b)(ii) of the definition, to qualify as an eligible individual.

“shared-custody parent”

The new definition “shared-custody parent” in section 122.6 of the Act provides that two parents will be shared-custody parents in respect of a qualified dependant if

- the qualified dependant does not reside with their female parent or the circumstances described in subsection 6301(1) of the Income Tax Regulations (discussed further below) are present;
- the parents are neither cohabiting spouses nor common-law partners of each other;
- the qualified dependant resides with each parent on an equal or near equal basis; and
- they both primarily fulfil the responsibility for the care and upbringing of the dependant when residing with the dependant.

Subsection 6301(1) of the Income Tax Regulations generally describes situations in which two or more parents of the qualified dependant, both of whom independently reside with the qualified dependant, have applied for the Child Tax Benefit. In these cases, even though the dependant resides with the female parent, the “female presumption rule” in paragraph (f) of the definition “eligible individual” in section 122.6 of the Act will not apply, such that each person could potentially be considered a shared-custody parent. These situations include those in which

- a qualified dependant resides with each of the persons filing the notices, and those persons live at different locations;
- the female parent is a qualified dependant of an eligible individual (for example, a grandfather) and each of them files an application for a Child Tax Benefit in respect of another qualified dependant (for example, a grandson) with whom they reside; and
- there is more than one female parent of the qualified dependant who resides with the qualified dependant, and each female parent files an application for a Child Tax Benefit in respect of the qualified dependant.

These amendments apply for amounts credited after June 2011.
Clause 25

Canada Child Tax Benefit

ITA
122.61

Section 122.61 of the Act provides for the calculation of the Canada Child Tax Benefit (CCTB). This non-taxable benefit is delivered to an eligible individual in monthly payments based on adjusted income and family circumstances, including the number of qualified dependants of the individual.

Please see the commentary on subsection 122.5(1).

Canada Child Tax Benefit – Deemed Overpayment

ITA
122.61(1) and (1.1)

Section 122.61(1) of the Act provides for the calculation of the CCTB. Under the existing rules, only one individual can receive the benefit in respect of a qualified dependant each month.

To improve the distribution of the CCTB for parents who share custody of a child, new subsection 122.61(1.1) of the Act modifies the calculation of the benefit for shared-custody parents such that both may be entitled to the benefit in the same month with respect to the same qualified dependant. This amendment is concurrent with the amendment to the definition “eligible individual” in section 122.6 of the Act to include certain shared-custody parents.

In this regard, new subsection 122.61(1.1) provides a formula for the computation of the CCTB if an eligible individual is a shared-custody parent at the beginning of a month (as determined by the new definition “shared-custody parent” in section 122.6 of the Act). If an eligible individual is a shared-custody parent of a qualified dependant, that parent will be entitled to one-half of the benefit with respect to that qualified dependant that the parent would have received if the parent were the only eligible individual of that qualified dependant. The amount determined by subsection 122.61(1.1) replaces the amount that would otherwise be the overpayment deemed to have arisen by subsection 122.61(1). For more information on the new definition “shared-custody parent”, see the commentary under section 122.6.

Variable A in the formula in new subsection 122.61(1.1) represents the amount that the parent would be entitled to receive if the parent were the only eligible individual with respect all of the qualified dependants of whom the parent is a shared-custody parent. New subparagraph (b)(ii) of the definition “eligible individual” in section 122.6 provides that a shared-custody parent of a qualified dependant can be an eligible individual in respect of the qualified dependant.

Variable B in the formula in new subsection 122.61(1.1) represents the amount that the parent would be entitled to receive if the parent were not an eligible individual with respect to any of the qualified dependants of whom the parent is a shared-custody parent. By determining the amount in variable B without reference to new subparagraph (b)(ii) of the definition “eligible individual” in section 122.6, a shared-custody parent will not meet the definition of eligible individual in section 122.6 in respect of a qualified dependant of whom they are shared-custody parent and as a result will not be an eligible individual in respect of the qualified dependant for the purposes of variable B.
These amendments apply for amounts credited after June 2011.

**Clause 26**

**Working Income Tax Benefit**

ITA

122.7(1)

Please see the commentary on subsection 122.5(1).

**Clause 27**

**Application of Section 127.5**

ITA

127.55(f)

Section 127.55 of the Act limits the application of the alternative minimum tax set out in section 127.5. Paragraph 127.55(f) is amended to add a reference to an employee life and health trust. As a result, employee life and health trusts are not subject to alternative minimum tax.

For more information regarding employee life and health trusts, please refer to the commentary on new section 144.1.

This amendment applies after 2009.

**Clause 28**

**Changes in Residence**

ITA

128.1

Section 128.1 sets out the income tax effects of becoming or ceasing to be resident in Canada.

ITA

128.1(4)(b.1) and (c)

Subsection 128.1(4) sets out rules that apply where a taxpayer ceases to be resident in Canada. Paragraph 128.1(4)(b) generally treats a taxpayer as having disposed of the taxpayer’s property, for proceeds equal to fair market value, immediately before the taxpayer’s loss of Canadian residence status. New paragraph 128.1(4)(b.1) provides special rules that will apply to a trust, that is or was previously an employee life and health trust, if it is ceases to be resident in Canada. The special rules are intended to discourage employee life and health trusts from giving up their Canadian residency.

New subsection 128.1(4)(b.1) deems a trust that is or was an employee life and health trust that ceases to be resident in Canada to have disposed of all of its property before that cessation for fair market value proceeds. The property is deemed to have been held as inventory and to have a cost of nil.
Paragraph 128.1(4)(c) provides that a taxpayer who experiences a deemed disposition under paragraph 128.1(4)(b) is deemed to have reacquired the taxpayer’s property at a cost equal to the proceeds of disposition (as specified in paragraph 128.1(4)(b)). Paragraph 128.1(4)(c) is amended to also apply to deemed dispositions occurring under new paragraph 128.1(4)(b.1).

These amendments apply after 2009.

“excluded right or interest”

ITA

128.1(10)

Subsection 128.1(10) defines the expression “excluded right or interest” for the purposes of the taxpayer migration rules in section 128.1. This definition is primarily relevant for paragraphs 128.1(1)(b) and (4)(b), which treat individuals as having disposed of (and immediately reacquired) most of their property on immigrating to or emigrating from Canada. Generally, excluded rights or interests are exempted from these deemed disposition rules. Paragraph (a) of the definition refers to rights under, or an interest in, a trust governed by certain deferred income plans.

Paragraph (a) of the definition is amended to add a reference to employee life and health trusts. This will ensure that a beneficiary under an employee life and health trust who immigrates to or emigrates from Canada will not be treated as having disposed of their rights under the trust.

For more information regarding employee life and health trusts, please refer to the commentary on new section 144.1.

This amendment applies after 2009.

Clause 29

Dividend Refund to Private Corporation

ITA

129(1)(a) and (b)

Section 129 of the Act allows a private corporation that pays a taxable dividend to obtain a partial refund of the taxes it has paid on its investment income.

Paragraph 129(1)(a) provides that the amount of a corporation’s dividend refund for a taxation year may be refunded by the Minister of National Revenue without application, upon mailing the notice of assessment for the year.

Paragraph 129(1)(b) requires the Minister of National Revenue to make the dividend refund after mailing the notice of assessment if the corporation has made an application for the refund within a certain period.

Paragraphs 129(1)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 30
Capital Gains Refund to Mutual Fund Corporation

ITA
131(2)(b)

Section 131 of the Act provides rules relating to the taxation of mutual fund corporations and their shareholders. Paragraph 131(2)(b) requires the Minister of National Revenue to make a capital gains refund after mailing a notice of assessment if a mutual fund corporation has made an application for the refund within a certain period.

Paragraph 131(2)(b) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 31
Capital Gains Refund to Mutual Fund Trust

ITA
132(1)(b)

Section 132 of the Act provides rules relating to the taxation of mutual fund trusts. Paragraph 132(1)(b) requires the Minister of National Revenue to make a capital gains refund after mailing a notice of assessment if a mutual fund trust has made an application for the refund within a certain period.

Paragraph 132(1)(b) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 32
Allowable Refund to Non-resident-owned Investment Corporation

ITA
133(6)(a) and (b)

Section 133 of the Act provides rules relating to the taxation of non-resident-owned investment corporations. Subsection 133(6) provides for the refund of a corporation’s “allowable refund”.

Paragraph 133(6)(a) provides that the amount of a corporation’s allowable refund for a taxation year may be refunded by the Minister of National Revenue without application, upon mailing the notice of assessment for the year.

Paragraph 133(6)(b) requires the Minister of National Revenue to make the allowable refund after mailing the notice of assessment if the corporation has made an application for the refund within a certain period.

Paragraphs 133(6)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to
taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 33

Insurance Corporations

ITA 138(12)

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations. Section 138 is amended to modify existing transitional rules for insurers in respect of their life insurance businesses carried on in Canada (“life insurers”). These modifications are as a result of changes to accounting rules in respect of the International Financial Reporting Standards adopted by the Accounting Standards Board and effective for fiscal years beginning on or after January 1, 2011 (“IFRS”).

These proposed modifications to the transitional rules in section 138 are generally intended to ensure that any increase or decrease in the reserves of an insurer resulting from the IFRS accounting changes will be taken into account in computing income for tax purposes over a five-year period. In large part, this transitional treatment is provided by means of extending, to circumstances involving the IFRS accounting changes, existing provisions of the Act that were enacted to provide similar, but separate, transitional relief with respect to earlier accounting changes adopted by the Accounting Standards Board, and effective as of October 1, 2006 (“the 2006 accounting changes”).

The tax treatment of changes to a life insurer’s reserves as a result of the IFRS accounting changes differs in some ways from the income tax treatment of the 2006 accounting changes. In particular, there is a two-year delay in applying to a life insurer, in respect of transition year amounts arising from the IFRS accounting changes, the transition year income inclusion reversal and transition year income deduction reversal provisions (see subsections 138(18) and (19) of the Act respectively). This two-year delay is intended to defer the transition year income reversal and transition year income deduction reversal until implementation of the second phase of accounting rule changes in respect of the International Financial Reporting Standards effective for fiscal years beginning after 2012. As well, for purposes of subsections 138(18) and (19), the computation of the life insurer’s reserve transition amount (under the formula contained in the definition “reserve transition amount” in subsection 138(12)) in respect of changes to the life insurer’s reserves as a result of the IFRS accounting changes is done without regard to any of the insurer’s “deposit accounting insurance policies” (as newly defined in subsection 138(12)).

Existing rules will apply to treat the five-year transitional amounts as a result of the adoption of IFRS appropriately if, during the transitional period, an insurer transfers its assets to another entity. Particularly, the transferee corporation will be treated as a continuation of the transferor for the purposes of the five-year transition amounts. If a life insurer ceases to carry on a life insurance business, the recognition of the five-year transition period is generally accelerated to the time at which the insurer ceases to carry on that business.

For more details on these amendments, please refer to the commentary on the new definitions “deposit accounting insurance policy” and “excluded policy” in subsection 138(12), the amended definition “transition year” in subsection 138(12), and new subsection 138(17.1) of the Act. For more detail on related changes to the Income Tax Regulations (the “Regulations”), readers may refer to the commentary on the amendments to Parts XIV, XXIV and LXXXVI of the Regulations.
Definitions

ITA
138(12)

“deposit accounting insurance policy”

The new definition “deposit accounting insurance policy” in subsection 138(12) describes insurance policies of a life insurer that are not treated as insurance contracts under IFRS. Such insurance policies would generally be accounted for as investment contracts for purposes of computing a life insurer’s income for tax purposes.

As a result of related changes to Part XIV of the Regulations, deposit accounting insurance policies will be excluded from the computation of policy reserves of a life insurer.

A life insurer’s deposit accounting insurance policies that would be deposit accounting insurance policies in the insurer’s base year if IFRS had applied in that year will be ignored in determining the insurer’s reserve transition amount for purposes of subsection 138(18) and (19) of the Act, in respect of policy reserve changes arising from the IFRS accounting changes. For more detail, please refer to the commentary on the definitions “excluded policy” and “transition year” in subsection 138(12) of the Act.

“excluded policy”

The new definition “excluded policy” in subsection 138(12) is added as a result of the adoption of IFRS.

An excluded policy for a life insurer’s base year is its deposit accounting insurance policies for that year, determined as though IFRS applied for that year. (Under the existing definition “base year” in subsection 138(12) of the Act, the base year of an insurer is the insurer’s taxation year that immediately precedes its transition year – for example, assuming that an insurer’s IFRS transition year begins on January 1, 2011, the insurer’s base year will be its taxation year that ends on December 31, 2010.)

Excluded policies of an insurer are ignored in determining the insurer’s reserve transition amount, for purposes of subsections 138(18) and (19) of the Act, in respect of policy reserve changes arising from the IFRS accounting changes.

By way of background, the reserve transition amount of a life insurer in its IFRS transition year is the positive or negative amount determined by the formula A-B contained in the existing definition “reserve transition amount” in subsection 138(12).

Element B of the formula is the maximum amount that the life insurer is permitted to deduct under subparagraph 138(3)(a)(i) as a policy reserve for its base year. The new “excluded policy” definition is relevant to determining element B of this formula in respect of the IFRS accounting changes. Specifically, because of a related amendment contained in new paragraph 138(17.1)(a), element B is to be read as though the policy reserves referred to in that element were computed without reference to the insurer’s excluded policies for its base year.

Element A of the formula is the maximum amount that a life insurer would be permitted to deduct under subparagraph 138(3)(a)(i) (and that would be prescribed by section 1404 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, computed on the basis of two assumptions. The first is that the generally accepted accounting principles (“GAAP”) that applied to the insurer in valuing its assets and liabilities for its IFRS transition...
year had applied to the insurer for its base year \((i.e., \text{in effect, the policy reserves are to be computed for this purpose as though GAAP included the IFRS accounting changes in the base year})\). The second is that section 1404 of the Regulations is to be read in respect of the insurer's base year as it reads in respect of its transition year.

For further details, readers may refer to the commentary on the definitions “deposit accounting insurance policy” and “transition year” in subsection 138(12).

**“transition year”**

The definition “transition year” provides that a life insurer's transition year is its first taxation year that begins after September 2006. The definition is being amended as a result of the adoption of IFRS by the Accounting Standards Board.

The amended definition “transition year” provides for two separate transition years. The first relates to the 2006 accounting changes and preserves the existing rules under the income tax provisions that apply in respect of the 2006 accounting changes. Therefore, a life insurer’s transition year in respect of the 2006 accounting changes remains its first taxation year that begins after September 2006.

The second transition year of a life insurer relates to the adoption of IFRS. In respect of the adoption of IFRS, a life insurer’s transition year is its first taxation year that begins after 2010 (“IFRS transition year”).

As a result of this amendment, a life insurer will be required to compute, in respect of its life insurance business carried on in Canada in its IFRS transition year, its reserve transition amount (as defined in existing subsection 138(12)) in respect of policy reserves arising from the IFRS accounting changes. (This computation is independent of the reserve transition amount computed in respect of the 2006 accounting changes.) In this regard, existing subsection 138(16) requires the inclusion in computing the insurer's income for its IFRS transition year of the positive amount, if any, of the insurer's reserve transition amount for its IFRS transition year. Similarly, subsection 138(17) requires the deduction in computing the insurer's income for its IFRS transition year of the absolute value of the negative amount, if any, of the insurer's reserve transition amount for its IFRS transition year. Except for the adjustment resulting from new subsection 138(17.1) for excluded policies, if an insurer has included an amount under subsection 138(16), or deducted an amount under subsection 138(17), subsections 138(18) and (19) will provide for corresponding deductions or inclusions — recognized over a five-year period beginning with years that end two years after the start of its transition year — in computing the insurer's income.

For further details, readers may refer to the commentary on new subsection 138(17.1).

These amendments apply to taxation years commencing after 2010.

**IFRS transition reversals**

ITA  
138(17.1)

New subsection 138(17.1) provides rules of application for the purposes of computing the income tax effects, under subsections 138(18) and (19), in respect of an insurer’s policy reserves as a result of the IFRS accounting changes.
In respect of the adoption of IFRS, subsection 138(16) requires the inclusion in computing the insurer's income for its transition year of the positive amount, if any, of the insurer's reserve transition amount for its transition year. Subsection 138(17) requires the deduction in computing the insurer's income for its transition year of the absolute value of the negative amount, if any, of the insurer's reserve transition amount for its transition year.

In general terms, if a life insurer has included an amount under subsection 138(16), or deducted an amount under subsection 138(17), subsections 138(18) and (19) will provide for corresponding deductions or inclusions — recognized over a five-year period beginning with years that end two years after the start of its transition year — in computing the insurer's income.

In this regard, paragraph 138(17.1)(a) requires that, in computing a life insurer’s reserve transition amount for purposes of the five-year transition period in respect of the IFRS accounting changes set out in subsections (18) and (19), the insurer’s excluded policies for its base year are to be ignored in computing the amounts for element B of the formula contained in the definition “reserve transition amount” in subsection 138(12). For more detail, please refer to the commentary on the definition “excluded policy” in subsection 138(12).

New paragraphs 138(17.1)(b) and (c) provide for a two-year delay in applying the transition year income inclusion reversal and transition year income deduction reversal provisions in respect of transition year amounts for life insurers arising from the adoption of IFRS.

These amendments apply to taxation years commencing after 2010.

**Clause 34**

**Deferred and Special Income Arrangements**

**ITA**

144.1

Division G of Part I of the Act deals with Deferred and Special Income Arrangements. Division G is amended to introduce a new section, section 144.1, dealing with employee life and health trusts (ELHTs), a new type of taxable *inter vivos* trust. These amendments apply to trusts established after 2009. The new rules applicable to ELHTs are based to a large extent on Canada Revenue Agency administrative positions regarding Health and Welfare Trusts. At this time, the government does not intend to make any changes to the tax rules applicable to Health and Welfare Trusts.

**ITA**

144.1(1)

New subsection 144.1(1) provides definitions that apply for the purposes of new section 144.1.

“**actuary**”

“Actuary” is defined as a Fellow of the Canadian Institute of Actuaries. This definition is relevant for the purposes of new subsection 144.1(5). The same definition is used in section 147.1 of the Act, which deals with registered pension plans.
“class of beneficiaries”

“Class of beneficiaries” is defined as a group of beneficiaries who have identical rights or interests under the trust. This definition is relevant for the purposes of new paragraphs 144.1(2)(e) and (f).

“designated employee benefits”

“Designated employee benefits” are a subset of the benefits listed in subparagraph 6(1)(a)(i) of the Act and may be described generally as health and insurance benefits. Pursuant to subsection 144.1(2), an ELHT is required to have as its only purposes the provision of designated employee benefits for employees.

“employee”

“Employee” is defined to include both current and former employees. The inclusion of former employees is intended to accommodate the provision of benefits to retirees, as well as to past employees (for example, in the context of business divestitures). The definition also includes individuals for whom an employer has assumed the responsibility of providing designated employee benefits as a result of a business acquisition. This could be relevant, for example, if a retired individual’s employer has been acquired by a new corporation and the new corporation has assumed responsibility for the payment of designated employee benefits for retirees of the acquired employer.

