[ERRATUM: AMENDMENTS IN RESPECT OF FOREIGN INVESTMENT ENTITIES AND NON-RESIDENT TRUSTS

In subsection 4(1) of the *Legislative Proposals relating to the Income Tax Act, the Air Travellers Security Charge Act, the Excise Act, 2001, and the Excise Tax Act* , which were first released on August 27, 2010 by News Release 2010–074, the text of the proposed changes to paragraph 75(3)(*c.3*),

"(c.3) by a trust that would be resident in Canada, for the purpose of computing its income for the year, if the definition "resident contributor" in subsection 94(1) were read without reference to its paragraph (a); or"

has been changed to read

"(c.3) by a trust that is non-resident, but would be resident in Canada for the purpose of computing its income for the year if the definition "resident contributor" in subsection 94(1) were read without reference to its paragraph (a); or".

Similarly, in subsection 4(2), the text of the proposed changes to paragraph 75(3)(*c.3*),

"(c.3) by a trust that would be resident in Canada, for the purpose of computing its income for the year, if section 94, as it reads in its application to the 2007 taxation year, had applied to the trust for the year and the definition "resident contributor" in that section were read without reference to its paragraph (a); or"

has been changed to read

"(c.3) by a trust that is non-resident, but would be resident in Canada for the purpose of computing its income for the year if section 94, as it reads in its application to the 2007 taxation year, had applied to the trust for the year and the definition "resident contributor" in that section were read without reference to its paragraph (a); or".]

LEGISLATIVE PROPOSALS RELATING TO THE INCOME TAX ACT, THE AIR TRAVELLERS SECURITY CHARGE ACT, THE EXCISE ACT, 2001 AND THE EXCISE TAX ACT

PART 1

AMENDMENTS IN RESPECT OF FOREIGN INVESTMENT ENTITIES AND NON-RESIDENT TRUSTS

Income Tax Act

1. (1) Paragraph 12(1)(*k*) of the *Income Tax Act* is replaced by the following:

Foreign corporations, trusts and investment entities

(*k*) any amount required by subdivision i to be included in computing the taxpayer's income for the year;

(2) Subsection (1) applies to taxation years that end after 2006.

2. (1) Paragraph 51(1)(*a*) of the French version of the Act is replaced by the following:

a) sauf pour l'application des paragraphes 20(21) et 44.1(6) et (7) et de l'alinéa 94(2)*m*), l'échange est réputé ne pas constituer une disposition du bien convertible;

(2) Paragraph 51(1)(*c*) of the English version of the Act is replaced by the following:

(*c*) except for the purposes of subsections 20(21) and 44.1(6) and (7) and paragraph 94(2)(*m*), the exchange is deemed not to be a disposition of the convertible property,

(3) Subsections (1) and (2) apply to taxation years of a taxpayer that end after 2006. Those subsections also apply to a taxation year of a taxpayer that ends before 2007, if subsection 94(3) of the Act, as enacted by section 6, applies to that earlier taxation year of the taxpayer.

3. (1) Paragraph 53(1)(*d.1*) of the Act is replaced by the following:

Capital interest in a non-resident trust

(*d.1*) where the property is a capital interest in a trust, any amount included under subsection 91(1) or (3) in computing the taxpayer's income for a taxation year that ends at or before that time (or that would have been required to have been included under those subsections but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest;

(2) Paragraph 53(2)(*b.1*) of the Act is replaced by the following:

Capital interest in a non-resident trust

(*b.1*) where the property is a capital interest in a trust, any amount deducted by the taxpayer by reason of subsection 91(2) or (4) in computing the taxpayer's income for a taxation year that ends at or before that time (or that would have been so deductible by the taxpayer but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest;

(3) Subsections (1) and (2) apply to taxation years that end after 2006. Subsections (1) and (2) also apply in computing the adjusted cost base to a taxpayer of a capital interest in a trust for an earlier taxation year if subsection 94(3) of the Act, as enacted by section 6, applies to the trust for a taxation year that ends in that earlier taxation year of the taxpayer.

(4) In computing the adjusted cost base of a capital interest in a trust disposed of on or before ANNOUNCEMENT DATE, paragraph 53(1)(*d.1*) of the Act, as enacted by subsection (1), shall be read as follows:

(*d.1*) where the property is a capital interest in a trust, any amount required to be included under subsection 91(1) or (3) in computing the taxpayer's income for a taxation year that ends before that time (or that would have been required to have been included under those subsections but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952) in respect of that interest;

4. (1) Subsection 75(3) of the Act is amended by striking out "or" at the end of paragraph (*c.1*) and by adding the following after paragraph (*c.1*):

(*c.2*) by a trust if the person from whom the trust acquired the property is, in respect of the trust, an electing contributor as defined in subsection 94(1);

(*c.3*) by a trust that is non-resident, but would be resident in Canada for the purpose of computing its income for the year if the definition "resident contributor" in subsection 94(1) were read without reference to its paragraph (*a*); or

(2) Paragraph 75(3)(*c.2*) of the Act, as enacted by subsection (1), applies to taxation years that end after March 4, 2010. Paragraph 75(3)(*c.3*) of the Act, as enacted by subsection (1), applies to taxation years that begin after 2000 except that, for taxation years that end before 2007, it shall be read as follows:

(*c.3*) by a trust that is non-resident, but would be resident in Canada for the purpose of computing its income for the year if section 94, as it reads in its application to the 2007 taxation year, had applied to the trust for the year and the definition "resident contributor" in that section were read without reference to its paragraph (*a*); or

5. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (*j.94*):

Non-resident entities

(*j.95*) for the purposes of sections 94 to 94.2, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) applies to taxation years that end after 2000.

6. (1) Section 94 of the Act is replaced by the following:

Definitions

94. (1) The definitions in this subsection apply in this section and in section 94.2.

"arm's length transfer" « *transfert sans lien de dépendance* »

"arm's length transfer", at any time by a person or partnership (referred to in this definition as the "transferor") means a transfer or loan (which transfer or loan is referred to in this definition as the "transfer") of property (other than restricted property) that is made at that time (referred to in this definition as the "transfer time") by the transferor to a particular person or partnership (referred to in this definition as the "recipient") where

(*a*) it is reasonable to conclude that none of the reasons (determined by reference to all the circumstances including the terms of a trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the transfer is the acquisition at any time by any person or partnership of an interest as a beneficiary under a non-resident trust; and

(*b*) the transfer

(i) is a payment of interest, of a dividend, of rent, of a royalty or of any other return on investment, or any substitute for such a return on investment, in respect of a particular property held by the recipient, if the amount of the payment is not more than the amount that the transferor would have paid if the transferor dealt at arm's length with the recipient,

(ii) is a payment made by a corporation on a reduction of the paid-up capital in respect of shares of a class of its capital stock held by the recipient, if the amount of the payment is not more than the lesser of the amount of the reduction in the paid-up capital and the consideration for which the shares were issued,

(iii) is a transfer in exchange for which, the recipient transfers or loans property to the transferor, or becomes obligated to transfer or loan property to the transferor, and for which it is reasonable to conclude

(A) having regard only to the transfer and the exchange, that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and

(B) that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,

(iv) is a transfer made in satisfaction of an obligation referred to in subparagraph (iii), and for which it is reasonable to conclude

(A) having regard only to the transfer and the obligation, that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and

(B) that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient,

(v) is a payment of an amount owing by the transferor under a written agreement the terms and conditions of which, when entered into, were terms and conditions that, having regard only to the amount owing and the agreement, would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient of the payment,

(vi) is a payment made before 2002 to a trust, to a corporation controlled by a trust or to a partnership of which a trust is a majority interest partner in repayment of or otherwise in respect of a loan made by a trust, corporation or partnership to the transferor, or

(vii) is a payment made after 2001 to a trust, to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, in repayment of or otherwise in respect of a particular loan made by the trust, corporation or partnership to the transferor and either

(A) the payment is made before 2011, and they would have been willing to enter into the particular loan if they dealt at arm's length with each other, or

(B) the payment is made before 2005 in accordance with fixed repayment terms agreed to before June 23, 2000.

"beneficiary" « *bénéficiaire* »

"beneficiary", under a trust, includes

(*a*) a person or partnership that is beneficially interested in the trust; and

(*b*) a person or partnership that would be beneficially interested in the trust if the reference in subparagraph 248(25)(*b*)(ii) to

(i) "any arrangement in respect of the particular trust" were read as a reference to "any arrangement (including, for greater certainty, the terms or conditions of a share, or any arrangement in respect of a share, of the capital stock of a corporation that is beneficially interested in the particular trust) in respect of the particular trust", and

(ii) "the particular person or partnership might" were read as a reference to "the particular person or partnership becomes (or could become on the exercise of any discretion by any person or partnership), directly or indirectly, entitled to any amount derived, directly or indirectly, from the income or capital of the particular trust or might".

"closely-held corporation" « *société à peu d'actionnaires* »

"closely-held corporation", at any time, means a corporation, other than a corporation in respect of which

(*a*) there is at least one class of shares of its capital stock that includes shares prescribed for the purpose of paragraph 110(1)(*d*);

(*b*) it is reasonable to conclude that at that time, in respect of each class of shares described by paragraph (*a*), shares of the class are held by at least 150 shareholders each of whom holds shares of the class that have a total fair market value of at least $500; and

(*c*) it is reasonable to conclude that at that time in no case does a particular shareholder (or particular shareholder together with any other shareholder with whom the particular shareholder does not deal at arm's length) hold shares of the corporation

(i) that would give the particular shareholder (or the particular shareholder together with those other shareholders referred to in this paragraph) 10% or more of the votes that could be cast under any circumstance at an annual meeting of shareholders of the corporation if the meeting were held at that time, or

(ii) that have a fair market value of 10% or more of the fair market value of all of the issued and outstanding shares of the corporation.

"connected contributor" « *contribuant rattaché* »

"connected contributor", to a trust at a particular time, means a contributor to the trust at the particular time, other than

(*a*) an individual (other than a trust) who was, at or before the particular time, resident in Canada for a period of, or periods the total of which is, not more than 60 months (but not including an individual who, before the particular time, was never non-resident); or

(*b*) a person all of whose contributions to the trust made at or before the particular time were made at a non-resident time of the person.

"contribution" « *apport* »

"contribution", to a trust by a particular person or partnership, means

(*a*) a transfer or loan (other than an arm's length transfer) of property to the trust by the particular person or partnership;

(*b*) if a particular transfer or loan (other than an arm's length transfer) of property is made by the particular person or partnership as part of a series of transactions that includes another transfer or loan (other than an arm's length transfer) of property to the trust by another person or partnership, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the particular transfer or loan; and

(*c*) if the particular person or partnership becomes obligated to make a particular transfer or loan (other than a transfer or loan that would, if it were made, be an arm's length transfer) of property as part of a series of transactions that includes another transfer or loan (other than an arm's length transfer) of property to the trust by another person or partnership, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the obligation.

"contributor" « *contribuant* »

"contributor", to a trust at any time, means a person (other than an exempt person but including a person that has ceased to exist) that, at or before that time, has made a contribution to the trust.

"electing contributor" « *contribuant déterminé* »

"electing contributor"at any time in respect of a trust means a resident contributor, to the trust, who has elected to have subsection (16) apply in respect of the contributor and the trust for a taxation year of the contributor, that includes that time or that ends before that time, and for all subsequent taxation years, if

(*a*) the election was in writing filed with the Minister on or before the contributor's filing-due date for the first taxation year of the contributor for which the election was to take effect (referred to in this definition as the "initial year"); and

(*b*) the election included both the trust's account number as assigned by the Minister and evidence that the contributor notified, no later than 30 days after the end of the trust's taxation year that ends in the initial year, the trust that the election would be made.

"exempt amount" « *somme exclue* »

"exempt amount", in respect of a particular taxation year of a trust, means an amount that is

(*a*) paid or credited (in this definition within the meaning assigned by Part XIII) by the trust before 2004;

(*b*) paid or credited by the trust and referred to in paragraph 104(7.01)(*b*) in respect of the trust for the particular taxation year; or

(*c*) paid in the particular taxation year (or within 60 days after the end of the particular taxation year) by the trust directly to a beneficiary (determined without reference to subsection 248(25)) under the trust, if

(i) the beneficiary is a natural person none of whose interests as a beneficiary under the trust was ever acquired for consideration,

(ii) the amount is described in subparagraph 212(1)(*c*)(i) and is not included in computing an exempt amount in respect of any other taxation year of the trust,

(iii) the trust was created before October 30, 2003, and

(iv) no contribution has been made to the trust on or after July 18, 2005.

