

## LEGISLATIVE PROPOSALS RELATING TO INCOME TAX

## INCOME TAX ACT

**1. (1) The definition “transition year” in subsection 138(12) of the *Income Tax Act* is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after paragraph (b):**

(c) in respect of the amendment to paragraph 1406(b) of the *Income Tax Regulations* announced on ANNOUNCEMENT DATE, the life insurer’s 2012 taxation year;

**(2) Section 138 of the Act is amended by adding the following after subsection (25):**

(26) In applying subsections (16), (17), (18) and (19) to a life insurer for a taxation year of the life insurer,

(a) if the application of one or more of those subsections is in respect of the amendment to paragraph 1406(b) of the *Income Tax Regulations* announced on ANNOUNCEMENT DATE, the life insurer’s reserve transition amount for its transition year in respect of that amendment is to be determined as though variable A in the formula in the definition “reserve transition amount” in subsection (12) read as follows:

A is the maximum amount that the life insurer would be permitted to claim under subparagraph (3)(a)(i) (and that would be prescribed by section 1404 of the *Income Tax Regulations* for the purposes of subparagraph (3)(a)(i)) as a policy reserve for its base year in respect of its life insurance policies in Canada if paragraph 1406(b) of the *Income Tax Regulations* were read as it applies to the life insurer’s 2012 taxation year, and;

(b) if one or more of those subsections applies in the same taxation year in respect of both the amendment to paragraph 1406(b) of the *Income Tax Regulations* announced on ANNOUNCEMENT DATE, and the International Financial Reporting Standards adopted by the Accounting Standards Board and effective as of January 1, 2011, then, for purposes of applying those subsections in respect of a transition year described by paragraph (b) of the definition “transition year” in subsection (12), the reference to “as it reads in respect of its transition year” in paragraph (b) of A of the formula in the definition “reserve transition amount” in subsection (12) is to be read as a reference to “as it reads in respect of its transition year (determined without reference to the amendment to paragraph 1406(b) of the *Income Tax Regulations* announced on ANNOUNCEMENT DATE); and

(c) if the life insurer has more than one transition year for the same taxation year of the life insurer

(i) for each such transition year, the computation of the reserve transition amount for the transition year, and the requirements to include, or rights to deduct, under any of those subsections an amount in respect of that reserve transition amount, shall be determined as if that transition year were the only transition year of the life insurer for that taxation year, and

(ii) for greater certainty, the references in subsections (16), (17), (18) and (19) to a transition year include each such transition year.

Policy reserve  
transition —  
application  
rules

**(3) Subsections (1) and (2) apply to the 2012 and subsequent taxation years.**

**2. (1) The Act is amended by adding the following before Division G of its Part I:**

EXPENDITURE – LIMIT FOR CONTINGENT AMOUNT

Definitions

**143.4** (1) The following definitions apply in this section.

“contingent amount”  
« *montant éventuel* »

“contingent amount”, of a taxpayer at any time (other than a time at which the taxpayer is a bankrupt), includes an amount to the extent that the taxpayer, or another taxpayer that does not deal at arm’s length with the taxpayer, has a right to reduce the amount at that time.

“expenditure”  
« *dépense* »

“expenditure”, of a taxpayer, means an expense, expenditure or outlay made or incurred by the taxpayer, or a cost or capital cost of property acquired by the taxpayer.

“right to reduce”  
« *droit de réduire* »

“right to reduce”, an amount in respect of an expenditure at any time, means a right to reduce or eliminate the amount including, for greater certainty, a right to reduce that is contingent upon the occurrence of an event, or in any other way, if it is reasonable to conclude, having regard to all the circumstances, that the right will become exercisable.

“taxpayer”  
« *contribuable* »

“taxpayer” includes a partnership.

Limitation of amount of expenditure

(2) For the purposes of this Act, if in a taxation year of a taxpayer an expenditure of the taxpayer occurs, the amount of the expenditure at any time is the lesser of

(a) the amount of the expenditure at the time calculated under this Act without reference to this section, and

(b) the least amount of the expenditure calculated by reducing the amount of the expenditure determined under paragraph (a) by the amount that is the amount, if any, by which

(i) the total of all amounts each of which is a contingent amount of the taxpayer in the year in respect of the expenditure

exceeds

(ii) the total of all amounts each of which is an amount paid by the taxpayer to obtain a right to reduce an amount in respect of the expenditure.