“key employee”

“Key employee” means an employee who is either a “specified employee” (as defined in subsection 248(1) of the Act) or a high-income employee. For this purpose, a high-income employee is an employee whose earnings for any two of the five preceding years exceeded five times the year’s maximum pensionable earnings (YMPE) for Canada Pension Plan purposes. YMPE for 2009 was $46,300 and for 2010 is $47,200.

A trust which includes key employees as beneficiaries must ensure that it satisfies the conditions in paragraphs 144.1(2)(e) and (f) in order to retain its status as an employee life and health trust. For more detail, please refer to the commentary on those paragraphs.

These amendments apply after 2009.

ITA
144.1(2)

New subsection 144.1(2) sets out the conditions that must govern the trust throughout a taxation year in order for a trust to qualify as an ELHT. Because these conditions must be met throughout the year, a trust which fails to satisfy one or more of the conditions at any time during the year will lose its employee life and health trust status for that taxation year. The terms that govern the trust must reflect the requirements of paragraphs 144.1(2)(a) to (i). Consequently, it should be possible to verify whether or not a trust is an employee life and health trust by reviewing the trust agreement or indenture.

Paragraph (a) requires that the trust’s purposes be limited to the provision of designated employee benefits. In this regard, it is intended that all activities that are reasonably related to providing designated employee benefits, such as managing investments, administering payments, and similar supporting activities, be considered to be activities that further the trust’s purposes of providing designated employee benefits. It is also intended that winding up the trust in the manner contemplated in new paragraph
Paragraph (b) requires that the terms of the trust must provide that, on wind up of the trust, the remaining property of the trust may only be distributed as provided in any of subparagraphs (i) to (iii). Accordingly, in general terms, an employee life and health trust may be wound up by distributing its remaining assets to

- another employee life and health trust;
- the government of Canada or a province, or
- to employee or dependent beneficiaries, but excluding key employees or related individuals.

Paragraph (c) requires that the trust be resident in Canada, under ordinary principles of tax residency for trusts.

Paragraph (d) requires that the trust have no beneficiaries other than persons each of whom is an employee of a participating employer, an employee’s spouse or common law partner, a member of the employee’s household who is related to the employee, another employee life and health trust or Her Majesty in right of Canada or a province. For greater certainty, it is not necessary for a trust to have all three categories of beneficiaries to satisfy this paragraph.

Paragraph (e) requires that the ELHT contain at least one class of beneficiaries which class represents at least 25% of all of the beneficiaries of the ELHT in respect of the employer. In addition, at least 75% of the members of the class must be non-key employees of the employer.

Paragraph (f) requires that the rights of key employees who are beneficiaries of an ELHT not be more advantageous than those of the class of beneficiaries described in paragraph (e). It is possible to comply with this rule either by including key employees in a broader class that meets the conditions in paragraph (e), or by establishing a separate class for key employees which has the same (or less advantageous) rights as another class that meets the conditions in paragraph (e).

Paragraph (g) generally provides that the trust must not provide any rights to an employer (or to a person not dealing at arm’s length with the employer). Certain exceptions are provided. One exception is for the provision of designated employee benefits to a person not dealing at arm’s length with the employer. For example, this exception would permit the controlling shareholder of an employer who is also an employee of the employer, or her spouse, to receive designated employee benefits under the trust. Another exception allows for the existence of covenants and warranties in favour of participating employers to enable them to require the maintenance of employee life and health trust status and the avoidance of the application of new subsection 144.1(3) to the trust. The third exception accommodates “prescribed payments”. For information regarding “prescribed payments”, please refer to the commentary on new section 9500 of the Income Tax Regulations.

Paragraph (h) provides that the trust may not make a loan to, or an investment in, a participating employer or a person not dealing at arm’s length with a participating employer. This provision is intended to prevent trust capital from reverting, directly or indirectly, to an employer. Consequently, it is intended that an ELHT could hold a promissory note issued by an employer, as evidence of the employer’s indebtedness in relation to unpaid employer contributions, but could not loan money to an employer. Similarly, an ELHT could, subject to the fiduciary obligations of the trustees to manage the trust in the
interests of the beneficiaries, accept shares of the employer as a contribution in some circumstances. Paragraph (h) would, however, require the trust’s terms to prevent it from using its capital or income to make a new investment in an employer.

Paragraph (i) provides that employer representatives must not constitute a majority of trustees or otherwise control the trust.

These amendments apply after 2009.

ITA 144.1(3)

New subsection 144.1(3) stipulates that an employee life and health trust that, in a taxation year, breaches the terms required to govern the trust under new subsection 144.1(2), or is operated primarily for the benefit of key employees (or family members of key employees) may not deduct any amount pursuant to subsection 104(6) for that taxation year.

This amendment applies after 2009.

ITA 144.1(4)

New paragraph 144.1(4)(a) allows an employer to claim a deduction in respect of its contributions to an ELHT to the extent that the amount being claimed relates to one of three amounts. New subparagraph 144.1(4)(a)(i) provides that amounts payable to a licensed insurance corporation for annual insurance coverage in respect of designated employee benefits may support an employer deduction. For example, if an employee life and health trust uses employer contributions to purchase insurance under a private health services plan, the premiums paid to the insurance company for that year by the trust may be taken into account in determining the deductible portion of employer contributions, even if no medical claims arise in the year among the employees. New clause 144.1(4)(a)(ii)(A) preserves the existing treatment for group term life insurance under section 18. New clause 144.1(4)(a)(ii)(B) allows employers to deduct ELHT contributions that enable the ELHT to pay or provide designated employee benefits that are payable in the same year or in a preceding year. In other words, employer contributions that relate to liabilities to make employee benefit payments in future years are not deductible in the year the contributions are made.

It is intended that amounts required to be contributed to fund the portion of an ELHT’s administrative and ancillary costs for a taxation year that relate to the designated employee benefits that become payable in the year be deductible by the employer for that year.

New paragraph 144.1(4)(b) provides that amounts that are not deductible under paragraph 144.1(4)(a) that are contributed to enable an employee life and health trust to provide or pay benefits described in subparagraph 144.1(4)(a)(i) or (ii) in a subsequent year are deductible in that subsequent year.

This amendment applies after 2009.

ITA 144.1(5)

New subsection 144.1(5) creates a rebuttable presumption. If, before the time of a contribution, an amount was specified in a report by an independent actuary (prepared using accepted actuarial principles
and practices) to be reasonably expected to be paid or incurred by an ELHT to provide designated employee benefits in a particular year, then, in the absence of evidence to the contrary, a portion of the contribution equal to that amount is presumed to have been contributed for the purpose of enabling the ELHT to provide those benefits in that particular year. For example, if a properly prepared actuarial report projects that an ELHT will spend $1 million per year for the following five years in order to provide the contemplated designated employee benefits to employees, and an employer contributes $6 million in year one, the employer can (in the absence of evidence to the contrary) rely on the actuarial report to support an employer-level deduction of $1 million per year for each of years one to five. The remaining undeducted $1 million may be deductible the following year (year six) if it may reasonably be regarded as having been contributed to enable the trust to provide designated employee benefits in year six, pursuant to new paragraph 144.1(4)(a).

This amendment applies after 2009.

ITA 144.1(6)

New subsection 144.1(6) provides a special rule to accommodate deductibility for periodic employer contributions to multi-employer employee life and health trusts that meet certain conditions. In general terms, these conditions, which are similar to those which apply to specified multi-employer pension plans under Income Tax Regulation 8510(3), are as follows in relation to a particular year:

- Not more than 95 percent of the employee beneficiaries will work for a single employer;
- At least 15 employers will contribute, or at least 10 percent of the employee beneficiaries will work for more than one employer;
- Employer contributions are made pursuant to a collective bargaining agreement; and
- Employer contributions are made in whole or in part on a per hour worked basis.

This amendment applies after 2009.

ITA 144.1(7)

New subsection 144.1(7) generally provides that the total amount deducted by an employer in all taxation years in respect of contributions made to an ELHT may not exceed the total amount contributed by the employer to the ELHT. This rule is intended to prevent an employer from attempting to claim a deduction in the later years of a pre-funded ELHT in respect of amounts related to inflation, income earned by the trust or to higher than anticipated benefit payments which are facilitated by strong investment performance within the trust.

Example

An employer contributes $50 million to an ELHT. The trust assumes responsibility for health plan benefits payments for all employees who commenced employment before 1990. Actuarial projections indicate that the trust expects to pay out $50 million in benefits within the first 13 years of its operations, although the life of the trust is expected to be at least 35 years. The benefit payments in later years will be possible because the trust will have been earning investment income throughout its life. Even though
the trust is still making benefit payments in those later years, no amount is deductible by the employer once its original contribution of $50 million has been claimed over the years.

ITA
144.1(8)

New subsection 144.1(8) deals with the special situation of an employer who issues promissory notes to an ELHT in relation to the employer’s obligation to make contributions to the ELHT. Interest payable by the employer on such notes would not normally be deductible under paragraph 20(1)(c) of the Act, because the interest is not payable on “borrowed money”.

Moreover, treating the notes as an investment asset of the trust would cause interest payable to be treated as trust income and, depending on the structure of the notes, could cause the trust to be liable for income tax, under the interest accrual rules in section 12 of the Act, before it had received any payments on the notes.

The new rules in subsection 144.1(8) provide relief from these results by deeming the payments on the notes, whether payments of interest or principal, not to be payments of interest or principal but to be contributions to the trust, the tax treatment of which is governed by section 144.1 (and therefore not by paragraph 20(1)(c) or the interest accrual rules in section 12).

Example

Acme Corporation and the union that represents most of its employees decide to restructure Acme’s employee health benefit obligations by establishing an ELHT. The parties calculate that the present value of Acme’s health benefit obligations is $10 million. Acme agrees to contribution $3 million in year 1, and to provide the trust with a promissory note bearing 6% simple interest in relation to the remaining $7 million obligation. Interest will accrue annually but no amount is payable on the note in respect of principal or interest until after the end of year 3. The note matures in year 5. Acme’s payment schedule is approximately as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Acme Payment to Trust</th>
<th>Acme Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$3 million – first trust contribution</td>
<td>$750,000</td>
</tr>
<tr>
<td>2</td>
<td>0</td>
<td>$750,000</td>
</tr>
<tr>
<td>3</td>
<td>0</td>
<td>$750,000</td>
</tr>
<tr>
<td>4</td>
<td>$3.26 million (representing 3 years’ interest plus a $2 million principal repayment in respect of promissory note)</td>
<td>$750,000</td>
</tr>
<tr>
<td>5</td>
<td>$5.6 million (retiring the note with the remaining interest and principal outstanding)</td>
<td>$750,000</td>
</tr>
</tbody>
</table>
The parties have also projected that the trust’s benefit payments, together with ancillary costs associated with the payment of those benefits, will be approximately $750,000 per year for each of these years. Because of the application of new paragraph 144.1(4)(a), Acme’s deduction in year 1 is limited to $750,000. New paragraph 144.1(4)(b) will apply to allow Acme a $750,000 deduction in each of years 2 and 3, leaving $750,000 of the original $3 million contribution undeducted after the end of year 3. In year 4, Acme deducts another $750,000, leaving $3.26 million in undeducted trust contributions to be deducted in future years. In year 5, again $750,000 is deductible for Acme, with the remaining contributions, plus the undeducted balance from year 4, deductible in later years.

The trust will receive all of the payments as capital contributions to the trust.

ITA
144.1(9)

New subsection 144.1(9) is related to the promissory note rule in new subsection 144.1(8). In order to prevent an employer from having to determine, at the later time of a payment on a promissory note (or similar indebtedness) that it has issued to a trust, that the trust retains its status as an employee life and health trust (ELHT), new subsection 144.1(9) creates a deeming rule. The rule provides that a trust that was an ELHT at the time that the note was issued is deemed to retain that status, for the limited purpose of determining whether an amount that is deemed under new paragraph 144.1(8)(b) to be an employer contribution at a later time (i.e. at the time the payment is made to the trust on the note) may be treated as an employer contribution to an ELHT.

This amendment applies after 2009.

ITA
144.1(10)

New subsection 144.1(10) provides a method of looking through the trust in respect of employee contributions, to the extent that the contributions could receive particular tax treatment (for example, eligibility for the medical expense tax credit) if made directly for a particular benefit rather than through the trust. For this purpose, the trust must identify the contributions as contributions in respect of a particular designated employee benefit at the time they are made. It is anticipated that this will be achieved in most cases by the trust notifying the employer and the employer reporting the contributions on the employee’s pay stub.

This amendment applies after 2009.

ITA
144.1(11)

New subsection 144.1(11) requires that any amount received from a trust that is or was an ELHT be included in income, unless the amount was received as the payment of a “designated employee benefit” that is not included in income because of section 6. It is anticipated that this income inclusion would most frequently apply in relation to designated employee benefits that are taxable under section 6 (e.g. employer-paid disability insurance periodic benefits) or on the wind-up of an ELHT to a distribution of residual surplus, or to a payment to a non-qualifying beneficiary of a former ELHT, such as an employer.

This amendment applies after 2009.
New subsection 144.1(12) allows an ELHT that administers employee benefits on behalf of employees of more than one employer to elect to be treated for income tax purposes as two or more separate trusts provided that it satisfies the conditions in paragraphs (a) and (b). Paragraph (a) requires that the trust designate the property being held on behalf of each group of employees in an election filed by its filing-due date for the first taxation year of what will be the deemed separate trust (i.e. generally the filing due-date for the year in which the trustees of the trust decide to make the election). Paragraph (b) requires that the trust terms stipulate that contributions to the trust from one employer accrue only to the benefit of that employer’s employees.

This amendment applies after 2009.

New subsections 144.1(13) provides that non-capital losses of ELHTs are only deductible to the extent provided by new subsections 111(7.3) to (7.5). For more information, see the commentary on those provisions.

This amendment applies after 2009.

**Clause 35**

**Trust not Taxable**

Subsection 146.2(6) of the Act provides that no Part I tax is payable by a trust that is governed by a TFSA (a “TFSA trust”) unless the TFSA trust carries on business or holds non-qualified investments during the year. Subsection 146.2(6) of the Act also provides special rules that apply for the purposes of calculating income of a TFSA trust from those sources. Subsection 146.2(6) is amended to add new paragraph (c). New paragraph 146.2(6)(c) provides that the TFSA trust’s income from carrying on a business or in respect of a non-qualified investment is to be calculated without reference to subsection 104(6). Subsection 104(6) generally permits a trust to deduct, in computing its income for a taxation year, any income payable to a beneficiary in the year under the trust.

This amendment applies to the 2010 and subsequent taxation years.

**Clause 36**

**Registered Disability Savings Plans – Definitions**

The definition “contribution” in subsection 146.4(1) of the Act is amended by adding new paragraph (d) to the definition, consequential on the introduction of new section 60.02. New section 60.02 creates a rollover for “specified RDSP payments” which, in general terms, are amounts deposited to an RDSP as a
result of the receipt of proceeds from a retirement savings vehicle of a deceased parent or grandparent of the RDSP beneficiary. For more information, please see the commentary to new section 60.02.

New paragraph (d) of the definition “contribution” applies to a specified RDSP payment (as defined in new subsection 60.02(1)). The effect of the new paragraph is to treat a specified RDSP payment as an RDSP contribution for the purposes of paragraphs 146.4(4)(f), (g), (h) and (n). This means that specified RDSP payments will be subject to the overall RDSP lifetime contribution limit of $200,000, and can only be made in respect of “DTC-eligible individuals” (as defined by subsection 146.4(1)) who are under age 60 and resident in Canada at the time of the specified RDSP payment (see paragraphs 146.4(4)(f) and (g)). Specified RDSP payments will, under paragraph 146.4(4)(h), have to be made either by or with the consent of the RDSP holder. Under paragraph 146.4(4)(n), specified RDSP payments will be treated as private contributions and not as amounts received under the Canada Disability Savings Act.

“Specified RDSP payments” will not be considered contributions for any other purposes. This means, in particular, that specified RDSP payments will not attract Canada Disability Savings Grants under the Canada Disability Savings Act and will be included in the beneficiary’s income when withdrawn from the RDSP.

This amendment applies after March 3, 2010.

Clause 37
Charities
ITA
149.1

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered charity status.

Definitions
ITA
149.1(1)

“capital gains pool”, “enduring property” and “specified gift”

Consequential to the amendment of the definition “disbursement quota” in subsection 149.1(1) of the Act, the definitions “capital gains pool”, “enduring property” and “specified gift” in subsection 149.1(1) are repealed.

“disbursement quota”

The “disbursement quota” (DQ) for a taxation year of a charitable foundation or charitable organization is defined in subsection 149.1(1) of the Act for the purpose of determining the amount that the charity is required, under subsection 149.1(2), (3) or (4) of the Act, to spend in a taxation year on charitable activities or gifts to qualified donees. The formula for the amount of this expenditure requirement contains two general components:

- a requirement to spend a percentage of gifts received for which an official receipt was issued, including both transfers received from other charities and enduring property disposed that was
A gift from one charity to another that is specified by the donor as a “specified gift” is not considered in the calculation of the DQ of the recipient charity. Such amounts are therefore precluded from satisfying the DQ expenditure requirement of the transferor charity.

Assets referred to in the second requirement are, generally, those owned by the charity at any time in the 24 months immediately preceding the taxation year, not including assets received from other charities during the year and “enduring property” disposed of in the year (as these excluded amounts are already considered in the first requirement). The “prescribed amount” is determined under section 3701 of the Income Tax Regulations.

The DQ definition is amended to eliminate the first requirement and to modify the second. Generally, the amended DQ will require that a charity spend annually 3.5 per cent of the prescribed amount of all assets owned by the charity at any time in the 24 months immediately preceding the taxation year that were not used in charitable programs or administration of the charity, but only if that amount exceeds $25,000 for charitable foundations and $100,000 for charitable organizations.

This definition also applies for the purpose of exempting a designated gift from the application of new paragraph 149.1(4.1)(d) and new subsection 188.1(12) of the Act to a charity that receives a gift from another charity with which it deals not at arm’s length. For more information see the commentary on those new provisions.

These amendments apply for taxation years that end on or after March 4, 2010.

Exclusions

ITA
149.1(1.1)

Subsection 149.1(1.1) of the Act excludes certain amounts from being included in determining if a registered charity has satisfied its disbursement quota for a year. In particular, this subsection provides that a “specified gift” from the charity to a qualified donee is precluded from satisfying the obligation of the donor charity under subsection 149.1(2), (3) or (4) of the Act, to expend an amount at least equal to its disbursement quota for the year.
Paragraph 149.1(1.1)(a) is amended to eliminate the reference to a “specified gift”. This amendment is consequential to the amendment of the definition “disbursement quota” and the concurrent repeal of the definition “specified gift” in subsection 149.1(1) of the Act.

In place of the reference to a specified gift is introduced a reference to a “designated gift”. Together with the amendment of subsections 149.1(1) and (4.1) of the Act, this reference will mean that a designated gift cannot be used to satisfy the donor charity’s disbursement quota. For more information, refer to the commentary for those subsections.