"exempt foreign trust" « *fiducie étrangère exempte* »

"exempt foreign trust", at a particular time, means

(*a*) a non-resident trust, if

(i) each beneficiary under the trust at the particular time is

(A) an individual who, at the time that the trust was created, was, because of mental or physical infirmity, dependent on an individual who is a contributor to the trust or on an individual related to such a contributor (which beneficiary is referred to in this paragraph as an "infirm beneficiary"), or

(B) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(ii) at the particular time there is at least one infirm beneficiary who suffers from a mental or physical infirmity that causes the beneficiary to be dependent on a person,

(iii) each infirm beneficiary is, at all times that the infirm beneficiary is a beneficiary under the trust during the trust's taxation year that includes the particular time, non-resident, and

(iv) each contribution to the trust made at or before the particular time can reasonably be considered to have been, at the time that the contribution was made, made to provide for the maintenance of an infirm beneficiary during the expected period of the beneficiary's infirmity;

(*b*) a non-resident trust, if

(i) the trust was created as a consequence of the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who was, during that marriage or common-law partnership,

(A) a child of both of those particular individuals (which beneficiary is referred to in this paragraph as a "child beneficiary"), or

(B) one of those particular individuals (which beneficiary is referred to in this paragraph as the "adult beneficiary"),

(ii) each beneficiary under the trust at the particular time is

(A) a child beneficiary under 21 years of age,

(B) a child beneficiary under 31 years of age who is enrolled at any time in the trust's taxation year that includes the particular time at an educational institution that is described in subclause (iv)(B)(I) or (II),

(C) the adult beneficiary, or

(D) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(iii) each beneficiary described in any of clauses (ii)(A) to (C) is, at all times that the beneficiary is a beneficiary under the trust during the trust's taxation year that includes the particular time, non-resident,

(iv) each contribution to the trust, at the time that the contribution was made, was

(A) an amount paid by the particular individual other than the adult beneficiary that would be a support amount as defined in subsection 56.1(4) if it had been paid by that particular individual directly to the adult beneficiary, or

(B) made by one of those particular individuals or a person related to one of those particular individuals to provide for the maintenance of a child beneficiary, while the child was either under 21 years of age, or was under 31 years of age and enrolled at an educational institution located outside Canada that is

(I) a university, college or other educational institution that provides courses at a post-secondary school level, or

(II) an educational institution that provides courses designed to furnish a person with skills for, or improve a person's skills in, an occupation;

(*c*) a non-resident trust, if

(i) at the particular time, the trust is an agency of the United Nations,

(ii) at the particular time, the trust owns and administers a university described in paragraph (*f*) of the definition "total charitable gifts" in subsection 118.1(1),

(iii) at any time in the trust's taxation year that includes the particular time or at any time in the preceding calendar year, Her Majesty in right of Canada has made a gift to the trust, or

(iv) a trust established pursuant to the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992*, or any protocol to it that has been ratified by the Government of Canada;

(*d*) a non-resident trust

(i) that, throughout the particular period that began at the time it was created and ends at the particular time, would be non-resident if this Act were read without reference to subsection (1) as that subsection read in its application to taxation years that include December 31, 2000,

(ii) that was created exclusively for charitable purposes and has been operated, throughout the particular period, exclusively for charitable purposes,

(iii) if the particular time is more than 24 months after the day on which the trust was created, in respect of which, there are at the particular time at least 20 persons (other than trusts) each of whom at the particular time

(A) is a contributor to the trust,

(B) exists, and

(C) deals at arm's length with at least 19 other contributors to the trust,

(iv) the income of which (determined in accordance with the laws described in subparagraph (v)) for each of its taxation years that ends at or before the particular time would, if the income were not distributed and the laws described in subparagraph (v) did not apply, be subject to an income or profits tax in the country in which it was resident in each of those taxation years, and

(v) that was, for each of its taxation years that ends at or before the particular time, exempt under the laws of the country in which it was resident from the payment of income or profits tax to the government of that country in recognition of the charitable purposes for which the trust is operated;

(*e*) a non-resident trust that, throughout the trust's taxation year that includes the particular time, is a trust governed by an employees profit sharing plan, a retirement compensation arrangement or a foreign retirement arrangement;

(*f*) a non-resident trust, if

(i) throughout the particular period that began when it was created and ends at the particular time it has been operated exclusively for the purpose of administering or providing employee benefits, and

(ii) throughout the trust's taxation year that includes the particular time

(A) the trust is a trust governed by an employee benefit plan or is a trust described in paragraph (*a.1*) of the definition "trust" in subsection 108(1),

(B) the trust is maintained for the benefit of natural persons the majority of whom are non-resident, and

(C) no benefits are provided under the trust, other than benefits in respect of qualifying services;

(*g*) a non-resident trust (other than a prescribed trust or a trust described in paragraph (*a.1*) of the definition "trust" in subsection 108(1)) that, throughout the particular period that began when it was created and ends at the particular time,

(i) has been resident in a particular country (other than Canada) the laws of which have, throughout the particular period,

(A) imposed an income or profits tax, and

(B) exempted the trust from the payment of all income tax, and all profits tax, to the government of that particular country in recognition of the purposes for which the trust is operated, and

(ii) has been operated exclusively for the purpose of administering or providing superannuation or pension benefits that are primarily in respect of services rendered, in the particular country, by natural persons who were non-resident at the time those services were rendered;

(*h*) a non-resident trust (other than a trust that elects, in writing filed with the Minister on or before the trust's filing-due date for the taxation year of the trust that includes the particular time, not to be an exempt foreign trust under this paragraph for the taxation year in which the election is made and for each subsequent taxation year), if at the particular time

(i) the only beneficiaries who may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold specified fixed interests in the trust, and

(ii) any of the following applies:

(A) there are at least 150 beneficiaries described in subparagraph (i) under the trust each of whose specified fixed interests in the trust have at the particular time a total fair market value of at least $500,

(B) all specified fixed interests in the trust are listed on a designated stock exchange and in the 30 days immediately preceding the particular time specified fixed interests in the trust were traded on a designated stock exchange on at least 10 days,

(C) each outstanding specified fixed interest in the trust in the trust

(I) was issued by the trust in exchange for consideration that was not less than 90% of the interest's proportionate share of the net asset value of the trust's property at the time of its issuance, or

(II) was acquired in exchange for consideration equal to the fair market value of the interest at the time of its acquisition, or

(D) the trust is governed by

(I) a Roth IRA, within the meaning of section 408A of the *Internal Revenue Code* of the United States, or

(II) a plan or arrangement that was created after September 21, 2007, that is subject to that Code and that the Minister agrees is substantially similar to a Roth IRA; or

(*i*) a trust that is at the particular time a prescribed trust.

"exempt person" « *personne exemptée* »

"exempt person", at any time, means

(*a*) Her Majesty in right of Canada or a province;

(*b*) a person whose taxable income for the taxation year that includes that time is exempt from tax under this Part because of subsection 149(1);

(*c*) a trust resident in Canada or a Canadian corporation

(i) that was established by or arises by virtue of an Act of Parliament or the legislature of a province, and

(ii) the principal activities of which at that time are to administer, manage or invest the monies of one or more pension funds or plans established pursuant to an Act of Parliament or the legislature of a province or an order or regulation made under such an Act;

(*d*) a trust or corporation established by or arising by reason of an Act of Parliament or the legislature of a province in connection with a scheme or program for the compensation of workers injured in an accident arising out of or in the course of their employment;

(*e*) a trust resident in Canada all of the beneficiaries under which are at that time exempt persons;

(*f*) a Canadian corporation all of the shares, or rights to shares, of which are held at that time by exempt persons;

(*g*) a Canadian corporation without share capital all of the property of which is held at that time exclusively for the benefit of exempt persons; and

(*h*) a partnership all the members of which are at that time exempt persons.

"exempt service" « *service exempté* »

"exempt service" means a service rendered at any time by a person or partnership (referred to in this definition as the "service provider") to, for or on behalf of, another person or partnership (referred to in this definition as the "recipient") if

(*a*) the recipient is a trust and the service relates to the administration of the trust; or

(*b*) the following conditions apply in respect of the service, namely,

(i) the service is rendered in the service provider's capacity at that time as an employee or agent of the recipient,

(ii) in exchange for the service, the recipient transfers or loans property or becomes obligated to transfer or loan property, and

(iii) it is reasonable to conclude

(A) having regard only to the service and the exchange, that the service provider would be willing to carry out the service if the service provider were dealing at arm's length with the recipient, and

(B) that the terms, conditions and circumstances under which the service is provided would be acceptable to the service provider if the service provider were dealing at arm's length with the recipient.

"joint contributor" « *contribuant conjoint* »

"joint contributor" at any time in respect of a contribution to a trust means, if more than one contributor has made the contribution, each of those contributors that is at that time a resident contributor to the trust.

"non-resident portion" « *partie non résidante* »

"non-resident portion" of a trust, at any time, means all property held by the trust to the extent that it is not at that time part of the resident portion of the trust.

"non-resident time" « *moment de non-résidence* »

"non-resident time", of a person in respect of a contribution to a trust and a particular time, means a time (referred to in this definition as the "contribution time") at which the person made a contribution to a trust that is before the particular time and at which the person was non-resident (or, if the person is not in existence at the contribution time, the person was non-resident throughout the 18 months before ceasing to exist), where the person was non-resident or not in existence throughout the period that began 60 months before the contribution time (or, if the person is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time) and ends at the earlier of

(*a*) the time that is 60 months after the contribution time, and

(*b*) the particular time.

"promoter" « *promoteur* »

"promoter", of a trust at any time, means a person or partnership that at or before that time establishes, organizes or substantially reorganizes the undertakings of the trust.

"qualifying services" « *services admissibles* »

"qualifying services" means services that are

(*a*) rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered;

(*b*) rendered to an employer by an employee of the employer, other than services that were

(i) rendered primarily in Canada,

(ii) rendered primarily in connection with a business carried on by the employer in Canada, or

(iii) a combination of services described in subparagraphs (i) and (ii);

(*c*) rendered in a particular calendar month to an employer by an employee of the employer, which employee

(i) was resident in Canada throughout no more than 60 months during the 72-month period that ends at the end of the particular month, and

(ii) became a member of, or a beneficiary under, the plan or trust under which benefits in respect of the services may be provided (or a similar plan or trust for which the plan or the trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada; or

(*d*) any combination of services that are qualifying services determined without reference to this paragraph.

"resident beneficiary" « *bénéficiaire résidant* »

"resident beneficiary", under a trust at any time, means a person (other than a person that is at that time a successor beneficiary under the trust or an exempt person) that is, at that time, a beneficiary under the trust where, at that time,

(*a*) the person is resident in Canada; and

(*b*) there is a connected contributor to the trust.

"resident contributor" « *contribuant résidant* »

"resident contributor", to a trust at any time, means a person that is, at that time, resident in Canada and a contributor to the trust, but does not include

(*a*) an individual (other than a trust) who has not, at that time, been resident in Canada for a period of, or periods the total of which is, more than 60 months (other than an individual who, before that time, was never non-resident); or

(*b*) an individual (other than a trust), if

(i) the trust is an *inter vivos* trust that was created before 1960 by a person who was non-resident when the trust was created, and

(ii) the individual has not, after 1959, made a contribution to the trust.

"resident portion" « *partie résidante* »

"resident portion" of a trust, at a particular time, means all property held by the trust

(*a*) in respect of which a contribution has been made at or before the particular time to the trust by a contributor that is at the particular time a connected contributor or a resident contributor (except that if a property held in common or in partnership is contributed by one or more connected contributors or resident contributors and one or more persons who are not a connected contributor or a resident contributor, then that property is described by this paragraph only to the extent of the contributions by the connected contributors or resident contributors);

(*b*) if the trust has incurred indebtedness in the course of acquiring at or before the particular time a property, or substituted property, all or part of which would not, if this definition were read without reference to this paragraph, be part of the resident portion of the trust (such property, or part of such property, referred to in this paragraph as the "subject property"), and the acquisition by the trust of the subject property is not a contribution to the trust, that is the subject property to the extent of the greater of

(i) the amount determined by the formula

$$A/B \times C$$

where

A is the total of all amounts each of which is the fair market value of a property held in the resident portion of the trust at the beginning of the trust's taxation year in which the trust acquired the subject property,

B is the total of all amounts each of which is the fair market value of a property held by the trust at the beginning of the trust's taxation year in which the trust acquired the subject property, and

C is the fair market value of the subject property at the time it was acquired by the trust, and

(ii) the amount that would be determined by the formula in subparagraph (i) if the references in that formula to the beginning of the trust's taxation year were read as references to the end of the trust's taxation year and the subject property was not held by the trust at the end of that taxation year;

(*c*) to the extent that it is at the particular time substituted for a property described by paragraph (*a*) or (*b*); and

(*d*) not described by any of paragraphs (*a*) to (*c*), to the extent that it is derived, directly or indirectly, in any manner whatever, from property described by any of paragraphs (*a*) to (*c*), and, without limiting the generality of the foregoing, including property derived from the income (computed without reference to paragraph (16)(*f*)) of the trust for a taxation year of the trust that ends at or before the particular time and property in respect of which an amount would be described at the particular time in respect of the trust under the definition "capital dividend account" in subsection 89(1) if the trust were at the particular time a corporation.