Payment of contingent amount

(3) For the purposes of this Act, if in a particular taxation year, a taxpayer pays all or a portion of a contingent amount referred to in paragraph (2)(b) that reduced the amount of the taxpayer’s expenditure referred to in paragraph (2)(a), the portion of the contingent amount paid by the taxpayer in the particular year for the purpose of earning income, and to that extent only, is deemed

(a) to have been incurred by the taxpayer in the particular year;

(b) to have been incurred for the same purpose and to have the same character as the expenditure so reduced; and

(c) to have become payable by the taxpayer in respect of the particular year.

Subsequent years	<p>(4) Subject to subsection (6), if at any time in a taxation that is after a taxation year in which an expenditure of the taxpayer occurred, the taxpayer, or another taxpayer not dealing at arm's length with the taxpayer, has a right to reduce an amount in respect of the expenditure (in this subsection and subsection (5) referred to as the "prior expenditure") that would, if the taxpayer or the other taxpayer had had the right to reduce in a particular taxation year that ended before the time, have resulted in subsection (2) applying in the particular taxation year to reduce or eliminate the amount of the prior expenditure, the taxpayer's subsequent contingent amount in respect of the prior expenditure, as determined under subsection (5), is deemed, to the extent subsection (2) and this subsection have not previously applied in respect of the expenditure,</p>
Subsequent contingent amount	<p>(a) to be an amount received by the taxpayer at the time in the course of earning income from a business or property from a person described in subparagraph 12(1)(x)(i); and</p> <p>(b) to be an amount referred to in subparagraph 12(1)(x)(iv).</p> <p>(5) For the purpose of applying subsection (4), a taxpayer's "subsequent contingent amount" in respect of a prior expenditure of the taxpayer is the amount, if any, by which</p> <p>(a) the maximum amount by which the amount (in this subsection referred to as the "particular amount") in respect of the prior expenditure may be reduced pursuant to a right to reduce the particular amount</p> <p>exceeds</p> <p>(b) the amount, if any, paid to obtain the right to reduce the particular amount.</p>
Anti-avoidance	<p>(6) If a taxpayer, or another taxpayer that does not deal at arm's length with the taxpayer, has a right to reduce an amount in respect of an expenditure of the taxpayer in a taxation year that is after the taxation year in which the expenditure otherwise occurred, determined without reference to subsection (3), the taxpayer is deemed to have the right to reduce in the taxation year in which that expenditure otherwise occurred if it is reasonable to conclude having regard to all the circumstances that one of the purposes for having the right to reduce after the end of the year in which the expenditure otherwise occurred was to avoid the application of subsection (2) to the amount of the expenditure.</p>
Assessments	<p>(7) Notwithstanding subsections 152(4) to (5), such assessments, determinations and re-determinations may be made as are necessary to give effect to this section.</p> <p><b>(2) Subsection (1) applies in respect of taxation years that end on or after Announcement Date.</b></p> <p><b>3. (1) Subparagraph 212(1)(b)(i) of the Act is replaced by the following:</b></p> <p>(i) is not fully exempt interest and is paid or payable</p> <p>(A) to a person with whom the payer is not dealing at arm's length, or</p> <p>(B) in respect of a debt or other obligation to pay an amount to a person with whom the payer is not dealing at arm's length, or</p>

**(2) Subsection (1) applies to interest that is paid or payable by a person or partnership (referred to in this subsection as the “payer”) to a person or partnership (referred to in this subsection as the “recipient”) on or after Announcement Date, other than interest that is paid**

**(a) in respect of a debt or obligation incurred by the payer before Announcement Date; and**

**(b) to a recipient that acquired the entitlement to the interest as a consequence of an agreement or other arrangement entered into by the recipient, and evidenced in writing, before Announcement Date.**

INCOME TAX REGULATIONS

**4. (1) Paragraph 1406(b) of the *Income Tax Regulations* is replaced by the following**

**(b) by excluding any liability to pay to a policyholder an amount out of a segregated fund.**

**(2) Subsection (1) applies to the 2012 and subsequent taxation years.**