These amendments apply for taxation years that end on or after March 4, 2010.

Authority of Minister

ITA
149.1(1.2)

Subsection 149.1(1.2) of the Act provides that, for the purposes of determining the “prescribed amount” of property of a charity that was not used in charitable programs or administration under section 3701 of the Income Tax Regulations (which applies in the calculation of a charity’s “disbursement quota” under subsection 149.1(1) of the Act), the Minister of National Revenue may authorize a change of the number of periods chosen by a charity for the purposes of that calculation and may accept any method for the determination of the fair market value of a property.

Subsection 149.1(1.2) is amended consequential to the renumbering of the formula in the disbursement quota definition. In addition, paragraph 149.1(1.2)(a) is amended to refer to a “registered charity” instead of a “charitable foundation”, as the disbursement quota applies to all registered charities.

This amendment applies for taxation years that end on or after March 4, 2010.

Revocation of Registration of a Registered Charity

ITA
149.1(4.1)

Subsection 149.1(4.1) of the Act allows the Minister of National Revenue to revoke the registration of a charity in certain circumstances. Paragraph 149.1(4.1)(a) permits revocation in the case of an inter-charity gift if it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities (as required, for example, under subsection 149.1(2), (3) or (4) of the Act).

Paragraphs 149.1(4.1)(a) and (b) are amended to expand their application to any transaction, if it may be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities. Such a transaction may include a gift from one registered charity to another.

New paragraph 149.1(4.1)(d) may apply where an amount is transferred by way of gift between registered charities who do not deal at arm’s length, unless the donor charity has indicated in its annual information return that the gift is a “designated gift”, as now defined in subsection 149.1(1) of the Act. Paragraph 149.1(4.1)(d) provides that the Minister may revoke the recipient charity’s registration if it does not spend, in the taxation year in which the gift was received or in the subsequent taxation year, the full amount transferred. That amount must be expended, in addition to the recipient charity’s disbursement
quota for those two years, on its own charitable activities or by way of gifts to qualified donees with which it deals at arm’s length.

This amendment applies for taxation years that end on or after March 4, 2010.

**Accumulation of Property**

**ITA**

149.1(8) and (9)

Subsections 149.1(8) and (9) of the Act allow a registered charity, with the approval of the Minister of National Revenue, to accumulate property for a particular purpose, such that the amount accumulated will satisfy the charity’s disbursement quota as defined under subsection 149.1(1) of the Act. Subsection 149.1(9) of the Act provides that property so accumulated in a prior year, along with income earned from the property, is deemed to be a gift received that is included in determining the charity’s disbursement quota for the year after the expiration of a time period previously specified by the Minister, or an earlier time that the charity has decided not to use the property for the particular purpose.

Subsection 149.1(8) is amended and subsection 149.1(9) is repealed to reflect the changes to the “disbursement quota” definition. In particular, subsection 149.1(8) is amended such that accumulated property and its related income are not to be included in the prescribed amount of all assets owned by the charity that were not used in charitable programs or administration, as long as the charity remains in compliance with the terms and conditions of the Minister’s approval.

Subsection 149.1(9) is repealed as gifts received by a charity are no longer relevant to the amended definition of disbursement quota.

These amendments apply for taxation years that end on or after March 4, 2010.

**Income of a Charity**

**ITA**

149.1(12)(b)(i)

Subparagraph 149.1(12)(b)(i) of the Act excludes “specified gifts” from the calculation of the income of a charity. Subparagraph 149.1(12)(b)(i) is amended to change this reference to a “designated gift”. For more information, refer to the commentary for the new definition “designated gift” in subsection 149.1(1) of the Act.

This amendment applies for taxation years that end on or after March 4, 2010.

**Clause 38**

**Assessment**

**ITA**

152

Section 152 of the Act contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer and to determinations and redeterminations of amounts of tax deemed to have been paid by a taxpayer.
Definition of “normal reassessment period”

ITA
152(3.1)(a) and (b)

Subsection 152(3.1) of the Act defines “normal assessment period” for the purpose of various provisions in section 152.

Paragraph 152(3.1)(a) provides generally that if the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the normal reassessment time is the period that ends four years after the earlier of the day of the mailing of a notice of an original assessment of the taxpayer for the year and the day of mailing of an original notification that no tax is payable for the year.

Paragraph 152(3.1)(b) provides generally that if paragraph 152(3.1)(a) does not apply to a taxpayer, the normal reassessment time is the period that ends three years after the earlier of the day of the mailing of a notice of an original assessment of the taxpayer for the year and the day of mailing of an original notification that no tax is payable for the year.

Paragraphs 152(3.1)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Assessment and Reassessment Limitation Period

ITA
152(4)(d)(ii)

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 except in certain circumstances.

Paragraph 152(4)(d) provides generally that where a province has made a “provincial reassessment” in respect of a taxation year of a corporation, the Minister of National Revenue may make an assessment, reassessment or additional assessment in respect of the year 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.

Subparagraph 152(4)(d)(ii) is amended to replace “mailing” with “sending”.

Clause 39

Withholding

ITA
153

Section 153 imposes tax withholding and remittance obligations on payments described in subsection 153(1).
Subsection 153(1) of the Act requires the withholding of tax from certain payments described in paragraphs 153(1)(a) to (t). The person making the payment is required to remit the amount withheld to the Receiver General on behalf of the payee. Paragraph 153(1)(s) is amended to add a reference to amounts described in new paragraph 56(1)(z.2).

New paragraph 56(1)(z.2) effectively requires a taxpayer to include in income an amount that is received from a current or former employee life and health trust to the extent that the amount received is not a payment of a “designated employee benefit”. “Designated employee benefit” is defined in new subsection 144.1(1). For more information, see the commentary on those provisions.

This amendment applies after 2009.

Stock Option Benefits

New subsection 153(1.01) is introduced consequential on the Budget 2010 proposal to repeal the tax deferral election with respect to the acquisition of public corporation securities under an employee stock option agreement under former subsection 7(8) and to clarify the tax remittance requirement on the amount of an employment benefit associated with the acquisition of the securities. This proposal is intended to ensure that employee income tax obligations are met and, in particular, prevent situations where an employee is unable to meet his or her tax obligations as a result of a decline in the value of securities acquired under a stock option plan.

New subsection 153(1.01) clarifies that, for the purpose of paragraph 153(1)(a), any amount deemed to be received as an employment benefit under any of paragraphs 7(a) to (d.1) (but subject to the limitations in new subsection 153(1.01), described below) is considered remuneration and subject to the same withholding and remittance rules as if it were a bonus for the taxation year. This ensures that tax obligations on the employment benefit are required to be remitted by the employer in respect of the employee’s tax liability. The detailed withholding rules applicable to bonuses are found in subsections 103(1) and (2) of the Income Tax Regulations.

New subsection 153(1.01) also clarifies that the withholding obligation will not be applicable to certain amounts. In particular, pursuant to paragraph 153(1.01)(a), a deduction available to the employee under paragraph 110(1)(d) will be taken into account in applying the withholding rules. As such, withholding will not apply in respect of one-half of the employment benefit that is deductible where the employee is entitled to a deduction under paragraph 110(1)(d).

Pursuant to paragraph 153(1.01)(b), withholding will not apply to an amount deemed to have been received as an employment benefit on the disposition of securities of a Canadian-controlled private corporation (CCPC). This reflects the fact that the employment benefit on the disposition of CCPC securities is not recognised until the securities are sold or exchanged, so withholding may not apply appropriately in such situations.

Pursuant to paragraph 153(1.01)(c), withholding will not apply to an amount that is deductible by the employee under paragraph 110(1)(d.01) in respect of securities donated to a charity if, upon acquisition of the securities, the employee instructs the broker or dealer appointed or approved by the employer to sell
the securities immediately and to donate all or part of the proceeds of disposition to a qualifying charity. Subsection 110(2.1) sets out the rule for determining the amount that is deductible by the employee in respect of the donation.

New subsection 153(1.01) applies after 2010. It does not, however, apply to employment benefits arising from stock options granted before 2011 to an employee under a stock option agreement which existed before 4:00 p.m. Eastern Standard Time on March 4, 2010 and which included, at that time, a written condition prohibiting the employee from selling the securities acquired under the agreement for a period of time. This transitional relief allows employers time to adjust their employee stock option plan provisions, if necessary, to allow a sufficient quantity of the related securities to be sold at the time of exercise of an employee stock option in order to satisfy the income tax withholding and remittance obligations.

**Undue Hardship - Non-cash Stock Option Benefit**

**ITA**

153(1.31)

Subsection 153(1.1) gives the Minister of National Revenue discretion to reduce the amount required by subsection 153(1) to be deducted or withheld on payments where the Minister is satisfied that the amount required under that subsection to be deducted or withheld from a payment made to a taxpayer would cause undue hardship to the taxpayer.

New subsection 153(1.31) limits the Minister’s discretion under subsection 153(1.1) in circumstances where an employee is deemed to have received an employment benefit and the benefit arose from the acquisition of securities. In particular, an employee will not be able to claim undue hardship under subsection 153(1.1) solely because the benefit was received as a non-cash benefit (in other words, because the benefit was received in the form of securities).

New subsection 153(1.31) applies after 2010.

**Clause 40**

**Interest on Penalties**

**ITA**

161(11)(c)

Section 161 of the Act provides for the payment of interest on outstanding amounts of tax and penalties payable under Parts I, I.3, VI and VI.1 of the Act, including late or deficient instalment payments. In particular, subsection 161(11) requires the payment of interest on penalties. Paragraph 161(11)(c) provides generally that interest will accrue for penalties (other than penalties payable because of section 161.1 or under subsection 237.1(7.4) of the Act), from the day of mailing of the notice of original assessment of the penalty to the day of the payment.

Paragraph 161(11)(c) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 41

Contents of Application for Offset of Refund Interest and Arrears Interest

ITA
161.1(3)(c)(i) to (v)

Section 161.1 of the Act provides rules for the offset of interest in respect of overpayments and underpayments by a corporation. Subsection 161.1(3) provides requirements for a valid application for an interest offset. Subparagraphs 161.1(3)(c)(i) to (v) provide generally that a corporation’s application for an interest offset is deemed not to have been made unless it is made on or before the day that is 90 days after the latest of

(i) the day of mailing of the first notice of assessment giving rise to any portion of the corporation’s overpayment amount to which the application relates,

(ii) the day of mailing of the first notice of assessment giving rise to any portion of the corporation’s underpayment amount to which the application relates,

(iii) if the corporation has served a notice of objection to an assessment referred to in (i) or (ii) above, the day of mailing of the notification under subsection 165(3) by the Minister in respect of the notice of objection,

(iv) if the corporation has appealed, or applied for leave to appeal, from an assessment referred to in (i) or (ii) above, to a court of competent jurisdiction, the day on which the court dismisses the application, the application or appeal is discontinued or final judgment is pronounced in the appeal, and

(v) the day of mailing of the first notice to the corporation indicating that the Minister of National Revenue has determined any portion of the corporation’s overpayment amount to which the application relates, if the overpayment amount has not been determined as a result of a notice of assessment mailed before that day.

Subparagraphs 161.1(3)(c)(i) to (v) are amended to replace “mailing” with “sending” and “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 42

Refunds

ITA
164

Section 164 of the Act provides rules relating to refunds of taxes, including provisions dealing with repayments, applications to other debts, and interest.
Refunds
ITA
164(1)(a) and (b)

Subsection 164(1) of the Act provides rules governing refunds of overpayments of tax. Subparagraphs 164(1)(a)(i) and (ii) provide circumstances where the Minister of National Revenue may, before mailing the notice of reassessment for the year, refund all or part of an amount claimed in the taxpayer’s return as an overpayment for the year.

Subparagraph 164(1)(a)(iii) provides that the Minister of National Revenue may, on or after mailing the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii).

Paragraph 164(1)(b) generally requires the Minister of National Revenue to make the refund referred to in subparagraph 164(1)(a)(iii) after mailing the notice of assessment if an application has been made for the refund within a certain period.

Paragraphs 164(1)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Exception
ITA
164(1.5)

Subsection 164(1.5) of the Act provides generally that the Minister of National Revenue may, notwithstanding certain restrictions in subsection 164(1), refund all or any portion of an overpayment of tax under certain circumstances, on or after mailing a notice of assessment for a taxation year.

Subsection 164(1.5) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Form Deemed to be a Return of Income
ITA
164(2.3)

Subsection 164(2.3) of the Act provides generally that if an individual has, in accordance with the Child Tax Benefit provisions, filed a form in lieu of a return of income, the form is deemed to be a return of the taxpayer’s income for that year and a notice of assessment in respect of that return is deemed to have been mailed by the Minister.

Subsection 164(2.3) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 43
Objections to Assessments
ITA
165

Section 165 of the Act provides rules governing a taxpayer’s right to object to an assessment or determination by the Minister of National Revenue of tax, interest, penalties and certain other amounts.

Objections to Assessments
ITA
165(1)(a) and (b)

Subsection 165(1) of the Act allows a taxpayer to object to an assessment within a certain period of time.

Paragraph 165(1)(a) provides generally that if the assessment is of an individual (other than a trust) or testamentary trust, the taxpayer who objects must serve notice on the Minister on or before the later of (i) the day that is one day after the taxpayer’s filing-due date for the year, and (ii) the day that is 90 days after the day of mailing of the notice of assessment.

Paragraph 165(1)(b) provides generally that where the assessment is not of an individual (other than a trust) nor a testamentary trust, the taxpayer who objects must serve notice on the Minister on or before the day that is 90 days after the day of mailing of the notice of assessment.

Paragraphs 165(1)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Limitation of Right to Object to Assessments or Determinations
ITA
165(1.1)

Subsection 165(1.1) of the Act restricts the matters to which a taxpayer may object in respect of certain assessments or determinations made by the Minister of National Revenue. This includes, for example, assessments made to give effect to an order of a court to vacate or vary an earlier assessment under the Act. Subsection 165(1.1) permits a taxpayer to file an objection to such an assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but generally limits the right of objection to issues arising as a result of that specific assessment or determination.

Subsection 165(1.1) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 44

Service of Objections to Assessments

ITA
166.1(6)

Section 166.1 of the Act allows a taxpayer to apply to the Minister of National Revenue for an extension of time to object to an assessment or make a request under subsection 245(6). If the request is granted, subsection 166.1(6) deems the date on which the notice of objection or request is served or made to be the day the decision of the Minister is mailed to the taxpayer.

Subsection 166.1(6) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 45

Appeal

ITA
169(1)

Subsection 169(1) of the Act provides that a taxpayer may, under certain conditions, appeal an assessment but that no appeal may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister of National Revenue has confirmed the assessment or reassessment.

Subsection 169(1) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 46

Special Tax and Relief for Deferral of Stock Option Benefit

ITA
180.01

Budget 2010 proposes to provide relief to taxpayers who took advantage of the tax deferral election on stock options introduced in Budget 2000 and who experienced financial difficulties as a result of a decline in the value of the optioned securities. The proposed relief is in the form of a special elective tax treatment for taxpayers who elected under subsection 7(8) to defer tax liability on their stock option benefit until the disposition of the optioned securities. Budget 2010 proposes to contemporaneously repeal the tax deferral election in respect of public corporations securities. For more information, please see the commentary on subsections 7(8) to (15).

New section 180.01 establishes the conditions for taxpayer eligibility for the special elective tax treatment and sets out the rules applicable in respect of the election by the taxpayer to benefit from the relief.
measure. The taxpayer may make the election for the special relief in any year (before 2015) in which he or she is required to include in income a qualifying deferred stock option benefit.

**Election and Special tax**

**ITA**

180.01(1)

New subsection 180.01(1) sets out the conditions that a taxpayer must fulfill in order to make an election to obtain relief from the deferred tax liability. The taxpayer must have made an election under former subsection 7(8) to defer tax liability on an employment benefit deemed to have been received in respect of rights exercised on a stock option agreement under paragraph 7(1)(a). As well, the taxpayer must have disposed of the optioned securities in the year of the election and before 2015.

If the taxpayer disposed of the securities before 2010, the taxpayer is required to file the election for relief on or before the filing-due date for 2010. In any other case, the election must be filed on or before the filing-due date for the taxation year of the taxpayer in which the disposition of the securities occurred.

**ITA**

180.01(2)

New subsection 180.01(2) sets out the mechanism for relieving the taxpayer of the deferred tax liability associated with his or her stock option benefit. The mechanism, in essence, is set out in new paragraphs 180.01(2)(a) to (c) and allows the taxpayer to claim an offsetting deduction equal to the full amount of the stock option benefit. In place of the “regular” stock option benefit, the taxpayer is deemed to have realized a taxable capital gain equal to one-half of the lesser of the “regular” stock option benefit and the capital loss of the taxpayer on the optioned securities, otherwise determined. The taxpayer may apply any unused allowable capital losses arising on the disposition of the optioned securities against this deemed capital gain. Any proceeds received by the taxpayer on the disposition of the optioned securities is payable as a special tax.

Subsection 180.01(2) also provides rules for opening past taxation years with respect to the election for special relief where the statutory normal reassessment period has expired. New paragraph 180.01(2)(d) deems the election to be an application for reassessment under subsection 152(4.2) (commonly referred to as the “fairness” provision) and therefore allows the Canada Revenue Agency to process the taxpayer’s election and associated return for the relevant taxation year for up to 10 years.

Finally, new paragraph 180.01(2)(e) provides for a re-determination by the Minister of National Revenue of the taxpayer’s net capital loss (as defined in subsection 111(8)) for the taxation year in which the taxpayer makes the election where losses on the optioned securities have been used.

**Example**

The following example illustrates the operation of the special elective tax treatment.

**Facts**

- In 2000, a taxpayer exercises his right to acquire 1,000 securities of his employer at a price of $10 each. The securities are trading at a fair market value of $110 each, yielding a stock option benefit
of $100,000 (1,000 x ($110 - $10)). The taxpayer makes an election under subsection 7(8) to defer the taxation of that benefit until he disposes of the securities.

- In April 2010, the taxpayer is still holding the optioned securities – which are now worth $5 each. The fair market value of the securities is therefore insufficient to cover the anticipated tax liability of the taxpayer. The taxpayer decides to elect the special tax treatment for deferred stock option benefits. To do so, he first disposes of his securities (at a fair market value of $5 each) for proceeds of $5,000, and realizes a capital loss of $105,000 (1,000 x ($110 - $5)).

**Result**

- Under the special tax treatment, the taxpayer claims a deduction to fully offset the stock option benefit of $100,000 that is realized upon disposition of the optioned securities.

- He is deemed to have realized a taxable capital gain of $50,000, equivalent to one-half the lesser of the stock option benefit and the capital loss on the optioned securities. This deemed taxable capital gain is included in the taxpayer’s income for the 2010 year, i.e. the year in which he disposed of the securities.

- The taxpayer’s allowable capital loss on the optioned securities is $52,500 (i.e. one-half the realized capital loss of $105,000). He uses $50,000 of this allowable capital loss to fully offset his deemed taxable capital gain, thus reducing his unused allowable capital loss by $50,000 to $2,500.