"restricted property" « *bien d'exception* »

"restricted property" of a person or partnership means property that the person or partnership holds and that is

(*a*) a share (or a right to acquire a share) of the capital stock of a closely-held corporation if the share or right, or a property for which the share or right was substituted, was at any time acquired by the person or partnership as part of a transaction or series of transactions under which

(i) a specified share of the capital stock of a closely-held corporation was acquired by any person or partnership in exchange for, as consideration for, or upon the conversion of, any property and the cost of the specified share to the person who acquired it was less than the fair market value of the specified share at the time of the acquisition, or,

(ii) a share (other than a specified share) of the capital stock of a closely-held corporation becomes a specified share of the capital stock of the corporation;

(*b*) an indebtedness or other obligation, or a right to acquire an indebtedness or other obligation, of a closely-held corporation if

(i) the indebtedness, obligation or right, or property for which the indebtedness, obligation or right was substituted, became property of the person or partnership as part of a transaction or series of transactions under which

(A) a specified share of the capital stock of a closely-held corporation was acquired by any person or partnership in exchange for, as consideration for, or upon the conversion of, any property and the cost of the specified share to the person who acquired

it was less than the fair market value of the specified share at the time of the acquisition, or

(B) a share (other than a specified share) of a closely-held corporation becomes a specified share of the capital stock of the corporation, and

(ii) the amount of any payment under the indebtedness, obligation or right (whether the right to the amount is immediate or future, absolute or contingent or conditional on or subject to the exercise of any discretion by any person or partnership) is, directly or indirectly, determined primarily by one or more of the following criteria:

(A) the fair market value of, production from or use of any of the property of the closely-held corporation,

(B) gains or profits from the disposition of any of the property of the closely-held corporation,

(C) income, profits, revenue or cash flow of the closely-held corporation, or

(D) any other criterion similar to a criterion referred to in any of clauses (A) to (C); and

(*c*) property

(i) that the person or partnership acquired as part of a series of transactions described in paragraph (*a*) or (*b*) in respect of another property, and

(ii) the fair market value of which is derived in whole or in part, directly or indirectly, from that other property.

"specified fixed interest" « *participation fixe désignée* »

"specified fixed interest", at any time of a person or partnership in a trust, means an interest of the person or partnership as a beneficiary (in this definition, determined without reference to subsection 248(25)) under the trust provided that no amount of the income or capital of the trust to be distributed at any time in respect of any interest in the trust depends on the exercise by any person or partnership of, or the failure by any person or partnership to exercise, any discretionary power.

"specified party" « *tiers déterminé* »

"specified party", in respect of a particular person at any time, means

(*a*) the particular person's spouse or common-law partner at that time;

(*b*) a corporation that at that time

(i) is a controlled foreign affiliate of the particular person or their spouse or common-law partner, or

(ii) would be a controlled foreign affiliate of a partnership, of which the particular person is a majority interest partner, if the partnership were a person resident in Canada at that time;

(*c*) a person, or a partnership of which the particular person is a majority interest partner, for which it is reasonable to conclude that the benefit referred to in subparagraph (8)(*a*)(iv) was conferred

(i) in contemplation of the person becoming after that time a corporation described by paragraph (*b*), or

(ii) to avoid or minimize a liability that arose, or that would otherwise have arisen, under this Part with respect to the particular person; or

(*d*) a corporation in which the particular person, or partnership of which the particular person is a majority interest partner, is a shareholder, if

(i) the corporation is at or before that time a beneficiary under a trust, and

(ii) the particular person or the partnership is a beneficiary under the trust solely because of the application of paragraph (*b*) of the definition "beneficiary" in this subsection to the particular person or the partnership in respect of the corporation.

"specified share" « *action déterminée* »

"specified share" means a share of the capital stock of a corporation other than a share that is a prescribed share for the purpose of paragraph 110(1)(*d*).

"specified time" « *moment déterminé* »

"specified time", in respect of a trust for a taxation year of the trust, means

(*a*) if the trust exists at the end of the taxation year, the time that is the end of that taxation year; and

(*b*) in any other case, the time in that taxation year that is immediately before the time at which the trust ceases to exist.

"successor beneficiary" « *bénéficiaire remplaçant* »

"successor beneficiary", at any time under a trust, means a person that is a beneficiary under the trust solely because of a right of the person to receive any of the trust's income or capital, if under that right the person may so receive that income or capital only on or after the death after that time of an individual who, at that time, is alive and

(*a*) is a contributor to the trust;

(*b*) is related to (in this definition including an uncle, aunt, niece or nephew of) a contributor to the trust; or

(*c*) would have been related to a contributor to the trust if every individual who was alive before that time were alive at that time.

"transaction" « *opération* »

"transaction" includes an arrangement or event.

"trust" « *fiducie* »

"trust" includes, for greater certainty, an estate.

Rules of application

(2) In this section and section 94.2,

(*a*) a person or partnership is deemed to have transferred, at any time, a property to a trust if

(i) at that time it transfers or loans property (other than by way of an arm's length transfer) to another person or partnership, and

(ii) because of that transfer or loan

(A) the fair market value of one or more properties held by the trust increases at that time, or

(B) a liability or potential liability of the trust decreases at that time;

(*b*) the fair market value, at any time, of a property deemed by paragraph (*a*) to be transferred at that time by a person or partnership is deemed to be the amount of the absolute value of the increase or decrease, as the case may be, referred to in subparagraph (*a*)(ii) in respect of the property, and if that time is after ANNOUNCEMENT DATE, and the property that the person or partnership transfers or loans at that time is restricted property of the person or partnership, the property deemed by paragraph (*a*) to be transferred at that time to a trust is deemed to be restricted property of the trust;

(*c*) a loan made by a particular specified financial institution to a trust is deemed not to be a contribution to the trust if

(i) the loan is made on terms and conditions that would have been agreed to by persons dealing at arm's length, and

(ii) the loan is made by the specified financial institution in the ordinary course of the business carried on by it;

(*d*) if, at any time, a particular person or partnership becomes obligated, either absolutely or contingently, to effect any undertaking including a guarantee, covenant or agreement given to ensure the repayment, in whole or in part, of a loan or other indebtedness incurred by another person or partnership, or has provided any other financial assistance to another person or partnership,

(i) the particular person or partnership is deemed to have transferred, at that time, property to that other person or partnership, and

(ii) the property, if any, transferred to the particular person or partnership from the other person or partnership in exchange for the guarantee or other financial assistance is deemed to have been transferred to the particular person or partnership in exchange for the property deemed by subparagraph (i) to have been transferred;

(*e*) the fair market value at any time of a property deemed by subparagraph (*d*)(i) to have been transferred at that time to another person or partnership is deemed to be the amount at that time of the loan or indebtedness incurred by the other person or partnership to which the property relates;

(*f*) if, at any time after June 22, 2000, a particular person or partnership renders any service (other than an exempt service) to, for or on behalf of, another person or partnership,

(i) the particular person or partnership is deemed to have transferred, at that time, property to that other person or partnership, and

(ii) the property, if any, transferred to the particular person or partnership from the other person or partnership in exchange for the service is deemed to have been transferred to the particular person or partnership in exchange for the property deemed by subparagraph (i) to have been transferred;

(*g*) each of the following acquisitions of property by a particular person or partnership is deemed to be a transfer of the property, at the time of the acquisition of the property, to the particular person or partnership from the person or partnership from which the property was acquired, namely, the acquisition by the particular person or partnership of

(i) a share of a corporation from the corporation,

(ii) an interest as a beneficiary under a trust (otherwise than from a beneficiary under the trust),

(iii) an interest in a partnership (otherwise than from a member of the partnership),

(iv) a debt owing by a person or partnership from the person or partnership, and

(v) a right (granted after June 22, 2000 by the person or partnership from which the right was acquired) to acquire or to be loaned property;

(*h*) the fair market value at any time of a property deemed by subparagraph (*f*)(i) to have been transferred at that time is deemed to be the fair market value at that time of the service to which the property relates;

(*i*) a person or partnership that at any time becomes obligated to do an act that would, if done, constitute the transfer or loan of a property to another person or partnership is deemed to have become obligated at that time to transfer or loan, as the case may be, property to that other person or partnership;

(*j*) in applying at any time the definition "non-resident time", if a trust acquires property of an individual as a consequence of the death of the individual, the individual is deemed to have transferred the property to the trust immediately before the individual's death;

(*k*) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular person or partnership and a second person or partnership (referred to in this paragraph as the "specified person") if

(i) the particular person or partnership transfers or loans property at that time to another person or partnership,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified person, and

(iii) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize the liability, of any person or partnership, under this Part that arose, or that would otherwise have arisen, because of the application of this section;

(*k.1*) a transfer or loan of property made at any time on or after November 9, 2006, is deemed to be made at that time jointly by a particular person or partnership and a second person or partnership (referred to in this paragraph as the "specified person") if

(i) the particular person or partnership transfers or loans property at that time to another person or partnership, and

(ii) a purpose or effect of the transfer or loan may reasonably be considered to be to provide benefits in respect of services rendered by a person as an employee of the specified person (whether the provision of the benefits is pursuant to a right that is immediate or future, absolute or contingent, or conditional on or subject to the exercise of any discretion by any person or partnership);

(*l*) a transfer or loan of property at any time is deemed to be made at that time jointly by a corporation and a person or partnership (referred to in this paragraph as the "specified person") if

(i) the corporation transfers or loans property at that time to another person or partnership,

(ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified person,

(iii) that time is not, or would not be if the transfer or loan were a contribution of the specified person,

(A) a non-resident time of the specified person, or

(B) if the specified person is a partnership, a non-resident time of one or more members of the partnership, and

(iv) either

(A) the corporation is, at that time, a controlled foreign affiliate of the specified person, or would at that time be a controlled foreign affiliate of the specified person if the specified person were at that time resident in Canada, or

(B) it is reasonable to conclude that the transfer or loan was made in contemplation of the corporation becoming after that time a corporation described in clause (A);

(*m*) a particular person or partnership is deemed to have transferred, at a particular time, a particular property or particular part of it, as the case may be, to a corporation described in subparagraph (i) or a second person or partnership described in subparagraph (ii) if

(i) the particular property is a share of the capital stock of a corporation held at the particular time by the particular person or partnership, and as consideration for the disposition at or before the particular time of the share, the particular person or partnership received at the particular time (or became entitled at the particular time to receive) from the corporation a share of the capital stock of the corporation, or

(ii) the particular property (or property for which the particular property is substituted) was acquired, before the particular time, from the second person or partnership by any

person or partnership, in circumstances that are described by any of subparagraphs (*g*)(i) to (v) (or would be so described if it applied at the time of that acquisition) and at the particular time,

(A) the terms or conditions of the particular property change,

(B) the second person or partnership redeems, acquires or cancels the particular property or the particular part of it,

(C) where the particular property is a debt owing by the second person or partnership, the debt or the particular part of it is settled or cancelled, or

(D) where the particular property is a right to acquire or to be loaned property, the particular person or partnership exercises the right;

(*n*) a contribution made at any time by a particular trust to another trust is deemed to have been made at that time jointly by the particular trust and by each person or partnership that is at that time a contributor to the particular trust;

(*o*) a contribution made at any time by a particular partnership to a trust is deemed to have been made at that time jointly by the particular partnership and by each person or partnership that is at that time a member of the particular partnership;

(*p*) subject to paragraph (*q*) and subsection (9), the amount of a contribution to a trust at the time it was made is deemed to be the fair market value, at that time, of the property that was the subject of the contribution;

(*q*) a person or partnership that at any time acquires a specified fixed interest in a trust (or a right, issued by the trust, to acquire a specified fixed interest in the trust) from another person or partnership (other than from the trust that issued the interest or the right) is deemed to have made at that time a contribution to the trust and the amount of the contribution is deemed to be equal to the fair market value at that time of the interest or right, as the case may be;

(*r*) a particular person or partnership that has acquired a specified fixed interest in a trust as a consequence of making a contribution to the trust — or that has made a contribution to the trust as a consequence of having acquired a specified fixed interest in the trust or a right described in paragraph (*q*) — is, for the purpose of applying this section at any time after the time that the particular person or partnership transfers the specified fixed interest or the right, as the case may be, to another person or partnership (which transfer is referred to in this paragraph as the "sale"), deemed not to have made the contribution in respect of the specified fixed interest, or right, that is the subject of the sale where

(i) in exchange for the sale, the other person or partnership transfers or loans, or becomes obligated to transfer or loan, property (which property is referred to in subparagraph (ii) as the "consideration") to the particular person or partnership, and

(ii) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the particular person or partnership would be willing to make the sale if the particular person or partnership were dealing at arm's length with the other person or partnership, and

(B) that the terms and conditions made or imposed in respect of the exchange would be acceptable to the particular person or partnership if the particular person or partnership were dealing at arm's length with the other person or partnership;

(*s*) a transfer to a trust by a particular person or partnership is deemed not to be, at a particular time, a contribution to the trust if

(i) the particular person or partnership has transferred, at or before the particular time and in the ordinary course of business of the particular person or partnership, property to the trust,

(ii) the transfer is not an arm's length transfer, but would be an arm's length transfer if the definition "arm's length transfer" were read without reference to paragraph (*a*), and subparagraphs (*b*)(i), (ii) and (iv) to (vii), of that definition,

(iii) it is reasonable to conclude that the particular person or partnership was the only person or partnership that acquired, in respect of the transfer, an interest as a beneficiary under the trust,

(iv) the particular person or partnership was required, under the securities law of a country or of a political subdivision of the country in respect of the issuance by the trust of interests as a beneficiary under the trust, to acquire an interest because of the particular person or partnership's status at the time of the transfer as a manager or promoter of the trust,

(v) at the particular time the trust is not an exempt foreign trust, but would be at that time an exempt foreign trust if it had not made an election under paragraph (*h*) of the definition "exempt foreign trust", and