- The taxpayer pays a special tax of $5,000, equivalent to the value of his proceeds from the disposition of the optioned securities.

**ITA 180.01(3)**

New subsection 180.01(3) ensures that the deemed taxable capital gain determined under paragraph 180.01(2)(b) is not included in the income base upon which employment insurance is calculated for a person for a taxation year.

**ITA 180.01(4)**

New subsection 180.01(4) provides that the rules regarding the special tax and relief for deferral of stock option benefits under new Part I.01 are subject to certain general rules relating to assessments and administration under the Act.

New section 180.01 is deemed to have into force on March 4, 2010.
Clause 47

Old Age Security Benefit

ITA 180.2

Please see the commentary on subsection 122.5(1).

Clause 48

Election to Treat Excess as Separate Dividend

ITA 184(3)

Section 184 of the Act provides that a private corporation can identify a dividend as a “capital dividend” and that a mutual fund corporation or a mortgage investment corporation can identify a dividend as a “capital gains dividend”. Subsection 184(3) allows a corporation that would otherwise be liable for an excessive capital dividend or capital gains dividend to treat the excess as a separate taxable dividend if an election is made not later than 90 days after the mailing of the notice of assessment in respect of the tax that would otherwise be payable.

Subsection 184(3) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 49

Election to Treat Excessive Eligible Dividend Designation as an Ordinary Dividend

ITA 185.1(2)

Section 185.1 of the Act applies a tax to a corporation that has made an “excessive eligible dividend designation” relating to dividends the corporation has paid and its “general rate income pool”. Subsection 185.1(2) allows a corporation to elect to treat an excessive dividend designation as an ordinary dividend, if an election is made on or before the day that is 90 days after the day of mailing the notice of assessment in respect of that tax that would otherwise be payable.

Subsection 185.1(2) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 50
Non-application of subsection (3)
ITA
188(3.1)

Subsection 188(3.1) of the Act excludes from the application of the transfer of property tax, in subsection 188(3) of the Act, transfers that are gifts to which a penalty under subsection 188.1(11) applies. Subsection 188(3.1) is amended to also exclude from the application of the transfer of property tax, gifts to which a penalty under new subsection 188.1(12) applies. For more information see the commentary on this new provision.

These amendments apply for taxation years that end on or after March 4, 2010.

Clause 51
Penalties for Charities
ITA
188.1(11) and (12)

Subsection 188.1(11) of the Act allows the Minister of National Revenue to impose a penalty on a charity when it has made a gift to another charity and it may reasonably considered that one of the main purposes of the gift was to unduly delay the expenditure of amounts on charitable activities. Both charities are jointly and severally, or solidarily, liable for the penalty.

Subsection 188.1(11) is amended to expand its applications to any transaction, if it may be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities. In the case of a gift to another registered charity, it remains that both charities are jointly and severally, or solidarily, liable for the penalty.

New subsection 188.1(12) of the Act applies in situations where an amount is transferred between non-arm’s length charities by way of a gift, other than a designated gift (as defined in subsection 149.1(1) of the Act). The recipient charity is liable to a penalty if it fails to spend, in the taxation year in which the gift was received or in the subsequent taxation year, the full amount transferred. That amount must be expended, in addition to the recipient charity’s disbursement quota for those two years, on its own charitable activities or by way of gifts to qualified donees with which it deals at arm’s length.

The Minister may impose a penalty equal to 110% of the difference between the fair market value of the gift and the amount so expended by the charity in addition to its disbursement quota.

These amendments apply for taxation years that end on or after March 4, 2010.
Clause 52
Reduction of Revocation Tax Liability

ITA
189(6.2)(a)(i)

Subsection 189(6.2) of the Act generally applies if the Minister of National Revenue assesses a former registered charity a revocation tax in excess of $1,000. Where subsection 189(6.2) applies, paragraph 189(6.2)(a) generally provides for a reduction of the former charity’s liability for revocation tax to the extent that its expenditures on charitable activities exceeds its income during the one-year period that begins immediately after a notice of the latest such assessment was mailed.

Subparagraph 189(6.2)(a)(i) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 53
Election

ITA
191.2(1)(b)(i) and (ii)

Subsection 191.2(1) of the Act describes various periods during which a taxable Canadian corporation may file an election in respect of a class of taxable preferred shares. Subparagraph 191.2(1)(b)(i) generally describes a six-month period commencing on the day of the mailing of any notice of assessment of tax payable by the corporation for the taxation year in which the shares are first issued or first became taxable preferred shares. Subparagraph 191.2(1)(b)(ii) generally describes a six-month period commencing on the day of mailing of a notice that the Minister of National Revenue has confirmed or varied an assessment, referred to in subparagraph (i), in respect of which the corporation has served a notice of objection.

Subparagraphs 191.2(1)(b)(i) and (ii) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 54
Consideration for Agreement Respecting Liability for Tax

ITA
191.3(2)(b)

Section 191.3 of the Act allows a corporation to transfer its Part VI.I tax liability for a taxation year to a related corporation in certain circumstances. Paragraph 191.3(2)(b) provides generally that an agreement to transfer the liability, referred to in subsection 191.3(1), between a transferor corporation and a transferee corporation, must be filed on or before the transferor corporation’s return of income under Part I of the Act is required to be filed for the taxation year in respect of which the agreement is filed, or within 90 days of


• the mailing of a notice of assessment of tax payable under Part I or VI.1 of the Act
  - by the transferor corporation, for the year, or
  - by the transferee corporation, for its taxation year ending in the calendar year in which the taxation year of the transferor corporation ends, or
• the mailing of a notification that no tax is payable under Part I or Part VI.1 for that taxation year.

Paragraph 191.3(2)(b) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 55
Labour-Sponsored Venture Capital Corporation
ITA
204.81(1)(c)

Subsection 204.81(1) sets out the conditions that labour-sponsored venture capital corporations (LSVCCs) must satisfy when redeeming or registering a transfer of Class A shares.

Clauses 204.81(1)(c)(v)(A) and 204.81(1)(c)(vii)(C), subclause 204.81(1)(c)(v)(D)(II) and the preamble of subparagraph 204.81(1)(c)(vii) are amended to include a reference to tax-free savings accounts (TFSAs), clarifying that Class A LSVCC shares being redeemed or transferred to or from TFSAs are subject to the same conditions that apply to other redemptions or transfers of Class A LSVCC shares.

ITA
204.81(1)(c)(v)(D) (French version)

Clause 204.81(1)(c)(v)(D) of the French version of the Act is further amended to replace the word “détenteur” by “détentrice” to clarify that the holder contemplated in the clause is the trust, and not the registered retirement savings plan or the registered retirement income fund.

The amendments apply to the 2009 and subsequent taxation years.

Clause 56
Refund of Part XI Tax
ITA
207(2)(a) and (b)

Part XI of the Act imposes a tax in respect of various transactions relating to registered disability savings plans. Subsection 207(2) of the Act provides authority for the Minister of National Revenue to refund a person’s allowable refund of Part XI tax for a calendar year, to the extent that it has not been applied against the person’s Part XI tax payable for the year. Paragraph 207(2)(a) generally allows the Minister the discretion, on mailing a notice of assessment for the year, to refund the amount without application by
Paragraph 207(2)(b) generally requires that the Minister refund the amount after mailing the notice of assessment if an application for it has been made by the person within three years after that mailing.

Paragraphs 207(2)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 57

Taxes in Respect of TFSAs

ITA

207.01(1)

Subsection 207.01(1) provides definitions that apply for the purposes of Part XI.01 of the Act. Pursuant to the October 16, 2009 Department of Finance news release regarding amendments to the TFSA rules, a number of changes are being proposed to existing defined terms and several new defined terms are being introduced.

“advantage”

Section 207.05 imposes a special tax if an advantage in relation to a TFSA is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA. An advantage is defined to include, in paragraph (a), any benefit, loan or indebtedness that is in any way dependent on the existence of the TFSA, with certain exceptions. Under paragraph (b), an advantage also includes a benefit that is an increase in the fair market value of property held in connection with a TFSA where it is reasonable to conclude that the increased value is attributable to certain events or circumstances. This provision is intended to prevent transactions designed to artificially shift taxable income away from the holder and into the shelter of the TFSA or to circumvent the TFSA contribution limits.

Consequential on technical changes to the TFSA rules proposed in the October 16, 2009 Department of Finance News Release, paragraph (b) is amended to extend its application to several new types of transactions, and new paragraph (c) is being added.

Paragraph (b) is amended so that an increase in the fair market value of property held in connection with a TFSA that is reasonably attributable to a “swap transaction” or to undistributed “specified non-qualified investment income” is specifically included in the definition “advantage”.

New paragraph (c) of the definition “advantage” adds to the definition income (including a capital gain) that is reasonably attributable, directly or indirectly, to a “deliberate over-contribution” or a “prohibited investment” in respect of the TFSA or any other TFSA of the holder.

For more detail, readers may refer to the commentary on the new defined terms “deliberate over-contribution”, “swap transaction” and “specified non-qualified investment income” that are being added to subsection 207.01(1). “Prohibited investment” is already defined in subsection 207.01(1); related rules are found in section 207.04.
Existing paragraph (c) of the definition “advantage” is renumbered as paragraph (d). 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".

These amendments apply after October 16, 2009, except that new subparagraph (c)(ii) of the definition "advantage" does not apply in respect of income (including a capital gain) earned before October 17, 2009.

“deliberate over-contribution”

Under this new definition, a “deliberate over-contribution” means any contribution made under a TFSA by the individual that results in, or increases, an “excess TFSA amount” unless it is reasonable to conclude that the individual neither knew nor ought to have known that the contribution could result in liability for a penalty, tax or similar consequence under this Act. Under the amended definition “advantage”, income that is reasonably attributable, directly or indirectly, to a “deliberate over-contribution” constitutes an advantage subject to the special tax on advantages under section 207.05. The new definition “deliberate over-contribution” is introduced in subsection 207.01(1) of the Act.

This amendment applies to contributions made after October 16, 2009.

“excess TFSA amount”

The expression “excess TFSA amount” is relevant primarily for the special tax imposed under section 207.02 on excess TFSA contributions. It is also relevant for the purposes of paragraph 74.5(12)(c), subparagraph (d)(iii) of the definition “exempt contribution” in subsection 207.01(1), and subsection 207.01(3), 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).

The amount of the tax under section 207.02 is determined on the basis of an individual's highest “excess TFSA amount” in a particular month. “Excess TFSA amount” is determined by a formula. Amounts included in variable C of the formula result in a reduction of an individual’s “excess TFSA amount”. Variable C reflects distributions from the individual’s TFSA in the preceding year, subject to certain exclusions. Variable C is amended to replace the reference to the exclusion of a “prescribed distribution” with a reference to the new defined term “specified distribution”. As a result of this amendment, a distribution from a TFSA in the preceding year that is a “specified distribution” is not included in variable C and so cannot reduce an individual’s “excess TFSA amount”. For more detail, readers may refer to the commentary on the new defined term “specified distribution” that is being added to subsection 207.01(1).

Amounts included in Variable E of the formula result in a reduction of an individual’s “excess TFSA amount” for the qualifying portion of distributions from the individual’s TFSA in the year. The qualifying portion is described in paragraphs (a) and (b) of Variable E. Paragraph (a) is amended to specify that no amount of a “specified distribution” may be included in the qualifying portion of a distribution in the year under Variable E. A “specified distribution” in the year therefore cannot reduce an individual’s “excess TFSA amount”. For more detail, readers may refer to the commentary on the new defined term “specified distribution” that is being added to subsection 207.01(1).

This amendment applies after October 16, 2009.
“specified distribution”

Unlike regular distributions, under the amended definition “unused TFSA contribution room”, “specified distributions” do not create or increase “unused TFSA contribution room”. Similarly, unlike regular distributions, under the amended definition “excess TFSA amount”, “specified distributions” do not reduce or eliminate an “excess TFSA amount”. If specified distributions were not treated in this manner, amounts that gave rise to specified distributions would inappropriately increase a taxpayer’s unused TFSA contribution room or inappropriately reduce the taxpayer’s excess TFSA amounts.

The new definition “specified distribution” generally means a distribution from a TFSA that is reasonably attributable to certain TFSA amounts that are subject to taxes. In particular, a distribution of an amount attributable to any of

- an “advantage”,
- “specified non-qualified investment income”,
- income that is taxable in a TFSA trust under Part I of the Act (generally income earned from non-qualified investments or from a business carried on by the TFSA), or
- income earned on excess contributions or non-resident contributions.

The definition “specified distribution” also includes a “prescribed distribution”. At this time, no distributions are prescribed by regulation.

This amendment applies to distributions that occur after October 16, 2009, other than the portion of a distribution that is, or is reasonably attributable to, an advantage that was extended, or income earned, before October 17, 2009.

“specified non-qualified investment income”

Under the existing TFSA rules, income earned by a TFSA trust on non-qualified investments is subject to tax under Part I of the Act because of subsection 146.2(6). An additional tax based on the fair market value of the investment is also payable under subsection 207.04(2). However, there was no requirement that such income, or income earned on such income, be removed from a TFSA.

The new definition “specified non-qualified investment income” in respect of a TFSA generally means income that is reasonably attributable, directly or indirectly, to an amount that is taxable under Part I for a TFSA trust. For this purpose, income includes capital gains. Amounts that are taxable under Part I for a TFSA trust are generally income earned from non-qualified investments or from a business carried on by the TFSA. Therefore, the new definition “specified non-qualified investment income” refers to second and subsequent generation income earned on non-qualified investment income or on income from a business carried on by a TFSA.

“Specified non-qualified investment income” may be subject to a Ministerial requirement to remove it from a TFSA pursuant to new subsection 207.06(4). If it is not removed within 90 days of receipt of the requirement to remove, it will be considered an “advantage” in respect of the TFSA under the amended definition “advantage” and subject to the tax on advantages under section 207.05.

This amendment applies to the 2010 and subsequent taxation years.
“swap transaction”

Under the amended definition “advantage”, an increase in fair market value of property held in connection with a TFSA that is reasonably attributable to a “swap transaction” is an “advantage” and subject to the tax on advantages under section 207.05.

The new definition “swap transaction”, in relation to a TFSA trust, generally means any transfer of property occurring between the trust and the holder of the TFSA or a person with whom the holder does not deal at arm’s length, other than a transfer that is a distribution from, or a contribution to, a TFSA trust.

This amendment applies to transfers of property occurring after October 16, 2009.

“unused TFSA contribution room”

An individual’s “unused TFSA contribution room” is used to determine how much an individual may contribute to a TFSA. Under the existing definition, an individual's “unused TFSA contribution room” (at the end of a particular calendar year after 2008) is the amount, which can be positive or negative, determined by the formula

\[ A + B + C - D \]

where

A is the individual’s “unused TFSA contribution room” at the end of the year preceding the particular year;

B is the total amount of distributions made in that preceding year under TFSAs of the individual, but excluding qualifying transfers and prescribed distributions;

C is the TFSA dollar limit for the particular year if, at any time in the particular year, the individual is at least 18 years of age and resident in Canada. If the individual is under 18 years old, or is non-resident, throughout the year, the C amount is nil; and

D is the total of all TFSA contributions made by the individual in the particular year, but excluding contributions made by way of a qualifying transfer or an exempt contribution.

The definition “unused TFSA contribution room” is amended in two respects. First, new paragraph (a.1) provides that, where the Minister of National Revenue has waived or cancelled all or part of an individual’s liability under sections 207.02, 207.03, 207.04 or 207.05 (respectively, taxes on excess TFSA amounts, non-resident contributions, prohibited or non-qualified investments, and advantages) an individual’s “unused TFSA contribution room” will be the amount determined by the Minister of National Revenue. In these circumstances, the formula will not be used to calculate “unused TFSA contribution room”. This will allow the particular circumstances that gave rise to the special tax, the steps taken by the individual to address the situation, and the conditions surrounding the waiver to be properly taken into consideration in re-setting the individual’s “unused TFSA contribution room”.

Second, the reference to a “prescribed distribution” in subparagraph (ii) of the description of variable B in the definition is replaced by a reference to a “specified distribution” consequential on the introduction of that new definition. For more detail, readers may refer to the commentary on the new defined term “specified distribution” that is being added to subsection 207.01(1).
These amendments apply after October 16, 2009.

Clause 58  
Prohibited Investments – TFSAs  
ITA  
207.04(6) and (7)

Existing subsections 207.04(6) and (7) impose a special tax in relation to “prohibited investments”. Subsections 207.04(6) and (7) of the Act are repealed, consequential on the amendments to the definition “advantage” which result in income earned on prohibited investments being subject to the tax on advantages under section 207.05.

This amendment applies after October 16, 2009.

Clause 59  
Tax on Advantages – TFSAs  
ITA  
207.05(1)

Existing subsection 207.05(1) imposes a tax for a calendar year if, in the year, an advantage (defined in subsection 207.01(1)) in relation to a TFSA is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA. Subsection 207.05(1) is amended to expand the description of the manner in which an advantage may be acquired, and the list of possible recipients. Amended subsection 207.05(1) imposes a tax if an advantage is “extended to, or received or receivable by” any of a TFSA holder, the TFSA itself, or any other person who does not deal at arm’s length with the TFSA holder. These amendments are consequential on the October 16, 2009 Department of Finance announcement of proposed changes to the TFSA rules, which have broadened the “advantage” concept.

This amendment applies after October 16, 2009.

Clause 60  
Waiver of Certain Taxes – TFSAs  
ITA  
207.06

Section 207.06 of the Act provides the Minister of National Revenue with the authority to waive taxes payable under Part XI.01 (Taxes in Respect of TFSAs) under certain conditions.

ITA  
207.06(1)(b)

Subsection 207.06(1) of the Act provides the Minister of National Revenue with the authority to waive taxes payable under section 207.02 (tax on excess TFSA amount) or 207.03 (tax on non-resident TFSA contributions) under certain conditions. In this regard, paragraph (b) contains a condition requiring the
removal from a TFSA of the amount that gave rise to the tax under section 207.02 or 207.03. Paragraph (b) is amended, consequential on the October 16, 2009 Department of Finance announcement of proposed TFSA changes, to also require the removal of any income earned on the excess TFSA contribution, or the non-resident TFSA contribution, as the case may be. Paragraph (b) is also amended to clarify that, as long as the required distributions are made without delay, it is not material whether or not they were made through the action of the individual TFSA holder.

This amendment applies after October 16, 2009.

ITA

207.06(3)

New subsection 207.06(3) imposes conditions that must be satisfied if the Minister of National Revenue intends to waive or cancel a liability for tax under subsection 207.05(3). Subsection 207.05(3) imposes liability for taxes on advantages. Under new subsection 207.06(3), the Minister shall not waive or cancel such a liability unless one or more distributions are made without delay from the relevant TFSA or TFSAs, the total amount of which is equal to or greater than the amount of the liability being waived or cancelled.

This amendment applies after October 16, 2009.

ITA

207.06(4)

New subsection 207.06(4) allows the Minister of National Revenue to issue a notice requiring a TFSA holder to remove “specified non-qualified investment income” (as defined in subsection 207.01(1)) from his or her TFSA within 90 days. Failure to comply with this requirement will result in the amount of the “specified non-qualified investment income” being considered an “advantage” and subject to the special tax on advantages under section 207.05. For more information, please refer to the commentary on those definitions.

This amendment applies after October 16, 2009.

Clause 61

TFSAs

ITA

207.061

New section 207.061 of the Act requires a holder of a TFSA to include in computing the holder’s income certain TFSA distributions of amounts related to transactions that are subject to tax under Part XI.01. These amounts are amounts described in

(a) subparagraph 207.06(1)(b)(ii) (income earned on excess TFSA contributions or non-resident TFSA contributions);

(b) subsection 207.06(3) (distributions required in relation to the waiver or cancellation of a tax on an advantage); or
(c) subparagraph (a)(ii) of the definition “specified distribution” (generally, first or subsequent generation income in respect of non-qualified investments for a TFSA).

This amendment applies after October 16, 2009.

ITA
207.062

New section 207.062 applies in situations where two taxes under Part XI.01 would otherwise apply in respect of the same TFSA contribution for the same calendar year. Specifically, where an individual is liable to pay tax under section 207.05 (tax on advantages) and under sections 207.02 or 207.03 (tax on excess TFSA contributions and tax on non-resident TFSA contributions, respectively) in respect of the same contribution for the same calendar year, the tax on the advantage payable under section 207.05 for the year shall be reduced by the amount of the tax payable under section 207.02 or 207.03, as the case may be, for the year.

This amendment applies after October 16, 2009.

Clause 62

Refund of Part XI.01 Tax

ITA
207.07(2)(a) and (b)

Section 207.05 imposes a tax on a person in respect of a tax-free savings account (TFSA) if an advantage, as defined in subsection 201.01(1) of the Act, is extended to any person who is, or who does not deal at arm’s length with, the holder of the TFSA.

Subsection 207.07(2) of the Act provides authority for the Minister of National Revenue, if a return has been filed under Part XI.01, to refund a person's allowable refund of Part XI.01 tax for a calendar year, to the extent that it has not been applied against the person's tax payable under that Part for the year. Paragraph 207.07(2)(a) generally allows the Minister the discretion, on mailing a notice of assessment for the year, to refund the amount without application by the person. Paragraph 207.07(2)(b) generally requires that the Minister refund the amount after the mailing the notice of assessment if an application for it has been by the person made within three years after that mailing.

Paragraphs 207.07(2)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 63

Refund of Part XI.3 Tax

ITA
207.7(2)(a) and (b)

Part XI.3 of the Act imposes on the custodian of a retirement compensation arrangement a refundable tax of 50% on contributions to the arrangement and earnings in the plan. The tax is refundable on the payment of retirement benefits from the plan to an employee.

Subsection 207.7(2) of the Act authorizes the Minister of National Revenue to refund to the custodian of a retirement compensation arrangement the amount by which the custodian’s balance of refundable tax at the end of the preceding year exceeds the balance at the end of the year. Paragraph 207.7(2)(a) generally allows the Minister of National Revenue the discretion, on mailing a notice of assessment for the year, to refund the amount without application by any person. Paragraph 207.7(2)(b) generally requires that the Minister of National Revenue refund the amount after the mailing the notice of assessment if an application for it has been made within three years after the mailing of an original notice of assessment for the year or of a notification that no tax is payable for the year.

Paragraphs 207.7(2)(a) and (b) are amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 64

Tax on Income from Canada of Non-resident Persons

ITA
212(1)(w)

Subsection 212(1) imposes an income tax at the rate of 25% on certain payments to non-residents. In many cases, the 25% rate is reduced by tax treaty. New paragraph 212(1)(w) provides that payments out of an employee life and health trust made to non-residents are subject to tax under subsection 212(1), except to the extent that they are payments of designated employee benefits.

This amendment applies after 2009.

Clause 65

Limitation Period

ITA
222(4)(a)(i)

Subsection 222(4) of the Act provides a limitation period for the collection of a tax debt of a taxpayer. Subparagraph 222(4)(a)(i) provides that the limitation period for the collection of a tax debt of a taxpayer begins, if the notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is mailed to or served on the taxpayer, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is mailed or served.
Subparagraph 222(4)(a)(i) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 66
Collection Restrictions
ITA
225.1

Section 225.1 of the Act describes those collection activities of the Minister of National Revenue, in respect of an amount assessed under the Act, that are generally restricted until after a specified time, known as the “collection commencement day”.

Collection-commencement day
ITA
225.1(1.1)(b) and (c)

Subsection 225.1(1.1) of the Act provides a rule of general application to describe the collection-commencement day in respect of an amount assessed under the Act. Paragraphs 225.1(1.1)(a) describes the collection-commencement day that applies in the case of the assessment of a former registered charity for revocation tax under subsection 188(1.1) of the Act.

Paragraph 225.1(1.1)(b) describes the collection-commencement day, that applies in the case of a penalty assessed under section 188.1 of the Act in respect of a charity, as one year after the day on which the notice of assessment was mailed. Paragraph 225.1(1.1)(c) provides a general rule in respect of other assessments under the Act, as 90 days after the notice of assessment was mailed.

Paragraphs 225.1(1.1)(b) and (c) are amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Where a notice of objection is filed
ITA
225.1(2)

Subsection 225.1(2) of the Act provides an extension to the general rule in subsection 225.1(1) of the Act that restricts certain collection activities of the Minister of National Revenue, in respect of an amount assessed under the Act, until after the “collection commencement day” of a taxpayer. If a taxpayer serves a notice of objection to the assessment, those collection actions described in subsection 225.1(1) may not be taken until after the day that is 90 days after the day on which notice is mailed to the taxpayer that the Minister has confirmed or varied the assessment.

Subsection 225.1(2) is amended to replace “mailed” with “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances.
circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Where an appeal is made to the Tax Court of Canada

Large corporations

ITA
225.1(7)(a)

Subsection 225.1(7) of the Act provides an exception to the rules in subsections 225.1(1), (1.1), (2) and (3) of the Act that restrict certain collection activities of the Minister of National Revenue, in respect of an amount assessed under the Act, until after the times specified in those provisions. Subsection 225.1(7) generally allows the Minister of National Revenue to take the collection actions described in subsection 225.1(1) in respect of one-half of any amount assessed in respect of a “large corporation”, as defined in subsection 225.1(8) of the Act, whether or not an objection or appeal has been filed in respect of the assessment. In this regard, paragraph 225.1(7)(a) allows the Minister to commence those collections actions on or before the day that is 90 days after the day of the mailing of the notice of assessment.

Paragraph 225.1(7)(a) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 67

Procedure and Evidence

ITA
244

Section 244 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Mailing or sending date

ITA
244(14)

Subsection 244(14) of the Act provides a rule presuming the date shown on a notice of assessment made by the Minister of National Revenue, on a notice or notification made by the Minister under certain other provisions of the Act, to be the mailing date.

Subsection 244(14) is amended to provide as well that the date shown on a notice of assessment made by the Minister of National Revenue, on a notice or notification made by the Minister under certain other provisions of the Act, is presumed to be the date it is sent electronically.
**Date when electronic notices sent**

ITA  
244(14.1)

New subsection 244(14.1) of the Act is added to allow for the electronic communication of those notices, referred to in various other provisions of the Act, that can currently be sent by the Minister of National Revenue by ordinary mail. Those other provisions are, where applicable, amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to notices of assessment of tax payable. It should be noted, however, that none of the provisions of the Act that specifically require notices to be served personally or by registered or certified mail are being amended.

In this regard, for security reasons, a notice, such as a notice of assessment of tax payable, is not itself to be conveyed electronically to a person. New subsection 244(14.1) provides generally that for the purposes of the Act a notice or other communication will be presumed to be sent by the Minister and received by a person or partnership on the date that an electronic message, informing the person or partnership that a notice or other communication is available in their secure electronic account, is sent to the person or partnership’s electronic address.

The notice or other communication will only be presumed to be sent and received on the date the electronic message is sent if the message is sent to the electronic address most recently provided by the person or partnership to the Minister of National Revenue before that date.

An electronic message that pertains to a time sensitive notice or other communication will be distinguishable from other electronic messages in that it will inform the person or partnership that information has been made available in the person or partnership’s secure electronic account that requires the person or partnership’s immediate attention.

A notice or other communication will be considered to be made available only if it is posted by the Minister in the person or partnership’s secure electronic account and the person or partnership has authorized that notices or other communications may be made available in this manner. A person or partnership may revoke their authorization for notices or other communications to be made in this manner, effective as of the day following such a revocation.

**Date when Assessment Made**

ITA  
244(15)

Subsection 244(15) of the Act provides that a notice of assessment or notice of determination sent by the Minister of National Revenue is deemed to have been made on the day of mailing the notice of assessment or notice of determination.

Subsection 244(15) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.
Clause 68

Request for Adjustments

ITA
245(6)

Section 245 of the Act provides rules regarding tax avoidance. Subsection 245(6) provides that a person can request an assessment, reassessment or additional reassessment that would be consequential to the application of subsection 245(2) of the Act in relation to an assessment of or a determination of a loss of another person. The request must be made within 180 days after the day of mailing of the notice of assessment or determination to the other person.

Subsection 245(6) is amended to replace “mailing” with “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to taxpayers in certain circumstances. For further details on the authority of the Minister of National Revenue to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Act.

Clause 69

Interpretation

ITA
248(1)

“employee life and health trust”

The definition “employee life and health trust” is added to subsection 248(1) to create a cross-reference to new subsection 144.1(2), which contains the conditions which must be met for a trust to be treated as an employee life and health trust.

“employee benefit plan”
“retirement compensation arrangement”
“salary deferral arrangement”

The definitions “employee benefit plan”, “retirement compensation arrangement” and “salary deferral arrangement” are amended to exclude employee life and health trusts from the ambit of each definition. A trust that is a valid employee life and health trust will therefore not be an employee benefit plan, a retirement compensation arrangement, or a salary deferral arrangement.

These amendments apply after 2009.
Clause 70
Refund of Excess Contribution in Respect of Self-employed Earnings

Paragraph 38(4)(a) of the Canada Pension Plan provides that the Minister of National Revenue may refund excess contributions made in respect of self employed earnings on mailing the assessment of the contribution. Paragraph 38(4)(b) provides that the Minister of National Revenue shall refund excess contributions made in respect of self employed earnings after mailing the notice of assessment, if application for the refund is made in writing by the contributor not later than four years after the end of the year to which the contributions relates.

Subsection 38(4) is amended to replace “mailing” with “sending”, consequential to new provisions that allow the Canada Revenue Agency to provide notices electronically in certain circumstances. For further details on the authority of the Canada Revenue Agency to provide electronic notices, refer to the commentary for new subsection 244(14.1) of the Income Tax Act.
Clause 71

Mailing or Sending Date

EIA
85(4)

Subsection 85(4) of the Employment Insurance Act provides a rule presuming the date shown on a notice of assessment to be the mailing date.

Subsection 85(4) is amended to provide as well that the date shown on a notice of assessment is presumed to be the date it is sent electronically.

Date when electronic notice sent

EIA
85(5)

New subsection 85(5) of the Employment Insurance Act is added to allow for the electronic communication of those notices, referred to in various other provisions of the Employment Insurance Act, that can currently be sent by the Minister of National Revenue by ordinary mail. Those other provisions are, where applicable, amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to notices of assessment of an amount payable. It should be noted, however, that none of the provisions of the Employment Insurance Act that specifically require notices to be served personally or by registered or certified mail are being amended.

In this regard, for security reasons, a notice, such as a notice of assessment of an amount payable, is not itself to be conveyed electronically to a person. New subsection 85(5) provides generally that for the purposes of the Employment Insurance Act a notice or other communication will be presumed to be sent by the Minister and received by a person or partnership on the date that an electronic message, informing the person or partnership that a notice or other communication is available in their secure electronic account, is sent to the person or partnership’s electronic address.

The notice or other communication will only be presumed to be sent and received on the date the electronic message is sent if the message is sent to the electronic address most recently provided by the person or partnership to the Minister of National Revenue before that date.

An electronic message that pertains to a time sensitive notice or other communication will be distinguishable from other electronic messages in that it will inform the person or partnership that information has been made available in the person or partnership’s secure electronic account that requires the person or partnership’s immediate attention.

A notice or other communication will be considered to be made available only if it is posted by the Minister in the person or partnership’s secure electronic account and the person or partnership has authorized that notices or other communications may be made available in this manner. A person or partnership may revoke their authorization for notices or other communications to be made in this manner, effective as of the day following such a revocation.
Clause 72

Date when Assessment Made

EIA
102(14)

Subsection 102(14) of the Employment Insurance Act provides that an assessment is deemed to have been made on the day of mailing the assessment.

Subsection 102(14) is amended to replace “mailed” with “sent”, consequential to new provisions in the Employment Insurance Act that allow the Canada Revenue Agency to provide notices electronically in certain circumstances. For further details on the authority of the Canada Revenue Agency to provide electronic notices, refer to the commentary for new subsection 85(5) of the Employment Insurance Act.

Clause 73

Refund of Excess Premium in Respect of Self-employed Earnings

EIA
152.3(1)

Paragraph 152.3(1)(a) of the Employment Insurance Act provides that the Minister of National Revenue may refund excess contributions made in respect of self employed earnings on mailing the assessment of the contribution. Paragraph 152.3(1)(b) provides that the Minister of National Revenue shall refund excess contributions made in respect of self employed earnings after mailing the notice of assessment, if application for the refund is made in writing by the contributor not later than three years after the end of the year to which the contributions relates.

Subsection 152.3(1) is amended to replace “mailing” with “sending”, consequential to new provisions that allow the Canada Revenue Agency to provide notices electronically in certain circumstances. For further details on the authority of the Canada Revenue Agency to provide electronic notices, refer to the commentary for new subsection 85(5) of the Employment Insurance Act.
Universal Child Care Benefit Act

Clause 74
Definitions

Section 2 of the Universal Child Care Benefit Act provides definitions that apply to that Act.

The new definition “shared-custody parent” means a person who is a shared-custody parent for the purpose of Subdivision a.1 of Division E of Part I of the Income Tax Act. For more information on the new definition “shared-custody parent”, see the commentary under section 122.6 of the Income Tax Act.

This amendment applies for payments in respect of months after June 2011.

Clause 75
Amount of Payment

Section 4 of the Universal Child Care Benefit Act provides for the amount of the Universal Child Care Benefit. This taxable benefit is delivered to eligible individuals in monthly payments based on the number of qualified dependants of the individual. An amount of $100 at the beginning of each month is provided for each child under six years of age who is a qualified dependant of an eligible individual (as defined in section 122.6 of the Income Tax Act).

Under the existing rules, only one individual can receive the benefit in respect of a qualified dependant each month. The definition of “eligible individual” in section 122.6 of the Income Tax Act is amended to allow two shared-custody parents to be eligible for the benefit. For information on the amended definition “eligible individual” under section 122.6 of the Income Tax Act, see the commentary under that section.

Amended subsection 4(1) of the Universal Child Care Benefit Act provides that shared-custody parents can now both receive one-half of the full benefit each month, in respect of the same qualified dependant. New paragraph 4(1)(a) of the Universal Child Care Benefit Act provides that a shared-custody parent of a qualified dependant will now be entitled to a benefit of $50 each month in respect of each qualified dependant under the age of six. New paragraph 4(1)(b) provides that an eligible individual who is not a shared-custody parent will continue to receive a monthly benefit of $100 in respect of each such dependant.

These amendments apply for payments in respect of months after June 2011.
Clause 76
Classes 43.1 and 43.2 – Clean Energy Generation Assets

Subsection 1104(13) of the Regulations sets out various definitions that apply for the purpose of applying Class 43.1 (30% CCA rate) and Class 43.2 (50% CCA rate) in Schedule II to the Regulations.

Subsection 1104(13) is amended in four respects consequential to amendments made to Class 43.1 and 43.2, as proposed in the 2008 Budget. First, the definition “food waste” is repealed. Second, the definition “food and animal waste” is added. Third, the definition “biogas” is amended to replace the reference to “food waste” with a reference to “food and animal waste” and to add a reference to “sludge from an eligible sewage treatment facility”. Fourth, the definition “eligible waste fuel” is amended to add a reference to “biogas”. These amendments apply to property acquired after February 25, 2008.

A fifth amendment concerns the definition “district energy system” and it deletes the words “that is primarily produced by electrical cogeneration equipment that meets the requirements of paragraphs (a) to (c) of Class 43.1, or paragraph (a) of Class 43.2, in Schedule II”. This amendment concerns a proposal announced in the 2010 Budget and it is consequential to a related amendment that modifies subparagraph (a)(iii.1) and adds new subparagraph (d)(xv) of Class 43.1, which concern district energy equipment. This amendment applies to property acquired after March 3, 2010.

Clause 77
Canadian Renewable and Conservation Expenses (CRCE)

Section 1219 of the Regulations defines “Canadian renewable and conservation expense” (CRCE) for the purposes of subsection 66.1(6) of the Act. CRCE is included in calculating a taxpayer’s “Canadian exploration expense” pool, as defined by subsection 66.1(6), and is eligible to be renounced under a flow-through share agreement. In general terms, subsection 1219(1) provides that CRCE is an expense incurred (for certain listed purposes) by a taxpayer in respect of a project for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in the project would be included in Class 43.1 or 43.2 or would be so included but for subsection 1219(1). Subsection 1219(2) excludes certain listed amounts from being CRCE under subsection 1219(1).

Paragraph 1219(1)(f) of the Regulations provides that CRCE may include an expense incurred for the drilling or completion of a well for a CRCE project. Paragraph 1219(1)(f) is amended to provide that it does not apply to an expense in respect of a well that is, or can reasonably be expected to be, used for the installation of underground piping that is included in paragraph (d) of Class 43.1 or paragraph (b) of Class 43.2. This change is consequential to changes to paragraph (d) of Class 43.1 which are discussed below in the related explanatory note.

These amendments apply to expenses incurred after May 2, 2010.
Clause 78

Insurance Business Policy Reserves

ITR

Part XIV

Part XIV of the Regulations provides rules for determining the amount that may be deducted by an insurer in computing its income for a taxation year under Part I of the Act as a reserve in respect of liabilities under insurance policies.

Special Rules

ITR

1402

Division 3 of Part XIV of the Regulations contains special rules for the purposes of determining, under sections 1400 and 1401 of the Regulations, the reserves of insurance corporations. Division 3 of Part XIV of the Regulations consists of sections 1402, 1402.1 and 1403. Section 1402 of the Regulations is being amended.

Section 1402 of the Regulations provides that any amount determined under section 1400 or 1401 of the Regulations shall be determined on a net of reinsurance ceded basis.