(vi) the particular time is before the earliest of

(A) the first time at which the trust becomes an exempt foreign trust,

(B) the first time at which the particular person or partnership ceases to be a manager or promoter of the trust, and

(C) the time that is 24 months after the first time at which the total fair market value of consideration received by the trust in exchange for interests as a beneficiary (other than the particular person or partnership's interest referred to in subparagraph (iii)) under the trust is greater than $500,000;

(*t*) a transfer, by a Canadian corporation of particular property, that is at a particular time a contribution by the Canadian corporation to a trust, is deemed not to be, after the particular time, a contribution by the Canadian corporation to the trust if

(i) the trust acquired the property before the particular time from the Canadian corporation in circumstances described in subparagraph (*g*)(i) or (iv),

(ii) as a result of a transfer (which transfer is referred to in this paragraph as the "sale") at the particular time by any person or partnership (referred to in this paragraph as the "seller") to another person or partnership (referred to in this paragraph as the "buyer") the trust

(A) no longer holds any property that is shares of the capital stock of, or debt issued by, the Canadian corporation, and

(B) no longer holds any property that is property the fair market value of which is derived in whole or in part, directly or indirectly, from shares of the capital stock of, or debt issued by, the Canadian corporation,

(iii) the buyer deals at arm's length immediately before the particular time with the Canadian corporation, the trust and the seller,

(iv) in exchange for the sale, the buyer transfers or becomes obligated to transfer property (which property is referred to in this paragraph as the "consideration"), to the seller, and

(v) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the seller would be willing to make the sale if the seller were dealing at arm's length with the buyer,

(B) that the terms and conditions made or imposed in respect of the exchange would be acceptable to the seller if the seller were dealing at arm's length with the buyer, and

(C) that the value of the consideration is not, at or after the particular time, determined in whole or in part, directly or indirectly, by reference to shares of the capital stock of, or debt issued by, the Canadian corporation; and

(*u*) a transfer, before October 11, 2002, to a personal trust by an individual (other than a trust) of particular property is deemed not to be a contribution of the particular property by the individual to the trust if

(i) the individual identifies the trust in prescribed form filed with the Minister on or before the individual's filing-due date for the individual's 2003 taxation year (or a later date that is acceptable to the Minister), and

(ii) the Minister is satisfied that

(A) the individual (and any person or partnership not dealing at any time at arm's length with the individual) has never loaned or transferred, directly or indirectly, restricted property to the trust,

(B) in respect of each contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust, none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution was to permit or fa-

cilitate, directly or indirectly, the conferral at any time of a benefit (for greater certainty, including an interest as a beneficiary under the trust) on

(I) the individual,

(II) a descendant of the individual, or

(III) any person or partnership with whom the individual or descendant does not, at any time, deal at arm's length, and

(C) the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust does not exceed the greater of

(I) 1% of the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made to the trust before October 11, 2002, and

(II) $500.

Liabilities of non-resident trusts and others

(3) Where at a specified time in a particular taxation year of a trust (other than a trust that is, at that time, an exempt foreign trust) the trust is non-resident (determined without reference to this subsection) and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust,

(*a*) the trust is deemed to be resident in Canada throughout the particular taxation year for the purposes of

(i) section 2,

(ii) computing the trust's income for the particular taxation year,

(iii) applying subsections 104(13.1) to (29) and 107(2.1), in respect of the trust and a beneficiary under the trust,

(iv) applying clause 53(2)(*h*)(i.1)(B), the definition "non-resident entity" in subsection 94.1(2), subsection 107(2.002) and section 115, in respect of a beneficiary under the trust,

(v) subsection 111(9),

(vi) determining an obligation of the trust to file a return under section 233.3 or 233.4,

(vii) determining the rights and obligations of the trust under Divisions I and J,

(viii) determining the liability of the trust for tax under Part I, and under Part XIII on amounts paid or credited (in this paragraph having the meaning assigned by Part XIII) to the trust,

(ix) applying Part XIII in respect of an amount (other than an exempt amount) paid or credited by the trust to any person, and

(x) determining whether a foreign affiliate of a taxpayer (other than the trust) is a controlled foreign affiliate of the taxpayer;

(*b*) no deduction shall be made under subsection 20(11) by the trust in computing its income for the particular taxation year, and for the purposes of applying subsection 20(12) and section 126 to the trust for the particular taxation year

(i) the business-income tax (in this paragraph as defined by subsection 126(7)), and non-business-income tax (in this paragraph as defined by subsection 126(7)), paid by the trust for the particular taxation year are deemed not to include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that was excluded under subparagraph (*f*)(i) in computing the trust's income for the particular taxation year,

(ii) in determining the non-business-income tax paid by the trust for the particular taxation year, paragraph (*b*) of the definition "non-business-income tax" does not apply, and

(iii) if, at that specified time, the trust is resident in a country other than Canada,

(A) the trust's income for the particular taxation year is deemed to be from sources in that country and not to be from any other source, and

(B) the business-income tax, and the non-business-income tax, paid by the trust for the particular taxation year are deemed to have been paid by the trust to the government of that country and not to any other government;

(*c*) if the trust was non-resident throughout its taxation year (referred to in this paragraph as the "preceding year") immediately preceding the particular taxation year, the trust is deemed to have

(i) immediately before the end of the preceding year, disposed of each property (other than property described in any of subparagraphs 128.1(1)(*b*)(i) to (iv)) held by the trust at that time for proceeds of disposition equal to its fair market value at that time, and

(ii) at the beginning of the particular taxation year, acquired each of those properties so disposed of at a cost equal to its proceeds of disposition;

(*d*) each person that at any time in the particular taxation year is a resident contributor to the trust (other than an electing contributor in respect of the trust at the specified time) or a resident beneficiary under the trust

(i) has jointly and severally, or solidarily, with the trust and with each other such person, the rights and obligations of the trust in respect of the particular taxation year under Divisions I and J, and

(ii) is subject to Part XV in respect of those rights and obligations;

(*e*) each person that at any time in the particular taxation year is a beneficiary under the trust and was a person from whom an amount would be recoverable at the end of the trust's 2006 taxation year under subsection (2) (as it read in its application to taxation years that end before 2007) in respect of the trust if the person had received before the trust's 2007 taxation year amounts described under paragraph (2)(*a*) or (*b*) in respect of the trust (as those paragraphs read in their application to taxation years that end before 2007)

(i) has, to the extent of the person's recovery limit for the year, jointly and severally, or solidarily, with the trust and with each other such person, the rights and obligations of the trust in respect of the taxation years, of the trust, that end before 2007 under Divisions I and J, and

(ii) is, to the extent of the person's recovery limit for the year, subject to Part XV in respect of those rights and obligations;

(*f*) notwithstanding any other provision in the Act, in computing the trust's income for the particular taxation year

(i) no amount shall be included, in respect of property that is part of its non-resident portion, that is an income or loss from property, or that is a taxable capital gain or allowable capital loss from a disposition of property, except to the extent that the amount would be included under any of paragraphs 115(1)(*a*) to (*c*) in computing its taxable income earned in Canada for the year if it were at no time in the year resident in Canada, and

(ii) no amount is to be deducted in respect of an outlay or expense except to the extent that it was made or incurred by the trust for the purpose of gaining or producing income from a property that is part of the trust's resident portion; and

(*g*) if a person deducts or withholds any amount (referred to in this paragraph as the "withholding amount") as required by section 215 from a particular amount paid or credited or deemed to have been paid or credited to the trust, and the particular amount has been included in the trust's income for the particular taxation year, the withholding amount shall be deemed to have been paid on account of the trust's tax under this Part for the particular taxation year.

Excluded provisions

(4) For greater certainty, paragraph (3)(*a*) does not deem a trust to be resident in Canada for the purposes of

(*a*) the definitions "arm's length transfer" and "exempt foreign trust" in subsection (1);

(*b*) paragraph (14)(*a*), subsections 70(6) and 73(1), the definition "Canadian partnership" in subsection 102(1), paragraph 107.4(1)(*c*) and paragraph (*a*) of the definition "mutual fund trust" in subsection 132(6);

(*c*) determining the liability of a person (other than the trust) that would arise under section 215;

(*d*) determining whether, in applying subsection 128.1(1), the trust becomes resident in Canada at a particular time;

(*e*) determining whether, in applying subsection 128.1(4), the trust ceases to be resident in Canada at a particular time;

(*f*) subparagraph (*f*)(i) of the definition "disposition" in subsection 248(1);

(*g*) determining whether subsection 107(5) applies to a distribution on or after July 18, 2005 of property to the trust; and

(*h*) determining whether subsection 75(2) applies to deem an amount to be an income, loss, taxable capital gain or allowable capital loss of the trust.

Deemed cessation of residence

(5) A trust is deemed to cease to be resident in Canada at the earliest time at which there is neither a resident contributor to the trust nor a resident beneficiary under the trust in a period that would, if this Act were read without reference to subsection 128.1(4), be a taxation year of the trust

(*a*) that immediately follows a taxation year of the trust throughout which it was resident in Canada;

(*b*) at the beginning of which there was a resident contributor to the trust or a resident beneficiary under the trust; and

(*c*) at the end of which the trust is non-resident.

Becoming or ceasing to be an exempt foreign trust

(6) If at any time a trust becomes or ceases to be an exempt foreign trust (otherwise than because of becoming resident in Canada),

(*a*) its taxation year that would otherwise include that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to begin at that time; and

(*b*) for the purpose of determining the trust's fiscal period after that time, the trust is deemed not to have established a fiscal period before that time.

Limit to amount recoverable

(7) The maximum amount recoverable under the provisions referred to in paragraph (3)(*d*) at any particular time from a person in respect of a trust (other than a person that is deemed, under subsection (12) or (13), to be a contributor or a resident contributor to the trust) and a particular taxation year of the trust is the person's recovery limit at the particular time in respect of the trust and the particular year if

(*a*) either

(i) the person is liable under a provision referred to in paragraph (3)(*d*) in respect of the trust and the particular year solely because the person was a resident beneficiary under the trust at a specified time in respect of the trust in the particular year, or

(ii) at a specified time in respect of the trust in the particular year, the total of all amounts each of which is the amount, at the time it was made, of a contribution to the trust made before the specified time by the person or by another person or partnership not dealing at arm's length with the person, is not more than the greater of

(A) $10,000, and

(B) 10% of the total of all amounts each of which was the amount, at the time it was made, of a contribution made to the trust before the specified time;

(*b*) except where the total determined in subparagraph (*a*)(ii) in respect of the person and all persons or partnerships not dealing at arm's length with the person is $10,000 or less, the person has filed on a timely basis under section 233.2 all information returns required

to be filed by the person before the particular time in respect of the trust (or on any later day that is acceptable to the Minister); and

(*c*) it is reasonable to conclude that for each transaction that occurred before the end of the particular year at the direction of, or with the acquiescence of, the person

(i) none of the purposes of the transaction was to enable the person to avoid or minimize any liability under a provision referred to in paragraph (3)(*d*) in respect of the trust, and

(ii) the transaction was not part of a series of transactions any of the purposes of which was to enable the person to avoid or minimize any liability under a provision referred to in paragraph (3)(*d*) in respect of the trust.

Recovery limit

(8) The recovery limit referred to in paragraph (3)(*e*) and subsection (7) at a particular time of a particular person in respect of a trust and a particular taxation year of the trust is the amount, if any, by which the greater of

(*a*) the total of all amounts each of which is

(i) an amount received or receivable after 2000 and before the particular time

(A) by the particular person on the disposition of all or part of the person's interest as a beneficiary under the trust, or

(B) by a person or partnership (that was, when the amount became receivable, a specified party in respect of the particular person) on the disposition of all or part of the specified party's interest as a beneficiary under the trust,

(ii) an amount (other than an amount described in subparagraph (i)) made payable by the trust after 2000 and before the particular time to

(A) the particular person because of the interest of the particular person as a beneficiary under the trust, or

(B) a person or partnership (that was, when the amount became payable, a specified party in respect of the particular person) because of the interest of the specified party as a beneficiary under the trust,

(iii) an amount received after ANNOUNCEMENT DATE by the particular person, or a person or partnership (that was, when the amount was received, a specified party in respect of the particular person), as a loan from the trust to the extent that the amount has not been repaid,

(iv) an amount (other than an amount described in any of subparagraphs (i) to (iii)) that is the fair market value of a benefit received or enjoyed, after 2000 and before the particular time, from or under the trust by

(A) the particular person, or

(B) a person or partnership that was, when the benefit was received or enjoyed, a specified party in respect of the particular person, or

(v) the maximum amount that would be recoverable from the particular person at the end of the trust's 2006 taxation year under subsection (2) (as it read in its application

to taxation years that end before 2007) if the trust had tax payable under this Part at the end of the trust's 2006 taxation year and that tax payable exceeded the total of the amounts described in respect of the particular person under paragraphs (2)(*a*) and (*b*) (as they read in their application to taxation years that end before 2007), except to the extent that the amount so recoverable is in respect of an amount that is included in the particular person's recovery limit because of subparagraph (i) or (ii), and

(*b*) the total of all amounts each of which is the amount, when made, of a contribution to the trust before the particular time by the particular person,

exceeds the total of all amounts each of which is

(*c*) an amount recovered before the particular time from the particular person in connection with a liability of the particular person (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that end before 2007),

(*d*) an amount (other than an amount in respect of which this paragraph has applied in respect of any other person) recovered before the particular time from a specified party in respect of the particular person in connection with a liability of the particular person (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that end before 2007), or

(*e*) the amount, if any, by which the particular person's tax payable under this Part for any taxation year in which an amount described in any of subparagraphs (*a*)(i) to (iv) was paid, became payable, was received, became receivable or was enjoyed by the particular person exceeds the amount that would have been the particular person's tax payable under this Part for that taxation year if no such amount were paid, became payable, were received, became receivable or were enjoyed by the particular person in that taxation year.