Section 1402 of the Regulations is amended in two ways. The first amendment replaces the concept of “net of reinsurance ceded basis” with the concept of a “reinsurance recoverable amount”. The new definition “reinsurance recoverable amount” in subsection 1408(1) of the Regulations provides that this amount is the amount of reinsurance assets that an insurer reports as recoverable from a reinsurer. This amendment ensures that the reserve calculations of insurance corporations under sections 1400 and 1401 of the Regulations continue to be determined net of reinsurance.

This amendment is consequential to changes to financial statement reporting that will occur with the adoption of IFRS by life insurers. Under IFRS, policy liabilities in respect of insurance contracts will be valued before taking into account reinsurance and corresponding reinsurance recoverable will be reported as assets.

Section 1402 of the Regulations is also amended to ensure that amounts in respect of deposit accounting insurance policies may no longer be included in the calculation of reserves under sections 1400 and 1401. For more detail on deposit accounting insurance policies, please refer to the commentary on the definition “deposit accounting insurance policy” in subsections 1408(1) of the Regulations and 138(12) of the Act. These amendments apply to taxation years commencing after 2010.

Clause 79

Insurance Business Policy Reserves

ITR

1406

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. Section 1405 of the Regulations establishes the basis for determining the amount an insurer may deduct
under subparagraph 138(3)(a)(ii) of the Act as a reserve in respect of its reported unpaid claims at the end of a taxation year under its life insurance policies in Canada.

Section 1406 of the Regulations provides rules for the purpose of computing the policy reserves under sections 1404 and 1405. Section 1406 ensures that the reserves claimed under sections 1404 and 1405 are net of any reinsurance ceded by the insurer and without reference to a liability in respect of a segregated fund other than a liability in respect of a guarantee.

Section 1406 is amended to refer to “reinsurance recoverable amount” to reflect concepts arising as a result of the adoption of IFRS effective in 2011. A relevant reinsurance recoverable amount is the amount of reinsurance recoverable in respect of the amounts used in the calculation of reserves in 1404 and 1405. For more detail, please refer to the commentary on section 1402 of the Regulations.

Section 1406 is also amended to ensure that amounts in respect of deposit accounting insurance policies may no longer be included in the calculation of reserves. For more detail on deposit accounting insurance policies, please refer to the commentary on the definition “deposit accounting insurance policy” in subsections 1408(1) of the Regulations and 138(12) of the Act.

These amendments apply to taxation years commencing after 2010.

Clause 80
Interpretation

Division 5 of Part XIV of the Regulations contains rules of interpretation that apply for that Part. Division 5 consists of section 1408 of the Regulations.

Subsection 1408(1) provides a number of definitions and interpretive rules that apply for purposes of the rules in Part XIV of the Regulations dealing with the determination of an insurer’s policy reserves.

“deposit accounting insurance policy”

The new definition “deposit accounting insurance policy” in subsection 1408(1) of the Regulations imports that definition from subsection 138(12) of the Act. The definition is relevant to the rules of application contained in sections 1402 and 1406 of the Regulations. Under those rules of application, deposit accounting insurance policies are ignored in determining amounts under sections 1400, 1401, 1404 and 1405 of the Regulations.

For further details, readers may refer to the commentary on the new definition “deposit accounting insurance policy” in section 138(12) of the Act, and the commentary on sections 1402 and 1406 of the Regulations.
“reinsurance recoverable amount”

The new definition “reinsurance recoverable amount” refers to the amount of reinsurance assets that an insurer reports as recoverable from a reinsurer. It is used in sections 1402 and 1406 to ensure that the reserve calculations of insurance corporations under Part XIV of the Regulations continue to be determined net of reinsurance.

For further details, readers may refer to the commentary on sections 1402 and 1406. These amendments apply to taxation years commencing after 2010.

ITR 1408(8)

New subsection 1408(8) provides that any reference in Part XIV of the Regulations to an amount reported as an asset or a liability of an insurer is to be construed as a reference to the amount that is reported as a liability in the taxpayer’s year-end balance sheet accepted by the insurer’s relevant authority, if applicable, or that is reported in a manner consistent with the requirements that would have applied had such reporting been required.

This amendment applies to taxation years commencing after 2010.

Clause 81

Insurers

ITR 2400(1)

“Canadian reserve liabilities”

An insurer’s “Canadian reserve liabilities” is defined as the total amount of the insurer’s liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) in respect of life insurance policies in Canada, fire insurance policies issued or effected in respect of property situated in Canada and insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected.

The definition of “Canadian reserve liabilities” is amended as a consequence of the adoption of IFRS, requiring liabilities and reserves to be computed gross of reinsurance for the purposes of IFRS. To maintain a calculation of reserve liabilities on a net of reinsurance basis for Canadian income tax purposes, reinsurance recoverable is deducted from liabilities and reserves to determine the Canadian reserve liabilities.
“reinsurance recoverable”

The definition “reinsurance recoverable” is amended to refer to the amount of reinsurance assets that an insurer reports as recoverable from a reinsurer.

“Canadian investment fund”

An insurer's Canadian investment fund at the end of a taxation year represents the quantum of investment property considered to be used in the insurer's Canadian insurance business as of the end of the year. The description of B of the formula in subparagraph (a)(i) of the definition “Canadian investment fund” is amended consequential to the amendment to the definition “Canadian reserve liabilities”, to ensure that references to policies referred to in that definition remain accurate as a result of the restructuring of that definition.

Clause (b)(i)(A) of the definition “Canadian investment fund” is amended to remove references to “reinsurance recoverables”, and consequential to the amendment to the definition “Canadian reserve liabilities”, to ensure that references to policies referred to in that definition remain accurate as a result of the restructuring of that definition.

For further details, readers may refer to the commentary on the definition “Canadian reserve liabilities” in subsection 2400(1).

“equity limit”

Subsection 2401(4) of the Regulations provides that an insurer cannot designate for a taxation year Canadian equity property in excess of its equity limit for the year. Subparagraph (b)(i) of the definition “equity limit” is amended to remove the former clause (B) from the calculation of an insurer’s equity limit. Subparagraph (b)(i) defines the equity limit of a non-resident insurer (other than a life insurer) to be the amount by which its mean Canadian reserve liabilities exceed the total of certain amounts, those amounts including a function of the insurer’s reinsurance recoverables. As the computation of the insurer’s Canadian reserve liabilities are concurrently being amended to be net of reinsurance recoverable, the reduction of the equity limit by a function of the insurer’s reinsurance recoverables is redundant.

For further details, readers may refer to the commentary on the definition “Canadian reserve liabilities” in subsection 2400(1).

“weighted Canadian liabilities”

The definition "weighted Canadian liabilities" is relevant for the purposes of the amended definitions "Canadian investment fund" and "equity limit".

An insurer's weighted Canadian liabilities is the total of its weighted Canadian life insurance and accident and sickness insurance policy liabilities (to the extent they exceed its policy loans) and its other non-weighted Canadian insurance liabilities (excluding those in respect of a segregated fund or a debt incurred or assumed to acquire a particular property).

The definition is amended consequential to the adoption of IFRS. The amendments ensure that weighted Canadian liabilities are reported net of reinsurance assets in respect of Canadian liabilities.

For further details, readers may refer to the commentary on the definition “Canadian reserve liabilities” in subsection 2400(1).
“weighted total liabilities”

The definition "weighted Canadian liabilities" is relevant for the purposes of the amended definitions "Canadian investment fund" and "equity limit".

An insurer's weighted total liabilities is similar to its weighted Canadian liabilities except that the former includes an insurer's world-wide insurance liabilities rather than only its Canadian insurance liabilities. (For further details see the above commentary to the definition of "weighted Canadian liabilities".)

The definition “weighted total liabilities” is amended consequential to changes related to the adoption of IFRS. The amendments ensure that weighted total liabilities are reported net of reinsurance assets in respect of total liabilities.

For further details, readers may refer to the commentary on the definition “Canadian reserve liabilities” in subsection 2400(1).

These amendments apply to taxation years commencing after 2010.

ITR
2400(9)

Certain of the accounting rules that insurance corporations must follow are being changed effective for fiscal years beginning on or after January 1, 2011. These changes are in addition to the accounting rule changes that were adopted effective for fiscal years beginning on or after October 1, 2006. The changes that are currently being made impact the tax rules that apply to insurance corporations for taxation years commencing after 2010. Subsection 2400(9) is added to ensure that the same form of transition rule that applied for the accounting rule changes effective for fiscal years beginning on or after October 1, 2006, applies in respect of the adoption of IFRS effective for fiscal years beginning on or after January 1, 2011.

For further details, readers may refer to the commentary on subsection 138(12) of the Act.

This amendment applies to taxation years commencing after 2010.

Clause 82
Designation Rules

ITR
2401(2)

Subsection 2401(2) sets out rules that an insurer is required to follow in designating investment property for a taxation year in respect of its insurance businesses carried on in Canada in the year. Paragraphs 2401(2)(b) and (c) are amended to remove subparagraphs (b)(ii) and (c)(ii), which referenced reinsurance recoverables. As the computation of the insurer’s Canadian reserve liabilities are concurrently being amended to be net of reinsurance recoverable, the reduction of the insurer’s reinsurance recoverables is redundant.

For further details, readers may refer to the commentary on the definition “Canadian reserve liabilities” in subsection 2400(1).
This amendment applies to taxation years commencing after 2010.

Clause 83
Registered Charities

Part XXXVII

Part XXXVII of the Regulations provides rules related to the calculation of a prescribed amount for the purpose of determining the disbursement quota of a charity as defined under subsection 149.1(1) of the Act. Part XXXVII is amended consequential to the amendment of that definition.

The heading “Charitable Foundations” to Part XXXVII of the Regulations is amended to refer to “Registered Charities”, as this Part is amended to apply to all registered charities.

This amendment applies for taxation years that end on or after March 4, 2010.

Interpretation

Section 3700 of the Regulations is repealed as the definitions found in subsection 149.1(1) of the Act apply to sections 3701 and 3702 of the Regulations. The reference to the definition “limited-dividend housing company” in paragraph 149(1)(n) of the Act is moved to subparagraph 3702(1)(c)(i) of the Regulations.

These amendments apply for taxation years that end on or after March 4, 2010.

Clause 84
Disbursement Quota

Section 3701 of the Regulations applies for the purpose of calculating the disbursement quota of a charity as defined in subsection 149.1(1) of the Act. Consequential to the amendment of that definition, subsection 3701(1) now refers to the description of B of the formula in that definition. In addition, section 3701 is amended to refer to a “registered charity” instead of a “charitable foundation”, as the disbursement quota applies to all registered charities.

These amendments apply for taxation years that end on or after March 4, 2010.
Clause 85

Determination of Value

ITR
3702

Section 3702 of the Regulations applies for the purpose of calculating the value of property in calculating the disbursement quota of a charity, as referred in subsection 3701(1) of the Regulations. Section 3702 is amended to refer to a “registered charity” instead of “charitable foundation” (when applicable), as this calculation applies to all registered charities. However, in the case where a property is a “non-qualified investment” of a private foundation (as defined in subsection 149.1(1) of the Act), paragraph 3702(1)(a) of the Regulations is amended to refer more specifically to a private foundation.

A reference to the definition “limited-dividend housing company” in paragraph 149(1)(n) of the Act is added in paragraph 3702(1)(c) of the Regulations, as section 3700 of the Regulations is repealed (see the commentary for section 3700 of the Regulations). In addition, the formula in paragraph 3702(1)(c) is amended to change the percentage to 3.5 per cent, to reflect the corresponding percentage in the definition “disbursement quota” in subsection 149.1(1) of the Act.

These amendments apply for taxation years that end on or after March 4, 2010.

Clause 86

Definitions

ITR
Part LXXXVI

Part LXXXVI of the Regulations provides rules for determining “taxable capital employed in Canada”. Although Part I.3 tax has been eliminated, a corporation’s “taxable capital employed in Canada” remains relevant for several purposes, including Part VI of the Act, which levies a tax on the capital of financial institutions. Section 8600 defines a number of terms for the purposes of Part LXXXVI of the Regulations and Part I.3 of the Act.

ITR
8600

“total reserve liabilities”

The term “total reserve liabilities” is relevant in determining the taxable capital employed in Canada of insurance corporations that carry on a life insurance business. The definition is amended as a consequence of the adoption of IFRS, requiring liabilities and reserves to be computed gross of reinsurance for the purposes of IFRS. To maintain a calculation of reserve liabilities on a net of reinsurance basis, the reinsurance recoverable is deducted from liabilities and reserves to determine the total reserve liabilities. This formula ensures that the calculations of taxable capital employed in Canada for purposes of Part LXXXVI of the Regulations and Parts I.3 and VI of the Act continue to be determined net of reinsurance.

This amendment applies to taxation years commencing after 2010.
Clause 87
Prescribed Payments

ITR 9500

New regulation 9500 defines “prescribed payments” which are, in general terms, payments which may, under new paragraph 144.1(2)(g) of the Act, be permitted to be made under the terms of an employee life and health trust without jeopardizing the trust’s status. Prescribed payments as currently defined are relevant only to the health care trust being established for retired auto workers who are former employees of General Motors of Canada Limited or Chrysler Canada Inc. or of related entities.

Due to the complexity of the proceedings surrounding the establishment of this trust, the former employers have continued to pay designated employee benefits to their former employees pending the proposed settlement of the trust. The parties intend that the trust will, after it has been settled, reimburse the employers for these payments.

Payments for certain administrative services that may be provided by the employers are also accommodated as prescribed payments.

In order to be a prescribed payment, paragraph (c) requires that the recipient of the payment acknowledge that it will include the payment in computing its income, to the extent that it has deducted the related expense.

New regulation 9500 applies after 2009.

Clause 88
Class 10 in Schedule II

Schedule II to the Regulations provides a list of classes of depreciable properties for the purpose of deducting capital cost allowance (CCA), and the description of properties that are to be included in each Class. A portion of the capital cost of depreciable property is deductible as CCA each year, with the CCA rate for each type of property set out in the Regulations.

ITR Class 10(v) (30% CCA rate)

In general, paragraph (v) of Class 10 applies to equipment used to interface between a cable distribution system and electronic products used by consumers such as televisions and radios where the equipment is designed primarily to augment channel capacity or to decode signals (i.e., a television set-top box). Paragraph (v) of Class 10 is amended so that it does not apply to property included in new paragraph (b) of Class 30, which is described below in the explanatory note that accompanies that amendment.

This amendment applies to taxation years that end after March 4, 2010.
Clause 89

Class 30 in Schedule II

ITR
Class 30 (40% CCA rate)

Class 30 applies – in general - to unmanned telecommunication spacecraft acquired before 1990. Class 30 is amended to create new paragraphs (a) and (b), with paragraph (a) referring to property currently described by Class 30. In general, new paragraph (b) applies to equipment acquired after March 4, 2010 that is used for the purpose of effecting an interface with a cable or satellite distribution system (other than a satellite radio distribution system) if the equipment is designed primarily to augment channel capacity or to decode signals (i.e., cable and satellite television set-top boxes). The equipment must not have been used for any purpose before March 5, 2010.

Clause 90

Class 43.1 in Schedule II

ITR
Class 43.1 (30% CCA rate) and 43.2 (50% CCA rate)

Class 43.1 provides a 30% accelerated capital cost allowance rate for certain renewable energy and energy conservation equipment. Class 43.2 provides a 50% accelerated capital cost allowance rate. In general terms, Class 43.2 applies to property described in Class 43.1 if the property is acquired on or after February 23, 2005 and before 2020. Unlike Class 43.1, however, Class 43.2 applies to co-generation property described in paragraphs (a) to (c) of Class 43.1 only if the heat rate of an eligible co-generation system attributable to fossil fuel does not exceed a 4,750 BTU requirement instead of the 6,000 BTU requirement.

Class 43.1 (and indirectly Class 43.2) is amended in a number of respects more fully described below.

Budget 2008 measures

1. Active Solar Equipment and Ground Source Heat Pump Systems

Subparagraph (d)(i) of Class 43.1 applies to certain active solar heating equipment and ground source heat pump system equipment.

Subclause (d)(i)(A)(II) is amended to remove the requirement that the liquid or gas heated by equipment that is part of a ground source heat pump system be used directly in an industrial process or in a greenhouse. Under the revised provision, the equipment must be part of a ground source heat pump system that meets the standards set by the Canadian Standards Association for the design and installation of earth energy systems. Such equipment includes piping (including above or below ground piping and the cost of drilling a well, or trenching, for the purpose of installing that piping).

Clause (d)(i)(B) is amended to exclude energy equipment that backs up equipment described in subclause (A)(I) or (II).
2. Geothermal Equipment

Subparagraph (d)(vii) is amended to remove the requirement that eligible geothermal equipment be “above-ground”. A related change extends eligibility to geothermal “equipment that consists of piping (including above or below ground piping and the cost of drilling a well, or trenching, for the purpose of installing that piping)”.

3. Equipment used Primarily to Collect Landfill Gas and Digester Gas

Subparagraph (d)(viii) is amended to remove the requirement that equipment used to collect landfill gas and digester gas be “above-ground”. A related change extends eligibility to “equipment that consists of piping (including above or below ground piping and the cost of drilling a well, or trenching, for the purpose of installing that piping)”.

4. Equipment used Primarily to Generate Heat Energy from an Eligible Waste Fuel

Subparagraph (d)(ix) is amended to remove the requirement that the industrial process or greenhouse that uses the heat energy be “of the taxpayer or lessee”. Accordingly, a taxpayer’s equipment that generates heat in an eligible manner remains eligible under the provision if the heat is sold to another person who uses it in their industrial process or greenhouse. In addition, eligibility requires that the heat be generated primarily from eligible waste fuel and, while eligibility is not denied if fossil fuel is also consumed as a minority fuel source, no other fuel may be consumed for the purposes of the provision. Both “eligible waste fuel” and “fossil fuel” are defined in subsection 1104(13) of the Regulations.

5. Equipment used Primarily to Convert Wood Waste or Plant Residue into Bio-oil

Subparagraph (d)(xi) currently requires that the bio-oil be used “primarily for the purpose of generating electricity”. This use requirement is extended to apply where the bio-oil is “used primarily for the purpose of generating heat that is used directly in an industrial process or a greenhouse, generating electricity or generating electricity and heat”. In addition, the provision is amended to remove the requirement that the bio-oil be used by “the taxpayer or lessee”. Accordingly, a taxpayer’s equipment that generates bio-oil in an eligible manner remains eligible under the provision if the bio-oil is sold to another person who uses it primarily to generate heat that is used directly in an industrial process or a greenhouse, to generate electricity or to generate electricity and heat.

6. Equipment that is part of a system used Primarily to Produce and Store Biogas

Subparagraph (d)(xiii) currently requires that eligible equipment be used primarily to “produce, store and use” biogas. Subparagraph (d)(xiii) is amended to apply to eligible equipment that is used primarily to “produce and store” biogas. Accordingly, a taxpayer’s equipment that produces and stores biogas in an eligible manner remains eligible under the provision if the biogas is sold to another person.

Generally, these amendments apply to property acquired after February 25, 2008.
Budget 2010 measures

Class 43.1 (and indirectly Class 43.2) is amended in two additional respects. In general, the following
amendments to Class 43.1 apply to new property acquired after March 3, 2010.

First, Class 43.1 is amended to apply to heat recovery equipment used in a broader range of applications.

- Subparagraph (a)(iii) of Class 43.1 – which applies to heat recovery equipment used primarily in
  eligible cogeneration systems – is amended to remove the restriction that requires the recovered
  thermal waste to be reused in a cogeneration process of the same type that generated it, and

- Subparagraph (d)(iv) of Class 43.1 – which applies to heat recovery equipment – is amended to
  remove the restriction that requires the recovered thermal waste to be reused directly in an industrial
  process (other than in an industrial process that generates or processes electrical energy). No change
  is made to the requirement that the recovered thermal waste be generated directly in an industrial
  process (other than an industrial process that generates or processes electrical energy). In addition,
  subparagraph (d)(iv) does not apply to property that is employed in re-using recovered heat (such as
  property that is part of the internal heating or cooling system of a building or electrical generating
  equipment), is a building or is equipment that recovers heat primarily for use for heating water in a
  swimming pool.

Second, Class 43.1 is broadened in the following two respects.

- Subparagraph (a)(iii.1) of Class 43.1 – which applies to “district energy equipment” – is amended to,
  in general, incorporate in the subparagraph a “primarily supplied” test that is analogous to the test
  deleted from the definition “district energy system” in subsection 1104(13) of the regulations, and

- New subparagraph (d)(xv) is added to extend Class 43.1 (and Class 43.2 indirectly) eligibility to a
  taxpayer’s district energy equipment (as defined in subsection 1104(13)) if the equipment is used as
  part of a district energy system (as defined in subsection 1104(13)) that uses thermal energy that is
  primarily supplied by equipment that is an eligible ground source heat pump system, active solar
  system, heat recovery equipment or a combination of these energy sources.
Part 2

Amendments in Respect of Excise Duties and Sales and Excise Taxes

Air Travellers Security Charge Act

Clause 91
Definitions
ATSCA
2

Section 2 of the *Air Travellers Security Charge Act* defines terms that apply for the purposes of the Act.

“fiscal month”

“Fiscal month” is currently defined as a period determined under section 16 for purposes of reporting and paying a charge. The definition is amended to mean a period determined under subsection 16(1). This amendment is consequential to the renumbering of section 16.

“fiscal half-year”

The Act is amended to add a new definition, “fiscal half-year”. The new definition is relevant for the purposes of new subsection 16(2) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a designated air carrier, and new subsection 16.1(2), which provides that the Minister of National Revenue may authorize a designated air carrier, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal half-year” means a fiscal half-year as determined under subsection 16(2).

“fiscal year”

The Act is amended to add a new definition, “fiscal year”. The new definition is relevant for the purposes of new subsection 16(2) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a designated air carrier, and new subsection 16.1(2), which provides that the Minister of National Revenue may authorize a designated air carrier, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal year” of a designated air carrier means the same period that is the carrier’s fiscal year under Part IX of the *Excise Tax Act*. 
“reporting period”

The Act is amended to add a new definition, “reporting period”. The new definition is introduced in conjunction with new section 16.1, which provides that the reporting period of a designated air carrier is a fiscal month, unless the carrier meets conditions set out in new subsection 16.1(2) and is authorized by the Minister to have a reporting period of a fiscal half-year.

“Reporting period” means a reporting period as determined under section 16.1.

The amendments come into force on Royal Assent.

Clause 92

Associated persons

ATSCA 5.1

New rules with respect to associated persons are introduced for the purposes of determining whether a carrier is entitled to file returns on a fiscal half-year basis rather than on a monthly basis. Eligibility for filing based on a fiscal half-year is determined by reference to the total of all charges and amounts collected or required to be collected by the carrier and any person associated with the carrier in the current or previous fiscal year.

Subsection 5.1(1) provides that a particular corporation is associated with another corporation for the purposes of the Air Travellers Security Charge Act if they are considered to be associated pursuant to subsections 256(1) to (6) of the Income Tax Act.

Subsection 5.1(2) provides that a person (other than a corporation) is associated with a particular corporation if that person or a group of associated persons of which the person is a member controls the corporation.

Subsection 5.1(3) sets out the circumstances in which a person will be treated as being associated with a partnership and with a trust.

Subsection 5.1(4) states that a person is associated with another person if both persons are associated with a third person.

The amendment comes into force on Royal Assent.

Clause 93

No Action for Collection of Charge

ATSCA 15.1

New section 15.1 of the Act provides that no person, other than Her Majesty, may bring an action or proceeding against any person for acting in compliance or intended compliance with this Act by collecting an amount as or on account of the charge.
New section 15.1 applies to any action or proceeding that has not, on or before July 13, 2010, been finally determined by the tribunals or courts of competent jurisdiction.

**Clause 94**

**Fiscal periods**

ATSCA 16

Section 16 currently provides rules for the determination of a fiscal month of a designated air carrier. The heading before section 16 is amended by replacing “Fiscal Month” with “Fiscal Periods”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier. In addition, current section 16 is renumbered as subsection 16(1) and new subsection 16(2) is introduced to set out rules for the determination of a new fiscal half-year reporting period.

New subsection 16(2) provides that the fiscal half-years of a designated air carrier are 1) the period beginning on the first day in a fiscal year of the carrier and ending on the earlier of the last day of the sixth fiscal month and the last day in the fiscal year, and 2) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year.

**Reporting periods**

ATSCA 16.1

New section 16.1 determines the reporting period of a designated air carrier for filing a return under the Act, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier. Currently, all carriers are required to file a return each fiscal month.

New subsection 16.1(1) provides that the reporting period of a designated carrier is a fiscal month.

New subsection 16.1(2) provides that, despite new subsection 16.1(1), the Minister of National Revenue may authorize a carrier to have a reporting period of a fiscal half-year, subject to certain conditions. For example, the total of all charges and amounts collected or required to be collected under the Act by the carrier and any person associated with the carrier shall not exceed $120,000 in the current or previous fiscal year.

New subsection 16.1(3) provides that an authorization under new subsection (2) is deemed to be revoked if the total of all charges and amounts collected or required to be collected under the Act by a carrier and any person associated with the carrier exceeds $120,000 in a fiscal year. The revocation is effective as of the first day after the end of the fiscal half-year in which the excess occurs.

New subsection 16.1(4) enables the Minister to revoke an authorization in specific circumstances, such as when an air carrier, in writing, requests the Minister to do so.

New subsection 16.1(5) provides that, upon the revocation of an authorization under subsection (4), the Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.
New subsection 16.1(6) provides that, if a revocation under subsection (4) becomes effective before the last day of a fiscal half-year of a carrier that is authorized under new subsection (2), the period beginning on the first day of the fiscal half-year and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the carrier.

The amendments come into force on Royal Assent.

**Clause 95**

**Returns and payments**

ATSCA 17(2)

Subsection 17(2) currently requires every designated air carrier that is registered or is required to register to, by the end of the first month following the fiscal month, file monthly returns, calculate in the return the total of all charges collected and other amounts collected as or on account of charges, and pay an amount equal to that total to the Receiver General.

This subsection is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.

**Clause 96**

**Waiving or reducing interest**

ATSCA 30(1)

Subsection 30(1) provides that the Minister of National Revenue may waive or reduce interest payable under the Act.

This subsection is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.

**Clause 97**

**Deduction of refund**

ATSCA 32(4)

Subsection 32(4) entitles an air carrier that has refunded or credited an amount under subsection 32(1) or 32(2) and that has issued a document in accordance with subsection 32(3) to deduct the amount refunded or credited from the amount payable to the Receiver General in the fiscal month in which the document is
issued provided that the amount refunded or credited was included in the amount payable by the air carrier for that or a preceding fiscal month.

This subsection is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under subsection 16.1(2).

The amendment comes into force on Royal Assent.

Clause 98
Restriction

ATSCA 33(3)(a)

Section 33 provides that a person who pays an amount under the Act that is in fact not payable may apply for a refund of the amount.

Paragraph 33(3)(a) currently provides that a refund under this section shall not be paid to a person to the extent that the amount was taken into account as an amount to be paid by the person in respect of one of their fiscal months and the Minister of National Revenue has assessed the person for the month under section 39.

This paragraph is amended by replacing the terms “fiscal months” and “month” with the terms “reporting periods” and “period” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under subsection 16.1(2).

The amendments come into force on Royal Assent.

Clause 99
Restriction re trustees

ATSCA 35

Section 35 currently provides that a refund to which a person was entitled prior to the appointment of a trustee in bankruptcy for the person shall not be paid unless all returns for the fiscal months that ended before the appointment of the trustee have been filed and all outstanding payments for those fiscal months have been paid.

This section is amended by replacing the term “fiscal months” with the term “reporting periods”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.
Clause 100
Refund on reassessment

ATSCA 39(4)

Section 39 authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under the Act.

Subsection 39(4) currently requires the Minister to provide a refund if a person has paid an amount that exceeds the amount determined on reassessment to have been payable in respect of that fiscal month.

This subsection is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.

Clause 101
Failure to file a return when required

ATSCA 53

Section 53 imposes a penalty where a person fails to file a return for a fiscal month as and when required under the Act.

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.

Clause 102
Waiving or cancelling penalties

ATSCA 55(1)

Subsection 55(1) provides that the Minister is authorized, on or before the day that is ten calendar years after the end of a fiscal month of a person, to waive or cancel any penalty payable under section 53 in respect of a return for the fiscal month.

This subsection is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a carrier under new subsection 16.1(2).

The amendment comes into force on Royal Assent.
Clause 103

Limitation period

ATSCA
72(2.2)(a)(i) and (ii)

Subsection 72(2.2) of the Act generally specifies the limitation period for the collection of a charge debt under the Act to be 10 years after the earliest day that the Minister of National Revenue can commence an action to collect the charge debt or, if a notice of assessment or a notice for payment of amount under subsection 80(1) is mailed to or served on a person, the last day on which one of those notices is mailed or served.

Subparagraphs 72(2.2)(a)(i) and (ii) are amended to replace the term “mailed” with the term “sent”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices, refer to the commentary for new subsection 83(9.1).

The amendment comes into force on Royal Assent.

Clause 104

Evidence and procedure

ATSCA
83

Section 83 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act. The section is amended to allow the Minister of National Revenue to provide electronic notices to persons under certain circumstances. Other provisions of the Act, where applicable, are amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to the notice of assessment in respect of a charge debt sent by the Minister under provisions governing the limitation period. However, those provisions of the Act that specifically require notices to be served personally or by registered or certified mail are not being amended to provide for the electronic communication of notices.

The amendments to section 83 come into force on Royal Assent.

Mailing or Sending Date

ATSCA
83(9)

Subsection 83(9) currently provides that the date of mailing of any notice or demand that the Minister of National Revenue is required or authorized under the Act to send or mail to a person is deemed to be the date of the notice or demand.

Subsection 83(9) is amended to add that the day of sending of a notice or demand electronically is deemed to be the date of the notice or demand. This is consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. The amended wording of subsection (9) also clarifies that the concept of “send” includes to mail.
**Date when Electronic Notice Sent**

ATSCA

83(9.1)

New subsection 83(9.1) is added to allow for the electronic communication of notices under the Act that can currently be sent by the Minister of National Revenue by ordinary mail.

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, new subsection 83(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

**Date when assessment made**

ATSCA

83(10)

Subsection 83(10) currently provides that a notice of assessment sent by the Minister of National Revenue to a person is deemed to have been made on the day of mailing the notice of assessment.

Subsection 83(10) is amended to replace the term “mailing” with the term “sending”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances.
Excise Act

Clause 105

Determination of periods for semi-annual returns

EA
36.1

New section 36.1 of the *Excise Act* is introduced to set out rules for the determination of a new six-month filing period. Currently, all brewers are required to file a return each month.

New subsection 36.1(1) provides that the six-month periods of a licensed brewer are 1) the period beginning on January 1 and ending on June 30, or the portion of that period, if any, that ends before the month of which a revocation becomes effective, and 2) the period beginning on July 1 and ending on December 31, or the portion of that period, if any, that ends before the month on which a revocation becomes effective.

New subsection 36.1(2) provides that the Minister of National Revenue may authorize a licensed brewer to make returns for six-month periods, subject to certain conditions. For example, the total of all duties imposed, levied and collected on beer and malt liquor brewed by the brewer and any person associated with the brewer shall not exceed $120,000 in the current or previous year.

New subsection 36.1(3) provides that an authorization provided under new subsection (2) is deemed to be revoked if the total of all duties imposed, levied and collected on beer and malt liquor by a brewer and any person associated with the brewer exceeds $120,000 in a year. The revocation is effective as of the first day after the end of the six-month period in which the excess occurs.

New subsection 36.1(4) enables the Minister to revoke an authorization in specific circumstances, such as when a brewer, in writing, requests the Minister to do so.

New subsection 36.1(5) provides that, upon the revocation of an authorization under subsection (4), the Minister shall send a notice in writing and shall specify the month for which the revocation becomes effective.

The amendments come into force on Royal Assent.

Clause 106

Time for making return

EA
37

Section 37 currently provides that returns be made on or before the tenth working day of each month. This section is amended by renumbering section 37 as subsection 37(1) and by adding new subsection 37(2), consequential to the introduction of a new semi-annual reporting period.
New subsection 37(2) requires licensed brewers that are authorized by the Minister to make a return for a six-month period under new subsection 36.1(2) to make such returns on or before the tenth working day of the month following the end of that six-month period.

The amendment comes into force on Royal Assent.
Clause 107

Definitions

Section 2 of the *Excise Act, 2001* defines terms that apply for the purposes of the Act.

“fiscal half-year”

The Act is amended to add a new definition, “fiscal half-year”. The new definition is relevant for the purposes of new subsection 159(1.1) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a person, and new subsection 159.1(2), which provides that the Minister of National Revenue may authorize a person, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal half-year” means a fiscal half-year as determined under subsection 159(1.1).

“fiscal year”

The Act is amended to add a new definition, “fiscal year”. The new definition is relevant for the purposes of new subsection 159(1.1) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a person, and new subsection 159.1(2), which provides that the Minister of National Revenue may authorize a person, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal year” of a person means the same period that is the person’s fiscal year under Part IX of the *Excise Tax Act*.

“reporting period”

The Act is amended to add a new definition, “reporting period”. The new definition is introduced in conjunction with new section 159.1, which provides that the reporting period of a person is a fiscal month, unless the person meets conditions set out in new subsection 159.1(2) and is authorized by the Minister to have a reporting period of a fiscal half-year.

“Reporting period” means a reporting period as determined under section 159.1.

The amendments come into force on Royal Assent.
Clause 108

Associated persons

EA, 2001
6(3) to (6)

New rules with respect to associated persons are introduced for the purposes of determining whether a person is entitled to file returns on a fiscal half-year basis rather than on a monthly basis. Eligibility for filing based on a fiscal half-year is determined by reference to the total of all duties payable under Part 4 by the person and any person associated with the person in the current or previous fiscal year.

Subsection 6(3) provides that a particular corporation is associated with another corporation for the purposes of the Excise Act, 2001 if they are considered to be associated pursuant to subsections 256(1) to (6) of the Income Tax Act.

Subsection 6(4) provides that a person (other than a corporation) is associated with a particular corporation if that person or a group of associated persons of which the person is a member controls the corporation.

Subsection 6(5) sets out the circumstances in which a person will be treated as being associated with a partnership and with a trust.

Subsection 6(6) states that a person is associated with another person if both persons are associated with a third person.

The amendment comes into force on Royal Assent.

Clause 109

Fiscal periods

EA, 2001
159

The heading before section 159 is amended by replacing the term “Fiscal Month” with the term “Fiscal Periods”, consequential to the introduction of a new reporting period of a fiscal half-year of a person.

The amendment comes into force on Royal Assent.

Clause 110

Determination of fiscal half-years

EA, 2001
159(1.1)

Currently, section 159 provides rules for the determination of a fiscal month of a person. New subsection 159(1.1) is introduced to set out rules for the determination of a new fiscal half-year reporting period.

New subsection 159(1.1) provides that the fiscal half-years of a person are 1) the period beginning on the first day in a fiscal year of the person and ending on the earlier of the last day of the sixth fiscal month
and the last day in the fiscal year, and 2) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year.

The amendment comes into force on Royal Assent.

Clause 111

Reporting periods

EA, 2001

159.1

New section 159.1 determines the reporting period of a person for filing a return under the Act, consequential to the introduction of a new reporting period of a fiscal half-year of a person. Currently, all licensees are required to file a return each fiscal month.

New subsection 159.1(1) provides that the reporting period of a person is a fiscal month.

New subsection 159.1(2) provides that, despite subsection 159.1(1), the Minister of National Revenue may authorize a category of licensee that is an excise warehouse licensee who does not hold tobacco products, a spirit licensee, a wine licensee, or a licensed user to have a reporting period of a fiscal half-year, subject to certain conditions. For example, in respect of a category of licensee, the total of all duties payable under Part 4 by the person and any person associated with the person shall not exceed $120,000 in the current or previous fiscal year.

New subsection 159.1(3) provides that an authorization under subsection (2) is deemed to be revoked if any of the conditions described in paragraphs 2(d) to (h) is no longer met, as of the first day after the end of the fiscal half-year, or if an excise warehouse licensee begins to hold manufactured tobacco or cigars, as of the first day of the fiscal month in which the licensee begins to hold the tobacco or cigars.

New subsection 159.1(4) enables the Minister to revoke an authorization in specific circumstances, such as when a person, in writing, requests the Minister to do so.

New subsection 159.1(5) provides that, upon the revocation of an authorization under subsection (4), the Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.

New subsection 159.1(6) provides that, if a revocation under paragraph (3)(b) or subsection (4) becomes effective before the last day of a fiscal half-year of a person that is authorized under new subsection (2), the period beginning on the first day of the fiscal half-year and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the person.

The amendments come into force on Royal Assent.
Clause 112

Filing by licensee
EA, 2001
160

Section 160 generally requires persons who are licensed under the Act to file monthly returns and calculate and remit any duty payable. The return for each of a person’s fiscal months must be filed, and the duty, if any, remitted by the end of the first month following the fiscal month.

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 113

Minimum interest and penalty
EA, 2001
170(4)

Section 170 imposes interest at the prescribed rate on amounts a person has failed to pay under the Act. Subsection 170(4) allows the Minister of National Revenue to waive interest of less than $25, under certain circumstances.

Subsection 170(4) is amended by replacing the terms “fiscal month” and “month” with the terms “reporting period” and “period” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendments come into force on Royal Assent.

Clause 114

Restriction
EA, 2001
176(2)(a)

Section 176 provides that a person who pays an amount under the Act that is in fact not payable may apply for a refund of the amount, provided the person applies for the refund within 2 years of the day the amount was paid.

Paragraph 176(2)(a) is amended by replacing the terms “fiscal month” and “month” with the terms “reporting period” and “period” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendments come into force on Royal Assent.
Clause 115
Restriction re trustees

Section 178 provides that a refund or other payment that a person was entitled to prior to the appointment of a trustee in bankruptcy for the person shall not be paid unless all returns for the fiscal months that ended before the appointment of the trustee have been filed and all outstanding payment for those fiscal months have been paid.