Determination of contribution amount — restricted property

(9) If a person or partnership contributes at any time restricted property to a trust, the amount of the contribution at that time is deemed, for the purposes of this section, to be the greater of

(*a*) the amount, determined without reference to this subsection, of the contribution at that time, and

(*b*) the amount that is the greatest fair market value of the restricted property, or property substituted for it, in the period that

(i) begins immediately after that time, and

(ii) ends at the end of the third calendar year that ends after that time.

Where contributor becomes resident in Canada within 60 months after making a contribution

(10) In applying this section at each specified time, in respect of a taxation year of a trust, that is before the particular time at which a contributor to the trust becomes resident in Canada within 60 months after making a contribution to the trust, the contribution is deemed to have been made at a time other than a non-resident time of the contributor if

(*a*) in applying the definition "non-resident time" in subsection (1) at each of those specified times, the contribution was made at a non-resident time of the contributor; and

(*b*) in applying the definition "non-resident time" in subsection (1) immediately after the particular time, the contribution is made at a time other than a non-resident time of the contributor.

Application of subsections (12) and (13)

(11) Subsections (12) and (13) apply to a trust or a person in respect of a trust if

(*a*) at any time property of a trust (referred to in this subsection and subsections (12) and (13) as the "original trust") is transferred or loaned, directly or indirectly, in any manner, to another trust (referred to in this subsection and subsections (12) and (13) as the "transferee trust");

(*b*) the original trust

(i) is deemed to be resident in Canada immediately before that time because of paragraph (3)(*a*),

(ii) would be deemed to be resident in Canada immediately before that time because of paragraph (3)(*a*) if this section were read without reference to paragraph (*a*) of the definition "connected contributor" in subsection (1) and paragraph (*a*) of the definition "resident contributor" in that subsection,

(iii) was deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that end before 2007, or

(iv) would have been deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that end before 2007 if that subsection were read in that application without reference to subclause (*b*)(i)(A)(III) of that subsection; and

(*c*) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize a liability under this Part that arose, or that would otherwise have arisen, because of the application of this section (or the application of this section as it read in its application to taxation years that end before 2007).

Deemed resident contributor

(12) The original trust described in subsection (11) (including a trust that has ceased to exist) is deemed to be, at and after the time of the transfer or loan referred to in that subsection, a resident contributor to the transferee trust for the purpose of applying this section in respect of the transferee trust.

Deemed contributor

(13) A person (including any person that has ceased to exist) that is, at the time of the transfer or loan referred to in subsection (11), a contributor to the original trust, is deemed to be at and after that time

(*a*) a contributor to the transferee trust; and

(*b*) a connected contributor to the transferee trust, if at that time the person is a connected contributor to the original trust.

Restricted property — exception

(14) A particular property that is, or will be, at any time held, loaned or transferred, as the case may be, by a particular person or partnership is not restricted property held, loaned or transferred, as the case may be, at that time by the particular person or partnership if

(*a*) the following conditions are met:

(i) the particular property (and property, if any, for which the particular property is, or is to be, substituted property) was not, and will not be, at any time acquired, held, loaned or transferred by the particular person or partnership (or any person or partnership with whom the particular person or partnership does not at any time deal at arm's length) in whole or in part for the purpose of permitting any change in the value of the property of a corporation (that is, at any time, a closely-held corporation) to accrue directly or indirectly in any manner whatever to the value of property held by a non-resident trust,

(ii) the Minister is satisfied that the particular property (and property, if any, for which it is, or is to be, substituted) is described by subparagraph (i), and

(iii) the particular property is identified in prescribed form, containing prescribed information, filed, by or on behalf of the particular person or partnership, with the Minister on or before

(A) in the case of a person, the particular person's filing-due date for the particular person's taxation year that includes that time,

(B) in the case of a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the particular partnership or would be required to be so filed if that section applied to the partnership, or

(C) another date that is acceptable to the Minister; or

(*b*) at that time

(i) the particular property is

(A) a share of the capital stock of a corporation,

(B) a specified fixed interest in a trust, or

(C) an interest, as a member of a partnership, under which, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited,

(ii) there are at least 150 persons each of whom holds at that time property that at that time

(A) is identical to the particular property, and

(B) has a total fair market value of at least $500,

(iii) the total of all amounts each of which is the fair market value, at that time, of the particular property (or of identical property that is held, at that time, by the particular person or partnership or a person or partnership with whom the particular person or partnership does not deal at arm's length) does not exceed 10% of the total of all amounts each of which is the fair market value, at that time, of the particular property or of identical property held by any person or partnership,

(iv) property that is identical to the particular property can normally be acquired by and sold by members of the public in the open market, and

(v) the particular property, or identical property, is listed on a designated stock exchange.

Anti-avoidance

(15) In applying this section,

(*a*) if it can reasonably be considered that one of the main reasons that a person or partnership

(i) is at any time a shareholder of a corporation is to cause the condition in paragraph (*b*) of the definition "closely-held corporation" in subsection (1) to be satisfied in respect of the corporation, the condition is deemed not to have been satisfied at that time in respect of the corporation,

(ii) holds at any time an interest in a trust is to cause the condition in clause (*h*)(ii)(A) of the definition "exempt foreign trust" in subsection (1) to be satisfied in respect of the trust, the condition is deemed not to have been satisfied at that time in respect of the trust, and

(iii) holds at any time a property is to cause the condition described in subparagraph (14)(*b*)(ii) to be satisfied in respect of the property or an identical property held by any person, the condition is deemed not to have been satisfied at that time in respect of the property or the identical property;

(*b*) if at any time at or before a specified time in a taxation year of a trust, a resident contributor to the trust contributes to the trust property that is restricted property of the trust, or property for which restricted property of the trust is substituted, and the trust is at that specified time an exempt foreign trust by reason of paragraph (*f*) of the definition "exempt foreign trust" in subsection (1), the amount of the trust's income for the taxation year from the restricted property, and the amount of any taxable capital gain from the disposition in the taxation year by the trust of the restricted property, shall be included in computing the income of the resident contributor for its taxation year in which that taxation year of the trust ends and not in computing the income of the trust for that taxation year of the trust; and

(*c*) if at a particular time in a particular taxation year of a trust, that was at a specified time in its immediately preceding taxation year an exempt foreign trust by reason of para-

graph (*h*) of the definition "exempt foreign trust" in subsection (1), a beneficiary who may receive, at or after the particular time and directly from the trust, any of the income or capital of the trust holds a specified fixed interest in the trust, and immediately after the particular time, the interest ceases to be a specified fixed interest in the trust,

(i) the trust shall include in computing its income for the particular taxation year an amount equal to the amount determined by the formula

$$A - B - C$$

where

A is the amount by which the total of all amounts each of which is the fair market value of a property held by the trust at that specified time exceeds the total of all amounts each of which is the principal amount outstanding at that specified time of a liability of the trust,

B is the amount by which the total of all amounts each of which is the fair market value of a property held by the trust at the earliest time at which there is a resident contributor to, or resident beneficiary under, the trust and at which the trust is an exempt foreign trust (referred to in this paragraph as the "initial time") exceeds the total of all amounts each of which is the principal amount outstanding at the initial time of a liability of the trust, and

C is the total of all amounts each of which is the amount of a contribution made to the trust in the period that begins at the initial time and ends at the specified time (in this paragraph referred to as the "interest gross-up period"); and

(ii) for the purposes of subsection 161(1), for each taxation year of the trust that ends in the interest gross-up period, the trust is (in addition to any excess otherwise determined in respect of the trust under that subsection) deemed to have throughout the period that begins at the trust's balance-due date for that taxation year and ends at that specified time, an excess equal to the amount determined by the following formula

$$A/B \times 42.92\%$$

where

A is the amount determined under subparagraph (i) in respect of the trust for the particular taxation year, and

B is the number of the trust's taxation years that end in the interest gross-up period.

Attribution to electing contributors

(16) If at a specified time in respect of a trust for a taxation year of the trust (referred to in this subsection as the "trust's year"), there is an electing contributor in respect of the trust, the following rules apply:

(*a*) the electing contributor is required to include in computing their income for their taxation year (referred to in this subsection as the "contributor's year") in which the trust's year ends, the amount determined by the formula

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

where

A is the total of all amounts each of which is

(i) if, at or before the specified time, the electing contributor has made a contribution to the trust and is not a joint contributor in respect of the trust and the contribution, the amount of the contribution, or

(ii) if, at or before the specified time, the electing contributor has made a contribution to the trust and is a joint contributor in respect of the trust and the contribution, the amount obtained when the amount of the contribution is divided by the number of joint contributors in respect of the contribution,

B is the total of all amounts each of which is the amount that would be determined under A for each resident contributor, or connected contributor, to the trust at the specified time if all of those contributors were electing contributors in respect of the trust,

C is the trust's income, computed without reference to paragraph (*f*), for the trust's year, and

D is the amount deducted by the trust under section 111 in computing its taxable income for the trust's year;

(*b*) subject to paragraph (*c*), the amount, if any, required by paragraph (*a*) to be included in the electing contributor's income for the contributor's year is deemed to be income from property from a source in Canada;

(*c*) for the purposes of this paragraph, paragraph (*d*) and section 126, an amount in respect of the trust's income for the trust's year from a source in a country other than Canada is deemed to be income of the electing contributor for the contributor's year from that source if

(i) the amount is designated by the trust, in respect of the electing contributor, in the trust's return of income under this Part for the trust's year,

(ii) the amount may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that because of paragraph (*a*) was included in computing the income of the electing contributor for the contributor's year, and

(iii) the total of all amounts designated by the trust, under this paragraph or subsection 104(22) in respect of that source, in the trust's return of income under this Part for the trust's year is not greater than the trust's income for the trust's year from that source;

(*d*) for the purposes of this paragraph and section 126, the electing contributor is deemed to have paid as business-income tax (in this subsection as defined by subsection 126(7)) or non-business-income tax (in this subsection as defined by subsection 126(7)), as the case may be, for the contributor's year in respect of a source the amount determined by the formula

$$A \times B/C$$

where

A is the amount that, in the absence of subparagraph (*e*)(i), would be the business-income tax or non-business-income tax, as the case may be, paid by the trust in respect of that source for the trust's year,

B is the total of all amounts each of which is an amount designated under paragraph (*c*) in respect of that source by the trust in respect of the electing contributor in the trust's return of income under this Part for the trust's year, and

C is the trust's income for the trust's year from that source;

(*e*) in applying subsection 20(12) and section 126 to the trust for the trust's year there shall be deducted

(i) in computing the trust's income from a source for the trust's year the total of all amounts each of which is an amount deemed by paragraph (*c*) to be income from that source of the electing contributor for the contributor's year, and

(ii) in computing the business-income tax or non-business-income tax paid by the trust for the trust's year in respect of a source the total of all amounts in respect of that source each of which is an amount deemed by paragraph (*d*) to be paid by the electing contributor as business-income tax or non-business-income tax, as the case may be, in respect of that source;

(*f*) in computing the trust's income for the trust's year there may be deducted the amount that does not exceed the amount included by reason of paragraph (*a*) in the electing contributor's income for the contributor's year; and

(*g*) where before the specified time the electing contributor made a contribution to the trust as part of a series of transactions in which another person made the same contribution, in applying this subsection in respect of the electing contributor and the other person, the other person is deemed not to be a joint contributor in respect of the contribution if it can reasonably be considered that one of the main purposes of the series was to obtain the benefit of any deduction in computing income, taxable income or tax payable under this Act or any balance of undeducted outlays, expenses or other amounts available to the other person or any exemption available to the other person from tax payable under this Act.

Liability for joint contribution

(17) If, at or before a specified time in a trust's taxation year (referred to in this subsection as the "trust's year"), there is an electing contributor in respect of the trust who is a joint contributor in respect of a contribution to the trust,

(*a*) each person who is a joint contributor in respect of the contribution

(i) has, in respect of the contribution, jointly and severally, or solidarily, the rights and obligations under Divisions I and J of each other person (referred to in this subsection as the "specified person") who is, at or before the specified time, a joint contributor in respect of that contribution, for the specified person's taxation year in which the trust's year ends, and

(ii) is subject to Part XV in respect of those rights and obligations; and

(*b*) the maximum recoverable under the provisions referred to in paragraph (*a*) at a particular time from the person in respect of the contribution and a particular specified person's taxation year in which the trust's year end is the amount determined by the formula

A – B – C

where

A is the total of the amounts payable by the particular specified person under this Part for the particular specified person's taxation year in which the trust's year ends,

B is the amount that would be determined for A if the total of the amounts payable by the particular specified person under this Part for the particular specified person's taxation year in which the trusts's year ends were computed without reference to the contribution, and

C is the amount recovered before the particular time from the specified person, and any other joint contributor in respect of the trust and the contribution, in connection with the liability of the specified person in respect of the contribution.

(2) Subsection (1) applies to taxation years that end after 2006, except that

(*a*) subsections 94(1) to (15) of the Act, as enacted by subsection (1), also apply to each of a trust's taxation years in which it exists and that end after 2000 and before 2007, and to each taxation year of the beneficiaries under, and contributors to, the trust in which such a trust taxation year ends, if the trust

(i) was created in one of those taxation years, and

(ii) elects, in writing, to have section 94 of the Act, as enacted by subsection (1), apply to each of those taxation years of the trust by filing the election with the Minister of National Revenue on or before the trust's filing-due date for the trust's taxation year in which this Act is assented to;

(*b*) subsections 94(16) and (17) of the Act, as enacted by subsection (1), apply only to taxation years that end after March 4, 2010;

(*c*) any election or form referred to in section 94 of the Act, as enacted by subsection (1), that would otherwise be required to be filed before 120 days after the day on which this Act is assented to is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue within 365 days after the day on which this Act is assented to;

(*d*) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, that this paragraph apply, in applying section 94 of the Act, as enacted by subsection (1), in respect of the trust the definition "arm's length transfer" in subsection 94(1) of the Act, as enacted by subsection (1), does not include a loan or other transfer of property that is identified in the election and that is made in a taxation year that begins before 2003;

(*e*) clause (*f*)(ii)(C) of the definition "exempt foreign trust" in subsection 94(1) of the Act, as enacted by subsection (1), is, in respect of a trust for its taxation years that end before 2009, to be read as follows:

(C) no benefits are provided under the trust, other than benefits in respect of

(I) qualifying services,

(II) particular services rendered before November 9, 2006, to an employer by an employee of the employer if the employee had on November 8, 2006, a right (whether immediate or future or whether absolute or contingent) to receive the benefits in respect of the particular services pursuant to an agreement in writing

1. that was entered into before November 9, 2006, and

2. where the employee was resident in Canada on November 9, 2006, a copy of which was filed with a prescribed form with the Minister by or on behalf of the employer no later than April 30 of the first calendar year that begins after November 9, 2006, or

(III) any combination of services that are described in subclause (I) or (II);

(*f*) the expression "if the person is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time" in the definition "non-resident time" in subsection 94(1) of the Act, as enacted by subsection (1), is, in respect of contributions made before June 23, 2000, to be read as the expression "if the contribution time is before June 23, 2000, 18 months before the end of the trust's taxation year that includes the contribution time";

(*g*) subparagraph 94(3)(*a*)(x) of the Act, as enacted by subsection (1), does not apply in determining, on or before July 18, 2005, whether a foreign affiliate is a controlled foreign affiliate of a taxpayer;

(*h*) paragraph 94(4)(*b*) of the Act, as enacted by subsection (1), is

(i) subject to subparagraph (ii), for taxation years that begin on or before July 18, 2005, to be read without reference to "the definition "Canadian partnership" in subsection 102(1),", and

(ii) to be read as follows in its application to a transfer, by a trust, that occurred before February 28, 2004:

(*b*) subsections 70(6) and 73(1), paragraph 107.4(1)(*c*) other than subparagraph (i) of that paragraph and paragraph (*a*) of the definition "mutual fund trust" in subsection 132(6);

(*i*) paragraph 94(4)(*f*) of the Act, as enacted by subsection (1), is, in its application to a transfer by a trust that occurred before February 28, 2004, to be read as follows:

(*f*) determining the residency of the transferee in applying subparagraph (*f*)(ii) of the definition "disposition" in subsection 248(1);

(*j*) paragraph 94(2)(*o*) of the Act, as enacted by subsection (1), is, in its application to a transfer that occurred before ANNOUNCEMENT DATE to be read as follows:

(*o*) a contribution made at any time by a particular partnership to a trust is deemed to have been made at that time jointly by the particular partnership and by each person or partnership that is at that time a member of the particular partnership (other than a member of the particular partnership where the liability of the member as a member of the particular partnership is limited by operation of any law governing the partnership arrangement);

(*k*) if a trust was, for its last taxation year that ends before 2007, deemed by paragraph 94(1)(*c*) of the Act (as it read in its application to that taxation year) to be resident in Canada, paragraphs 94(4)(*d*) and (*e*) of the Act, as enacted by subsection (1), do not apply to the trust for the period that starts immediately before the end of that last taxation year and that ends immediately after the beginning of its first taxation year that ends after 2006, unless during that period a change in the trustees of the trust occurred; and

(*l*) the reference to "designated stock exchange" in subparagraph 94(14)(*b*)(v) of the Act, as enacted by subsection (1), is, before December 14, 2007, to be read as a reference to "prescribed stock exchange".

7. (1) The portion of section 94.1 of the Act before paragraph (*b*) is replaced by the following:

Offshore investment fund property

94.1 (1) Where in a taxation year a taxpayer holds or has an interest in property (referred to in this section as an "offshore investment fund property")

(*a*) that is a share of the capital stock of, an interest in, or a debt of, a non-resident entity (other than a controlled foreign affiliate of the taxpayer, a trust to which section 94.2 applies in respect of the taxpayer or a prescribed non-resident entity) or an interest in or a right or option to acquire such a share, interest or debt, and

(2) Subparagraph 94.1(1)(*f*)(ii) of the Act is replaced by the following:

(ii) the quotient obtained when the total of the prescribed rate of interest for the period including that month plus two per cent is divided by 12

(3) The definition "non-resident entity" in subsection 94.1(2) of the Act is replaced by the following:

"non-resident entity" « *entité non-résidente* »

"non-resident entity" means

(*a*) a corporation that is not resident in Canada,

(*b*) a partnership, organization, fund or entity that is not resident or is not situated in Canada, or

(*c*) a non-resident trust other than a trust described in subparagraph (*b*)(i) of the definition "resident contributor" in subsection 94(1) and a trust that is an "exempt foreign trust" as defined in subsection 94(1) because of any of paragraphs (*a*) to (*g*).

(4) Subsections (1) to (3) apply to taxation years that end after March 4, 2010. Subsections (1) and (3) also apply to each taxation year of a beneficiary under a trust that ends before March 5, 2010 if subsection 94(3) of the Act, as enacted by section 6, applies to the trust for a taxation year of the trust that ends in that earlier taxation year of the beneficiary.

(5) Subsection (6) applies to a taxpayer for each taxation year that ends in the period that begins after 2000 and ends before the last taxation year of the taxpayer that ends before March 4, 2010 (referred to in this subsection and subsections (6) to (10) as the "relevant period"), if

(*a*) in a return of income for the year the taxpayer has, in respect of a participating interest in a foreign investment entity, in this subsection and subsections (6) to (10) having the meaning of those terms as set out in the provisions of sections 94.1 to 94.4 of the Act contained in section 18 of Bill C-10 of the second session of the 39th Parliament as passed by the House of Commons on October 29, 2007, included or deducted an amount (referred to in this subsection and subsections (6) to (10) as the "reported inclusion" or "reported deduction" as the case may be) under those provisions in computing income for the year; and

(*b*) the taxpayer files a prescribed form on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act is assented to

(i) identifying each participating interest of the taxpayer described in paragraph (*a*), and

(ii) providing sufficient detail of each of those participating interests, including any reported inclusions or reported deductions in respect of those participating interests.

(6) If this subsection applies to a taxpayer for a taxation year,

(*a*) the taxpayer's reported inclusion for the year in respect of a participating interest is deemed to be the amount required to be included under the Act in computing the taxpayer's income for that year in respect of that participating interest; and

(*b*) the taxpayer's reported deduction for the year in respect of a participating interest is deemed to be the amount deductible under the Act in computing the taxpayer's income for that year in respect of that participating interest.

(7) If subsection (6) applies to a taxpayer for one or more taxation years, in computing the taxpayer's income for the first taxation year that ends after the relevant period, there may be deducted the amount that does not exceed the amount, if any, determined by the formula

$$(A - B) - (C - D)$$

where

A is the total of all amounts each of which is a reported inclusion for a year in respect of a participating interest, or a taxable capital gain for a taxation year that ends in

the relevant period from the disposition of a participating interest of the taxpayer described in paragraph (5)(*a*),

B is the total of all amounts each of which is a reported deduction for a year in respect of a participating interest, or an allowable capital loss for a taxation year that ends in the relevant period from the disposition of a participating interest of the taxpayer described in paragraph (5)(*a*),

C is the total of all amounts each of which is

(*a*) an amount that would be required to be included under the Act, read without reference to this Act, in the taxpayer's income for a taxation year that ends in the relevant period in respect of a property that is a participating interest of the taxpayer described in paragraph (5)(*a*), or

(*b*) a taxable capital gain computed without reference to this Act for a taxation year that ends in the relevant period from the disposition of a participating interest of the taxpayer described in paragraph (5)(*a*), and

D is the total of all amounts each of which is an allowable capital loss computed without reference to this Act for a taxation year that ends in the relevant period from the disposition of a participating interest of the taxpayer described in paragraph (5)(*a*).

(8) Subsection (9) applies to a taxpayer in respect of a participating interest described in paragraph (5)(*a*) for the first taxation year that ends after the relevant period if

(*a*) at the start of the year the taxpayer holds the participating interest;

(*b*) the total of all amounts each of which is a reported deduction for a year in respect of the participating interest exceeds the total of all amounts each of which is a reported inclusion for a year in respect of the participating interest (such amount referred to in subsection (9) as the "excess"); and

(*c*) the amount determined for B in applying the formula in subsection (7) in computing the taxpayer's income for that year exceeds the amount, if any, that is the amount determined for A in so applying that formula.

(9) If this subsection applies to a taxpayer in respect of a participating interest, in computing the adjusted cost base to the taxpayer of the participating interest at any time after the start of the taxation year, there is to be deducted an amount equal to the excess determined in respect of the participating interest under paragraph (8)(*b*).

(10) If subsection (6) does not apply to a taxpayer, and in a return of income for a taxation year that ends in the relevant period, the taxpayer has in respect of a participating interest in a foreign investment entity a reported inclusion or a reported deduction for the year, notwithstanding subsection 152(4), for the purpose of determining, at any time after the end of the normal reassessment period of each taxation year of the taxpayer that ends in the relevant period, the amount of any refund to which the taxpayer is entitled in respect of any such year, or a reduction of an amount payable

under this Part by the taxpayer for any such year, the Minister of National Revenue may, if the taxpayer makes an application for that determination on or before the day that is 365 days after this Act is assented to reassess tax, interest or penalties payable under this Part by the taxpayer in respect of each such year.

8. (1) The Act is amended by adding the following after section 94.1:

Investments in non-resident commercial trusts

94.2 (1) For the purposes of subsections (2) and 91(1) to (4) and sections 95 and 233.4, an exempt foreign trust (other than a trust described in any of paragraphs (*a*) to (*g*) of the definition "exempt foreign trust"in subsection 94(1)) is deemed to be at a particular time a controlled foreign affiliate of each particular person that is a resident beneficiary that holds a specified fixed interest in the trust at that time, if, at that time

(*a*) the total fair market value at that time of all specified fixed interests in the trust held by the particular person, persons not dealing at arm's length with the particular person, or persons who acquired their interest in the trust in exchange for consideration given to the trust by the particular person, is at least 10% of the total fair market value at that time of all specified fixed interests in the trust; or

(*b*) the particular person has contributed restricted property to the trust.

Participating percentage

(2) For the purposes of subsections 91(1) to (4) and sections 95 and 233.4, if a trust is deemed under subsection (1) to be at a particular time a controlled foreign affiliate of a person, the person is deemed to own a share of the capital stock of the controlled foreign affiliate and the participating percentage of that share is deemed to be

(*a*) if the foreign accrual property income of the controlled foreign affiliate for its taxation year that includes that time is $5,000 or less, nil; and

(*b*) in any other case, the proportion of 100 that the fair market value at that time of the person's specified fixed interests in the trust is of the fair market value at that time of all specified fixed interests in the trust.

Relief from double tax

(3) If a trust is deemed under subsection (1) to be at a particular time in a taxation year of the trust (referred to in this subsection as the "trust's year") a controlled foreign affiliate of a person, in computing the amount to be included under subsection 91(1) in the person's income for a taxation year (referred to in this subsection as the "beneficiary's year") in which the trust's year ends, there may be deducted an amount not exceeding the part of the trust's foreign accrual property income for the trust's year that may reasonably be considered as having been included in the part of the trust's income (computed without reference to subsections 104(6) and (12)) for the trust's year included in computing the person's income under subsection 104(13) for the beneficiary's year.

Demand for information

(4) If the Minister sends a written demand to a taxpayer requesting additional information for the purpose of enabling the Minister to determine the fair market value of interests in a trust for the purpose of determining the application of subsections (1) to (3) to the taxpayer in respect of a taxation year, and information that may reasonably be considered to be sufficient to make the determination is not received by the Minister within 120 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand, in

applying this section to the taxpayer for that taxation year the fair market value of those interests is deemed to be the fair market value as reasonably determined by the Minister based on the information provided by the taxpayer to the Minister at or before the time the demand is sent and other information the Minister considers is reasonable.