This section is amended by replacing the term “fiscal months” with the term “reporting periods”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 116
Assessments

Section 188 authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under the Act.

This section is amended by replacing the terms “fiscal month” and “month” with the terms “reporting period” and “month” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendments come into force on Royal Assent.

Clause 117
Limitation period for assessments

Section 191 sets out the limitation periods for assessing duty, interest and other amounts payable under the Act.

Section 191 is amended by replacing the terms “fiscal month” and “month” with the terms “reporting period” and “period” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendments come into force on Royal Assent.
Clause 118
Scope of notice
EA, 2001
193(2)

Section 193 requires the Minister of National Revenue to provide a notice of assessment to any person who has been assessed. A notice of assessment may include assessments of any number or combination of fiscal months, refunds or amounts payable under the Act.

Subsection 193(2) is amended by replacing the term “fiscal months” with the term “reporting periods”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 119
Bankruptcies
EA, 2001
212

This section determines the liabilities and obligations under the Act of a bankrupt’s trustee, a receiver appointed to manage or wind up a person’s business or property, or other representative, in specific circumstances.

This section is amended by replacing the term “fiscal month” with “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 120
Failure to file return
EA, 2001
251.1

Section 251.1 imposes a penalty where a person fails to file a return for a fiscal month as and when required under the Act.

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.
Clause 121

False statements or omissions

EA, 2001
253

Section 253 provides that a person who, knowingly or under circumstances amounting to gross negligence, is involved in the making of a false statement or omission in a return or other document made in respect of a fiscal month or activity is liable to a penalty.

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 122

Waiving or reducing failure to file penalty

EA, 2001
255.1

Section 255.1 provides that the Minister is authorized, on or before the day that is ten calendar years after the end of a fiscal month of a person, to waive or reduce any penalty payable under section 251.1 in respect of a return for the fiscal month.

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 123

Limitation period

EA, 2001
284(2.2)(a)(i) and (ii)

Subsection 284(2.2) of the Act generally specifies the limitation period for the collection of a tax debt under the Act to be 10 years after the earliest day that the Minister of National Revenue can commence an action to collect the tax debt or, if a notice of assessment or a notice for payment of amount under subsection 254(1) or 294(1) is mailed to or served on a person, the last day on which one of those notices is mailed or served.

Subparagraphs 284(2.2)(a)(i) and (ii) are amended to replace the term “mailed” with the term “sent”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices, refer to the commentary for new subsection 301(9.1).
The amendment comes into force on Royal Assent.

Clause 124
Liability re transfers not at arm’s length
EA, 2001
297(1)(e)(i)

Section 297 provides an anti-avoidance rule for non-arm’s length transfers of property by a person liable to make a payment under the Act.

Subparagraph 297(1)(e)(i) is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 159.1(2).

The amendment comes into force on Royal Assent.

Clause 125
Evidence and procedure
EA, 2001
301

Section 301 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act. The section is amended to allow the Minister of National Revenue to provide electronic notices to persons under certain circumstances. Other provisions of the Act, where applicable, are amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to the notice of assessment in respect of a tax debt sent by the Minister under provisions governing the limitation period. However, those provisions of the Act that specifically require notices to be served personally or by registered or certified mail are not being amended to provide for the electronic communication of notices.

The amendments to section 301 come into force on Royal Assent.

Mailing and Sending Date
EA, 2001
301(9)

Subsection 301(9) currently provides that the date of mailing of any notice or demand that the Minister of National Revenue is required or authorized under the Act to send or mail to a person is deemed to be the date of the notice or demand.

Subsection 301(9) is amended to add that the day of sending of a notice or demand electronically is deemed to be the date of the notice or demand. This is consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. The amended wording of subsection (9) also clarifies that the concept of “send” includes to mail.
Date when Electronic Notice Sent
EA, 2001
301(9.1)

New subsection 301(9.1) is added to allow for the electronic communication of notices under the Act that can currently be sent by the Minister of National Revenue by ordinary mail.

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, new subsection 301(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Date when assessment made
EA, 2001
301(10)

Subsection 301(10) currently provides that a notice of assessment sent by the Minister of National Revenue to a person is deemed to have been made on the day of mailing the notice of assessment. Subsection 301(10) is amended to replace the term “mailing” with the term “sending”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances.
Clause 126
Associated persons
ETA
2(2.3) to (2.6)

New rules with respect to associated persons are introduced for the purposes of determining whether a person is entitled to file returns on a fiscal half-year basis rather than on a monthly basis. Eligibility for filing based on a fiscal half-year is determined by reference to the total of all taxes payable under Part III by the person and any person associated with the person in the current or previous fiscal year.

Subsection 2(2.3) provides that a particular corporation is associated with another corporation for the purposes of the Excise Tax Act if they are considered to be associated pursuant to subsections 256(1) to (6) of the Income Tax Act.

Subsection 2(2.4) provides that a person (other than a corporation) is associated with a particular corporation if that person or a group of associated persons of which the person is a member controls the corporation.

Subsection 2(2.5) sets out the circumstances in which a person will be treated as being associated with a partnership and with a trust.

Subsection 2(2.6) states that a person is associated with another person if both persons are associated with a third person.

The amendments come into force on Royal Assent.

Clause 127
Definitions
ETA
58.1(1)

Subsection 58.1(1) of the Excise Tax Act defines terms that apply for the purposes of Part VII of the Act.

Definitions
ETA
58.1(1)

“fiscal half-year”

The Act is amended to add a new definition, “fiscal half-year”. The new definition is relevant for the purposes of new subsection 78(1.1) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a person, and new subsection 78.1(2), which provides that the
Minister of National Revenue may authorize a person, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal half-year” means a fiscal half-year as determined under subsection 78(1.1).

“fiscal year”

The Act is amended to add a new definition, “fiscal year”. The new definition is relevant for the purposes of new subsection 78(1.1) of the Act, which introduces rules for the determination of a new reporting period of a fiscal half-year of a person, and new subsection 78.1(2), which provides that the Minister of National Revenue may authorize a person, under certain conditions, to have a reporting period of a fiscal-half year.

“Fiscal year” of a person means the same period that is the person’s fiscal year under Part IX of the Act.

“reporting period”

The Act is amended to add a new definition, “reporting period”. The new definition is introduced in conjunction with new subsection 78.1(1), which provides that the reporting period of a person is a fiscal month unless the person meets conditions set out in new subsection 78.1(2) and is authorized by the Minister to have a reporting period of a fiscal half-year.

“Reporting period” means a reporting period as determined under new section 78.1.

The amendments come into force on Royal Assent.

Clause 128

Determination of fiscal half-years

ETA

78

Section 78 currently provides rules for the determination of a fiscal month of a person. New subsection 78(1.1) is introduced to set out rules for the determination of a new fiscal half-year reporting period.

New subsection 78(1.1) provides that the fiscal half-years of a person are 1) the period beginning on the first day in a fiscal year of the person and ending on the earlier of the last day of the sixth fiscal month and the last day in the fiscal year, and 2) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year.

The amendment comes into force on Royal Assent.
Clause 129

Reporting periods

ETA
78.1

New section 78.1 determines the reporting period of a person for filing a return under this Act, consequential to the introduction of a new reporting period of a fiscal half-year of a person.

New subsection 78.1(1) provides that the reporting period of a person is a fiscal month.

New subsection 78.1(2) provides that, despite new subsection 78.1(1), the Minister of National Revenue may authorize a person to have a reporting period of a fiscal half-year, subject to certain conditions. For example, the total of all taxes payable under Part III by the person and any person associated with the person shall not exceed $120,000 in the current or previous fiscal year.

New subsection 78.1(3) provides that an authorization under new subsection (2) is deemed to be revoked if the total of all taxes payable under Part III by a person and any person associated with the person exceeds $120,000 in a fiscal year. The revocation is effective as of the first day after the end of the fiscal half-year in which the excess occurs.

New subsection 78.1(4) enables the Minister to revoke an authorization in specific circumstances, such as when a person, in writing, requests the Minister to do so.

New subsection 78.1(5) provides that, upon the revocation of an authorization under subsection (4), the Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.

New subsection 78.1(6) provides that, if a revocation under subsection (4) becomes effective before the last day of a fiscal half-year of a person that is authorized under new subsection (2), the period beginning on the first day of the fiscal half-year and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the person.

The amendments come into force on Royal Assent.

Clause 130

Returns and payments

ETA
79(1) to (3)

Subsection 79(1) currently requires persons who are required to pay tax under Part III of the Act, and every person who holds a licence granted under or in respect of that Part, to file monthly returns and calculate and remit any tax payable. The return for each of a person’s fiscal months must be filed, and the tax, if any, remitted by the end of the first month following the fiscal month. Subsections 79(2) and (3) provide the Minister with the authority to extend the reporting period of a person under certain conditions, such as where the tax payable by the person for the preceding twelve fiscal months did not exceed $4,800, and sets out the deadline for the filing of a return for extended reporting periods.
Subsections 79(2) and (3) are repealed and subsection 79(1) is amended by replacing the terms “fiscal month” and “month” with the terms “reporting period” and “period” respectively, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 78.1(2).

The amendments come into force on Royal Assent.

**Clause 131**

**Limitation period**

**ETA**

82(2.2)(a)(i) and (ii)

Subsection 82(2.2) of the Act generally specifies the limitation period for the collection of a tax debt by a person under this Act other than Part IX (i.e. GST) to be 10 years after the earliest day that the Minister of National Revenue can commence an action to collect the tax debt or, if a notice of assessment is mailed to or served on a person, the last day on which one of those notices is mailed or served.

Subparagraphs 82(2.2)(a)(i) and (ii) are amended to replace the term “mailed” with the term “sent”, consequential to new provisions in this Act that allow the Minister to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices in respect of a tax debt payable by a person under this Act other than Part IX, refer to the commentary for new subsection 106.1(3.1).

The amendment comes into force on Royal Assent.

**Clause 132**

**Failure to file a return when required**

**ETA**

95.1

Section 95.1 imposes a penalty where a person fails to file a return for a fiscal month as and when required under subsection 79(1).

This section is amended by replacing the term “fiscal month” with the term “reporting period”, consequential to the introduction of a new reporting period of a fiscal half-year of a person under new subsection 78.1(2).

The amendment comes into force on Royal Assent.

**Clause 133**

**Service**

**ETA**

104(1)

Subsection 104(1) of the Act currently provides that if a notice or other document is to be sent to a person, other than the Minister or the Commissioner or the Tribunal, the notice or document shall be sent
to that person by prepaid mail addressed to him at his latest known address or by being served personally on that person.

The subsection is amended to provide that if a notice or other document is to be served on a person, other than the Minister or the Commissioner or the Tribunal, the notice or document shall be sent by registered or certified mail or be served personally on that person. The amendment clarifies that such notices are to be served personally or by registered or certified mail and not through electronic communication.

The amendment comes into force on Royal Assent.

Clause 134

Presumption

ETA
106.1

Section 106.1 of the Act currently provides a number of evidentiary rules dealing with the administration and enforcement of the Act other than Part IX. The section is amended to allow the Minister of National Revenue to provide electronic notices to persons under certain circumstances. Other provisions of the Act other than Part IX, where applicable, are amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to the notice of assessment in respect of a tax debt payable by a person under this Act other than Part IX under provisions governing the limitation period. However, those provisions of the Act that specifically require notices to be served personally or by registered or certified mail are not being amended to provide for the electronic communication of notices.

The amendments to section 106.1 come into force on Royal Assent.

Mailing or sending date

ETA
106.1(2)

Subsection 106.1(2) currently provides that the day of sending of certain notices that are sent by mail shall, in the absence of any evidence to the contrary, be deemed to have been sent on the day appearing from the notice.

Subsection 106.1(2) is amended to provide for the sending of certain notices to a person either by mail or by electronic notice, consequential to new provisions in the Act other than Part IX that allow the Minister of National Revenue to provide electronic notices to persons in certain circumstances. The amended subsection provides that if a certain notice is sent to a person either by mail or by electronic notice (as the case may be), the notice is deemed to have been sent on the day appearing from the notice.

Date when electronic notice sent

ETA
Subsection 106.1(3.1)

New subsection 106.1(3.1) is added to allow for the electronic communication of notices under the Act other than Part IX that can currently be sent by the Minister of National Revenue by ordinary mail.
Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, new subsection 106.1(3.1) provides that a notice or other communication will be, for the purposes of the Act other than Part IX, deemed to be sent by the Minister and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Clause 135

No Action for Collection of Tax

ETA

224.1

New section 224.1 of the Act states that no person, other than Her Majesty in right of Canada, may bring an action or proceeding against any person for acting in compliance or intended compliance with Part IX by collecting an amount as or on account of tax.

New section 224.1 applies to any action or proceeding that has not, on or before July 13, 2010, been finally determined by the tribunals or courts of competent jurisdiction.

Clause 136

Request for Adjustments

ETA

274(6)

Where the general anti-avoidance rule under subsection 274(2) of the Act applies with respect to a transaction and a person has received a notice of assessment, reassessment or additional assessment, as the case may be, regarding the transaction, any other person is entitled to request an assessment, reassessment or additional assessment under subsection 274(6), in respect of the same transaction. The request under this subsection must be made within 180 days of the date of mailing of the first notice of assessment, reassessment or additional assessment.

Subsection 274(6) is amended to replace the term “mailing” with the term “sending”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices under Part IX, refer to the commentary for new subsection 335(10.1).

The amendment comes into force on Royal Assent.
Clause 137
Request for Adjustments

ETA
274.2(4)

Where the anti-avoidance rule under subsection 274.2(2) of the Act applies with respect to a transaction and a person has received a notice of assessment, reassessment or additional assessment, as the case may be, regarding the transaction, any other person is entitled to request an assessment, reassessment or additional assessment under subsection 274.2(4), in respect of the same transaction. The request under this subsection must be made within 180 days after the day on which the first notice of assessment, reassessment or additional assessment was mailed.

Subsection 274.2(4) is amended to replace the term “mailed” with the term “sent”, consequential to new provisions in the Act that allow the Minister of National Revenue to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices under Part IX, refer to the commentary for new subsection 335(10.1).

The amendment comes into force on Royal Assent.

Clause 138
Limitation Period

ETA
313(2.2)(a)(i) and (ii)

Subsection 313(2.2) of the Act generally specifies the limitation period for the collection of a tax debt under Part IX to be 10 years after the earliest day that the Minister of National Revenue can commence an action to collect the tax debt or, if a notice of assessment or a notice for payment of amount under subsection 322(1) is mailed to or served on a person, the last day on which one of those notices is mailed or served.

Subparagraphs 313(2.2)(a)(i) and (ii) are amended to replace the term “mailed” with the term “sent”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices, refer to the commentary for new subsection 335(10.1).

The amendment comes into force on Royal Assent.

Clause 139
Payment of Remainder

ETA
315(2)

Section 315 of the Act currently provides that the Minister of National Revenue may not proceed to collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under Part IX, other than interest, unless the amount has been assessed. Under
subsection 315(2), where the Minister mails a notice of assessment, any amount assessed and unpaid is payable immediately to the Receiver General.

Subsection 315(2) is amended to replace the term “mails” with the term “sends”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices, refer to the commentary for new subsection 335(10.1).

The amendment comes into force on Royal Assent.

**Clause 140**

**Evidence and Procedure**

ETA
335

Section 335 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX. The section is amended to allow the Minister of National Revenue to provide electronic notices to persons under certain circumstances. Other provisions under Part IX, where applicable, are amended concurrently to replace the verb “to mail” with the verb “to send”. This applies, for example, to requests for adjustments after a notice of assessment has been sent by the Minister. However, those provisions of the Act that specifically require notices to be served personally or by registered or certified mail are not being amended to provide for the electronic communication of notices.

The amendments to section 335 come into force on Royal Assent.

**Mailing or sending date**

ETA
335(10)

Subsection 335(10) currently provides that the date of mailing of any notice or demand that the Minister of National Revenue is required or authorized under Part IX to send or mail to a person shall be deemed to be the date of the notice or demand.

Subsection 335(10) is amended to add that the day of sending of a notice or demand electronically shall be deemed to be the date of the notice or demand. This is consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances. The amended wording of subsection (10) also clarifies that the concept of “send” includes to mail.

**Date when electronic notice sent**

ETA
335(10.1)

New subsection 335(10.1) is added to allow for the electronic communication of notices under Part IX that can currently be sent by the Minister of National Revenue by ordinary mail.
Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, new subsection 335(10.1) provides that a notice or other communication will be, for the purposes of Part IX, deemed to be sent by the Minister and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

**Date when assessment made**

ETA
335(11)

Subsection 335(11) currently provides that a notice of assessment sent by the Minister of National Revenue to a person shall be deemed to have been made on the day of mailing the notice of assessment.

Subsection 335(11) is amended to replace the term “mailing” with the term “sending”, consequential to new provisions in the Act that allow the Minister to provide electronic notices to persons in certain circumstances.
Brewery Departmental Regulations

Clause 141

Time for making return

Brewery Departmental (Excise Act) Regulations 7

Section 7 of the Brewery Departmental Regulations currently provides that returns required by section 175 of the Excise Act shall be made monthly and contain certain information.

This section is amended consequential to the introduction of a new semi-annual reporting period for returns as provided for under new subsection 36.1(2) of the Act. In the case of a licensed brewer authorized to make returns for six-month periods, the return shall be made for each six-month period.

The amendment comes into force on Royal Assent.
Brewery Regulations

Clause 142

Excise duty payments

Brewery (Excise Act) Regulations
5

Currently, section 5 of the Brewery Regulations requires that the duty imposed under the Excise Act in respect of beer produced during a month shall be paid not later than the last day of the following month.

This section is amended consequential to the introduction of a new semi-annual reporting period for returns as provided for under new subsection 36.1(2) of the Act. In the case of a licensed brewer authorized to make returns for six-month periods, the duty imposed under the Act in respect of beer produced during a six-month period shall be paid not later than the last day of the month following that period.

The amendment comes into force on Royal Assent.
New Harmonized Value-added Tax System Regulations

Clause 143

Request for Adjustments

NHVATSR

37(4)

Existing subsection 37(4) of the New Harmonized Value-added Tax System Regulations (the Regulations) allows a person to request an assessment, reassessment or additional assessment in respect of a transaction where the anti-avoidance rule under subsection 37(2) of the Regulations applies with respect to the same transaction and for which another person has received a notice of assessment, reassessment or additional assessment, as the case may be. The request under subsection 37(4) of the Regulations must be made within 180 days of the date of mailing of the notice of assessment, reassessment or additional assessment to the other person.

Subsection 37(4) of the Regulations is amended to replace the term “mailing” with the term “sending”, consequential to new provisions in the Excise Tax Act (the Act) that allow the Minister of National Revenue to provide electronic notices to persons in certain circumstances. For further details on the authority of the Minister to provide electronic notices under Part IX of the Act, refer to the commentary for new subsection 335(10.1) of the Act.

This amendment comes into force on Royal Assent.