(2) Subsection (1) applies to taxation years that end after March 4, 2010, except that if subsection 94(3) of the Act, as enacted by section 6, applies to a trust for a taxation year that ends before March 5, 2010, then section 94.2 of the Act, as enacted by subsection (1), shall apply to each beneficiary under the trust for a taxation year of the beneficiary in which the earlier taxation year of the trust ends and, for those earlier taxation years, that section shall be read as follows:

94.2 (1) Where,

(*a*) at any time in a taxation year of a trust that is not resident in Canada or that, but for subsection 94(3), would not be so resident, a person beneficially interested in the trust (referred to in this section as a "beneficiary") was

(i) a person resident in Canada,

(ii) a corporation or trust with which a person resident in Canada was not dealing at arm's length, or

(iii) a controlled foreign affiliate of a person resident in Canada, and

(*b*) at any time in or before the taxation year of the trust,

(i) the trust, or a non-resident corporation that would, if the trust were resident in Canada, be a controlled foreign affiliate of the trust, has, other than in prescribed circumstances, acquired property, directly or indirectly in any manner whatever, from

(A) a particular person who

(I) was the beneficiary referred to in paragraph (*a*), was related to that beneficiary or was the uncle, aunt, nephew or niece of that beneficiary,

(II) was resident in Canada at any time in the 18 month period before the end of that year or, in the case of a person who has ceased to exist, was resident in Canada at any time in the 18 month period before the person ceased to exist, and

(III) in the case of an individual, had before the end of that year been resident in Canada for a period of, or periods the total of which is, more than 60 months, or

(B) a trust or corporation that acquired the property, directly or indirectly in any manner whatever, from a particular person described in clause (A) with whom it was not dealing at arm's length

and the trust was not

(C) an *inter vivos* trust created at any time before 1960 by a person who at that time was a non-resident person,

(D) a testamentary trust that arose as a consequence of the death of an individual before 1976, or

(E) governed by a foreign retirement arrangement, or

(ii) all or any part of the interest of the beneficiary in the trust was acquired directly or indirectly by the beneficiary by way of

(A) purchase,

(B) gift, bequest or inheritance from a person referred to in clause (i)(A) or (B), or

(C) the exercise of a power of appointment by a person referred to in clause (i)(A) or (B),

the following rules apply for that taxation year of the trust:

(*c*) for the purposes of subsections 91(1) to (4) and sections 95 and 233.4,

(i) the trust shall, with respect to any beneficiary under the trust the fair market value of whose beneficial interest in the trust is not less than 10% of the aggregate fair market value of all beneficial interests in the trust, be deemed to be a non-resident corporation that is controlled by the beneficiary,

(ii) the trust shall be deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares, and

(iii) each beneficiary under the trust shall be deemed to own at any time the number of the issued shares that is equal to the proportion of 100 that

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

is of

(B) the fair market value at that time of all beneficial interests in the trust, and

(*d*) in computing the foreign accrual property income of the trust for that taxation year, there may be deducted such portion of the amount that would, but for this subsection, be the foreign accrual property income of the trust as may reasonably be considered as having been included in computing a beneficiary's income under subsection 104(13) for a taxation year in which that taxation year of the trust ends.

9. (1) The portion of subsection 104(6) of the Act before paragraph (*a*) is replaced by the following:

Deduction in computing income of trust

(6) Subject to subsections (7) to (7.1), for the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

(2) Section 104 of the Act is amended by adding the following after subsection (7):

Trusts deemed to be resident in Canada

(7.01) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in computing its income for the year is the amount, if any, by which

(*a*) the maximum amount that, if this Act were read without reference to this subsection, would be deductible under subsection (6) in computing its income for the year,

exceeds

(*b*) the total of

(i) the portion of the trust's designated income for the year (within the meaning assigned by section 210) that became payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

(ii) all amounts each of which is determined by the formula

$$A \times B$$

where

A is an amount (other than an amount described in subparagraph (i)) that

(A) is paid or credited (having the meaning assigned by Part XIII) in the year to the trust,

(B) would, if this Act were read without reference to subparagraph 94(3)(*a*)(viii), paragraph 212(2)(*b*) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and

(C) becomes payable in the year by the trust to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

B is

(A) 0.35, if the trust can establish to the satisfaction of the Minister that the non-resident beneficiary to whom the amount described in the description of A is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited, and

(B) 0.6, in any other case.

(3) Subsection 104(24) of the Act is replaced by the following:

Amount payable

(24) For the purposes of subparagraph 53(2)(*h*)(i.1), subsection 94(8), and subsections (6), (7), (7.01), (13), (16) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

(4) Subsections (1) to (3) apply to taxation years that end after 2006. Those subsections also apply to each earlier taxation year of a trust to which subsection 94(3) of the Act, as enacted by section 6, applies and each taxation year of a beneficiary under the trust in which one of those earlier taxation years of the trust ends, except that subsection 104(24) of the Act, as enacted by subsection (3) is to be read as follows in its application before October 31, 2006:

Amount payable

(24) For the purposes of subparagraph 53(2)(*h*)(i.1), subsection 94(8), and subsections (6), (7), (7.01), (13) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

10. (1) The portion of paragraph 107(4.1)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) subsection 75(2) was applicable, or would have been applicable if subsection 75(3) were read without reference to paragraph (*c.2*), at a particular time in respect of any property of

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

11. (1) The portion of subsection 108(7) of the Act before paragraph (*a*) is replaced by the following:

Interests acquired for consideration

(7) For the purposes of paragraph 53(2)(*h*), subparagraph (*c*)(i) of the definition "exempt amount" in subsection 94(1), subsection 107(1), paragraph (*j*) of the definition "excluded right or interest" in subsection 128.1(10) and paragraph (*b*) of the definition "personal trust" in subsection 248(1),

(2) Subsection (1) applies to taxation years that end after 2006. That subsection also applies to each earlier taxation year of a trust to which subsection 94(3) of the Act, as enacted by section 6, applies and each taxation year of a beneficiary under the trust in which one of those earlier taxation years of the trust ends.

12. (1) Subsection 122(2) of the Act is amended by adding the following after paragraph (*d*):

(*d.1*) was not a trust to which a contribution (as defined by section 94 as it reads for taxation years that end after 2006) was made after June 22, 2000;

(2) Subsection (1) applies to trust taxation years that begin after 2002.

13. (1) Section 128.1 of the Act is amended by adding the following after subsection (1):

Trusts subject to subsection 94(3)

(1.1) Paragraph (1)(*b*) does not apply, at a time in a particular taxation year of a trust, to the trust if the trust is resident in Canada for the particular taxation year for the purpose of computing its income.

(2) Subsection (1) applies to trust taxation years that end after 2006. Subsection (1) also applies to each earlier taxation year of a trust to which subsection 94(3) of the Act, as enacted by section 6, applies.

14. (1) Paragraph 152(4)(*b*) of the Act is amended by striking out "or" at the end of subparagraph (v), by adding "or" at the end of subparagraph (vi) and by adding the following after subparagraph (vi):

(vii) is made to give effect to the application of any of sections 94, 94.1 and 94.2;

(2) Subsection (1) applies to taxation years that end after March 4, 2010.

15. (1) Section 160 of the Act is amended by adding the following after subsection (2):

Assessment

(2.1) The Minister may at any time assess a taxpayer in respect of any amount payable because of paragraph 94(3)(*d*) or (*e*) or subsection 94(17) and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(2) The portion of subsection 160(3) of the Act before paragraph (*a*) is replaced by the following:

Discharge of liability

(3) Where a particular taxpayer has become jointly and severally, or solidarily, liable with another taxpayer under this section or because of paragraph 94(3)(*d*) or (*e*) or subsection 94(17) in respect of part or all of a liability under this Act of the other taxpayer,

(3) Subsections (1) and (2) apply to assessments made after 2006, except that

(*a*) subsection 160(2.1) of the Act, as enacted by subsection (1), and the portion of subsection 160(3) of the Act before its paragraph (*a*), as enacted by subsection (2), are to be read without reference to "or subsection 94(17)" in their application to taxation years that end before March 5, 2010; and

(*b*) if subsection 94(3) of the Act, as enacted by section 6, applies to a taxation year of a taxpayer that ends before 2007, subsection (1) applies to assessments made on or after the first day of the first such taxation year of the taxpayer to which that subsection 94(3) applies.

16. (1) Paragraph (*c*) of the description of A in subsection 162(10.1) of the French version of the Act is replaced by the following:

c) si la déclaration est à produire en application de l'article 233.2 à l'égard d'une fiducie, 5 % du total des montants représentant chacun la juste valeur marchande, au moment où il a été fait, d'un apport que la personne ou la société de personnes a fait à la fiducie avant la fin de la dernière année d'imposition de celle-ci pour laquelle la déclaration doit être produite,

(2) Paragraph (*d*) of the description of A in subsection 162(10.1) of the English version of the Act is replaced by the following:

(*d*) where the return is required to be filed under section 233.2 in respect of a trust, 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required,

(3) Section 162 of the Act is amended by adding the following after subsection (10.1):

Application to trust contributions

(10.11) In paragraph (*d*) of the description of A in subsection (10.1), subsections 94(1), (2) and (9) apply.

(4) Subsections (1) to (3) apply to returns in respect of taxation years that end after 2006. Those subsections also apply to returns in respect of an earlier taxation year of a taxpayer if subsection 94(3) of the Act, as enacted by section 6, applies to that earlier taxation year of the taxpayer.

17. (1) Paragraph 163(2.4)(*b*) of the Act is replaced by the following:

(*b*) where the return is required to be filed under section 233.2 in respect of a trust, the greater of

(i) $24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required;

(2) Section 163 of the Act is amended by adding the following after subsection (2.4):

Application to trust contributions

(2.41) In subparagraph (2.4)(*b*)(ii), subsections 94(1), (2) and (9) apply.

(3) Subsections (1) and (2) apply to taxation years that end after 2006. Those subsections also apply to returns in respect of an earlier taxation year of a taxpayer if subsection 94(3) of the Act, as enacted by section 6, applies to that earlier taxation year of the taxpayer.

18. (1) Subsection 215(1) of the Act is replaced by the following:

Withholding and remittance of tax

(1) When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Act were read without reference to subparagraph 94(3)(*a*)(viii) and to subsection 216.1(1), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form.

(2) Subsection (1) applies to trust taxation years that end after 2006. Subsection (1) also applies to each earlier taxation year of a trust to which subsection 94(3) of the Act, as enacted by section 6, applies.

19. (1) Section 216 of the Act is amended by adding the following after subsection (4):

Optional method of payment

(4.1) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the trust, an amount to the Receiver General in payment of tax on rent on real or immovable property or on a timber royalty may elect in prescribed form filed with the Minister under this subsection not to remit under subsection 215(3) in respect of amounts received after the election is made, and if that election is made, the elector shall,

(*a*) when any amount is available out of the rent or royalty received for remittance to the trust, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the trust on account of the trust's tax under Part I; and

(*b*) if the trust does not file a return for the year as required by section 150, or does not pay the tax that the trust is liable to pay under Part I for the year within the time required by that Part, on the expiration of the time for filing or payment, as the case may be, pay to the Receiver General, on account of the trust's tax under Part I, the amount by which the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty exceeds the amounts that the elector has remitted in the year under paragraph (*a*) in respect of the rent or royalty.

(2) Subsection (1) applies to trust taxation years that end after 2006, except that

(*a*) it also applies to each earlier taxation year of a trust to which subsection 94(3) of the Act, as enacted by section 6, applies; and

(*b*) an election referred to in subsection 216(4.1) of the Act, as enacted by subsection (1), is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which this Act is assented to.

20. (1) The definitions "specified beneficiary" and "specified foreign trust" in subsection 233.2(1) of the Act are repealed.

(2) Subsections 233.2(2) and (3) of the Act are replaced by the following:

Rule of application

(2) In this section and paragraph 233.5(*c.1*), subsections 94(1), (2) and (10) to (13) apply, except that the references to the expression "(other than restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the expression "(other than property to which paragraph 94(2)(*g*) applies but not including a unit of a mutual fund trust or of a trust that would be a mutual fund trust if section 4801 of the *Income Tax Regulations* were read without reference to paragraph 4801(*b*), a share of the capital stock of a mutual fund corporation, or a particular share of the capital stock of a corporation (other than a closely-held corporation) which particular share is identical to a share that is, at the transfer time, of a class that is listed on a designated stock exchange)".

(3) Subsection 233.2(4) of the Act is replaced by the following:

Filing information on foreign trusts

(4) A person shall file an information return in prescribed form, in respect of a taxation year of a particular trust (other than an exempt trust or a trust described in any of paragraphs (*c*) to (*h*) of the definition "exempt foreign trust" in subsection 94(1)) with the Minister on or before the person's filing-due date for the person's taxation year in which the particular trust's taxation year ends if

(*a*) the particular trust is non-resident at a specified time in that taxation year of the particular trust;

(*b*) the person is a contributor, a connected contributor or a resident contributor to the particular trust; and

(*c*) the person

(i) is resident in Canada at that specified time, and

(ii) is not, at that specified time,

(A) a mutual fund corporation,

(B) an exempt person,

(C) a mutual fund trust,

(D) a trust described in any of paragraphs (*a*) to (*e.1*) of the definition "trust" in subsection 108(1),

(E) a registered investment,

(F) a trust in which all persons beneficially interested are persons described in clauses (A) to (E), or

(G) a contributor to the particular trust by reason only of being a contributor to another trust that is resident in Canada and is described in any of clauses (B) to (F).

Similar arrangements

(4.1) In this section and sections 162, 163 and 233.5, a person's obligations under subsection (4) (except to the extent that they are waived in writing by the Minister) are to be determined as if a contributor described in paragraph (4)(*b*) were any person who had transferred or loaned property, an arrangement or entity were a non-resident trust throughout the calendar year that includes the time referred to in paragraph (*a*) and that calendar year were a taxation year of the arrangement or entity, if

(*a*) the person at any time, directly or indirectly, transferred or loaned the property to be held

(i) under the arrangement and the arrangement is governed by the laws of a country or a political subdivision of a country other than Canada or exists, was formed or organized, or was last continued under the laws of a country or a political subdivision of a country other than Canada, or

(ii) by the entity and the entity is a non-resident entity (as defined by subsection 94.1(2));

(*b*) the transfer or loan is not an arm's length transfer;

(*c*) the transfer or loan is not solely in exchange for property that would be described in paragraphs (*a*) to (*i*) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (*j*) to (*q*);

(*d*) the arrangement or entity is not a trust in respect of which the person would, if this Act were read without reference to this subsection, be required to file an information return for a taxation year that includes that time; and

(*e*) the arrangement or entity is, for a taxation year or fiscal period of the arrangement or entity that includes that time, not

(i) an exempt foreign trust (as defined in subsection 94(1)),

(ii) a foreign affiliate in respect of which the person is a reporting entity (within the meaning assigned by subsection 233.4(1)), or

(iii) an exempt trust.

(4) Subsections (1) to (3) apply to returns in respect of trust taxation years that end after 2006. Those subsections also apply to returns in respect of an earlier taxation year of a trust if subsection 94(3) of the Act, as enacted by section 6, applies to the trust for that earlier taxation year. However, the reference to "designated stock exchange" in subsection 233.2(2) of the Act, as enacted by subsection (2), is in its application to a time that is before December 14, 2007 to be read as a reference to "prescribed stock exchange".

(5) A return required to be filed by a person because of subsection 233.2(4) of the Act, as enacted by subsection (3), is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the person's filing-due date for the person's taxation year that includes the day on which this Act is assented to.

21. (1) Subparagraph (*a*)(iv) of the definition "bien étranger déterminé" in subsection 233.3(1) of the French version of the Act is replaced by the following:

(iv) la participation dans une fiducie non-résidente,

(2) Paragraph (*d*) of the definition "specified foreign property" in subsection 233.3(1) of the English version of the Act is replaced by the following:

(*d*) an interest in a non-resident trust,

(3) Subsections (1) and (2) apply to returns in respect of trust taxation years that end after 2006. Those subsections also apply to returns in respect of an earlier taxation year of a trust if subsection 94(3) of the Act, as enacted by section 6, applies to the trust for that earlier taxation year.

22. (1) Paragraph 233.5(*c*) of the Act is replaced by the following:

(*c*) if the return is required to be filed under section 233.2 in respect of a trust, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 and before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that ended before 2007 or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2 in respect of each taxation year of the trust that ended before 2007;

(*c.1*) if the return is required to be filed under section 233.2, at the time of each contribution (determined with reference to subsection 233.2(2)) made by the person or partnership after June 22, 2000 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.2;

(*c.2*) if the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate for the purpose of that section of the person or partnership, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.4; and

(2) Subsection (1) applies to returns in respect of trust taxation years that end after 2006. Subsection (1) also applies to returns in respect of an earlier taxation year of a trust if subsection 94(3) of the Act, as enacted by section 6, applies to that earlier taxation year of the trust.

23. (1) The definition "amount" in subsection 248(1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*b.1*) in the case of a stock dividend paid by a corporation that is, when the dividend is paid, a non-resident corporation, the "amount" of any stock dividend is, except where subsection 95(7) applies to the dividend, the greater of

(i) the amount by which the paid-up capital of the corporation that paid the dividend is increased by reason of the payment of the dividend, and

(ii) the fair market value of the share or shares paid as a stock dividend at the time of payment, and

(2) Subsection (1) applies to dividends declared on or after July 18, 2005.

2001, c. 17

INCOME TAX AMENDMENTS ACT, 2000

24. (1) Paragraph 53(2)(*a*) of the *Income Tax Amendments Act, 2000* is replaced by the following:

(*a*) in respect of transfers that occur after 1999 and before 2007, for the purpose of subsection 73(1) of the Act, as enacted by subsection (1), the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it reads in its application to taxation years that end before 2007;

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

25. (1) Subsection 80(19) of the Act is replaced by the following:

(19) Subsections (1) to (4) apply to the 2000 and subsequent taxation years except that, in respect of transfers after 1999 and before 2007, for the purposes of subsection 107(1) of the Act, as enacted by this section, the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it read in its application to taxation years that end before 2007.

(2) Subsection (1) is deemed to have come into force on June 14, 2001.

INCOME TAX CONVENTIONS INTERPRETATION ACT

26. (1) The *Income Tax Conventions Interpretation Act* is amended by adding the following after section 4.2:

Application of section 94 of the *Income Tax Act*

4.3 Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, if a trust is deemed by subsection 94(3) of the *Income Tax Act* to be resident in Canada for a taxation year for the purposes of computing its income, the trust is deemed to be a resident of Canada, and not a resident of the other contracting state, for the purposes of applying the convention

(*a*) in respect of the trust for that taxation year; and

(*b*) in respect of any other person for any period that includes all or part of that taxation year.

(2) Subsection (1) applies after March 4, 2010.

INCOME TAX REGULATIONS

27. (1) Section 202 of the *Income Tax Regulations* is amended by adding the following after subsection (6):

(6.1) A trust that is deemed by subsection 94(3) of the Act to be resident in Canada for a taxation year for the purposes of computing its income, is deemed, in respect of amounts (other than an exempt amount as defined in subsection 94(1) of the Act) paid or credited by it, to be a person resident in Canada for the taxation year for the purposes of subsections (1) and (2).

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

28. (1) Section 5909 of the Regulations is repealed.

(2) Subsection (1) applies to trust taxation years that end after 2006. Subsection (1) also applies to an earlier taxation year of a trust if subsection 94(3) of the Act, as enacted by section 6, applies to that earlier taxation year.

PART 2

AMENDMENTS IN RESPECT OF FOREIGN AFFILIATES

INCOME TAX ACT

29. (1) Paragraph 53(1)(*d*) of the *Income Tax Act* is replaced by the following:

(*d*) where the property is a share of the capital stock of a foreign affiliate of the taxpayer, any amount required by section 92 to be added in computing the adjusted cost base to the taxpayer of the share;

(2) Subsection (1) applies after December 20, 2002.

30. (1) Subparagraph 88(1)(*d*)(ii) of the Act is replaced by the following:

(ii) in no case shall the amount so designated in respect of any such capital property exceed the amount, if any, by which the fair market value of the property at the time the parent last acquired control of the subsidiary exceeds the total of

(A) the cost amount to the subsidiary of the property immediately before the winding-up, and

(B) the prescribed amount, and

(2) Subparagraph 88(1)(*d*)(iii) of the French version of the Act is replaced by the following:

(iii) le total des sommes ainsi désignées, relativement à toute immobilisation semblable, ne peut en aucun cas dépasser l'excédent du total déterminé selon le sous-alinéa *b*)(ii) sur le total des sommes déterminées selon les sous-alinéas (i) et (i.1);

(3) Section 88 of the Act is amended by adding the following after subsection (1.7):

Application of subsection (1.9)

(1.8) Subsection (1.9) applies if

(*a*) a corporation has made a designation (referred to in this subsection and subsection (1.9) as the "initial designation") under paragraph (1)(*d*) in respect of a share of the capital stock of a foreign affiliate of the corporation, or an interest in a partnership that, based on the assumptions contained in paragraph 96(1)(*c*), owns a share of the capital stock of a foreign affiliate of the corporation, on or before the filing-due date for its return of income under this Part for the taxation year in which a disposition of the share or the partnership interest, as the case may be, occurred in the course of a winding-up referred to in subsection (1) or an amalgamation referred to in subsection 87(11);

(*b*) the corporation made reasonable efforts to determine the foreign affiliate's tax-free surplus balance (within the meaning of subsection 5905(5.5) of the *Income Tax Regulations*), in respect of the corporation, that was relevant in the computation of the maximum amount available under subparagraph (1)(*d*)(ii) to be designated in respect of that disposition; and

(*c*) the corporation amends the initial designation on or before the day that is 10 years after the filing-due date referred to in paragraph (*a*).

Amended designation

(1.9) If this subsection applies and, in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the initial designation to be amended, the amended designation under paragraph (1.8)(*c*) is deemed to have been made on the day on which the initial designation was made and the initial designation is deemed not to have been made.

(4) Subsections (1) and (2) apply to windings-up that begin, and amalgamations that occur, after February 27, 2004.

(5) Subsection (3) applies after December 18, 2009.

31. (1) Section 92 of the Act is amended by adding the following after subsection (1):

Adjustment for prescribed amount

(1.1) The prescribed amount shall be added in computing the adjusted cost base of a share of the capital stock of a foreign affiliate of a corporation resident in Canada to

(*a*) another foreign affiliate of the corporation; or

(*b*) a partnership of which another foreign affiliate of the corporation is a member.

(2) Subsection (1) applies after December 18, 2009.

32. (1) Paragraph 93(1)(*b*) of the Act is replaced by the following:

(*b*) where subsection 40(3) applies to the disposing corporation or disposing affiliate, as the case may be, in respect of the share, the amount deemed by that subsection to be the gain of the disposing corporation or disposing affiliate, as the case may be, from the disposition of the share is, except for the purposes of paragraph 53(1)(*a*), deemed to be equal to the amount, if any, by which

(i) the amount deemed by that subsection to be the gain from the disposition of the share determined without reference to this paragraph

exceeds

(ii) the elected amount.

(2) Subparagraph 93(1.2)(*a*)(ii) of the Act is replaced by the following:

(ii) where subsection (1.3) applies, the prescribed amount

(3) Subsection 93(3) of the Act is amended by striking out the word "and" at the end of paragraph (*a*), by adding the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*b*):

(*c*) the prescribed amount is deemed to be an amount that is received by a particular foreign affiliate of a corporation resident in Canada from another foreign affiliate of the corporation and that is in respect of an exempt dividend on a share of the capital stock of the other affiliate.

(4) Section 93 of the Act is amended by adding the following after subsection (5.1):

Amended election

(5.2) An election (referred to in this subsection as the "amended election") by a taxpayer under subsection (1) in respect of a disposition of shares of the capital stock of a foreign affiliate of the taxpayer is deemed to have been made on the day on or before which the election was so required to be made and any previous election (referred to in this subsection as the "old election") under subsection (1) in respect of that disposition is deemed not to have been effective if

(*a*) the taxpayer has not elected under [section 51 of title of implementing enactment];

(*b*) the taxpayer made the old election on or before December 18, 2009;

(*c*) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the old election to be amended; and

(*d*) the amended election is made in prescribed form on or before December 31, 2012.

(5) Subsection (1) applies in respect of elections made in respect of dispositions that occur after December 18, 2009.

(6) Subsection (2) applies in respect of elections made under subsection 93(1.2) of the Act in respect of dispositions that occur after November 1999.

(7) Subsections (3) and (4) apply after December 18, 2009.

33. (1) The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

F is the prescribed amount for the year,

(2) Clause (*a*)(i)(A) of the definition "investment business" in subsection 95(1) of the Act is replaced by the following:

(A) of each country in which the business is carried on through a permanent establishment in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

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

"permanent establishment" « *établissement stable* »

"permanent establishment" has the meaning assigned by regulation;

(4) Clause 95(2)(*l*)(iii)(A) of the Act is replaced by the following:

(A) of each country in which the business is carried on through a permanent establishment in that country and of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued,

(5) Clause 95(2.3)(*b*)(ii)(A) of the Act is replaced by the following:

(A) under the laws of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued, and under the laws of each country in which the business is carried on through a permanent establishment in that country,

(6) Subparagraph 95(2.4)(*a*)(i) of the Act is replaced by the following:

(i) of the country under whose laws the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment in that country,

(7) Subclause (*c*)(ii)(B)(I) of the definition "indebtedness" in subsection 95(2.5) of the Act is replaced by the following:

(I) under the laws of the country under whose laws the non-resident corporation is governed and any of exists, was (unless the non-resident corporation was con-

tinued in any jurisdiction) formed or organized, or was last continued and under the laws of each country in which the business is carried on through a permanent establishment in that country,

(8) Subsection (1) applies to taxation years of a foreign affiliate of a taxpayer that begin after November 1999.

(9) Subsections (2) to (7) apply to taxation years of a foreign affiliate of a taxpayer that begin after 1999.

34. (1) Subparagraph 152(4)(*b*)(i) of the Act is replaced by the following:

(i) is required under subsection (6) or (6.1), or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in the subsection on or before the day referred to in the subsection,

(2) Subsection 152(6.1) of the Act is replaced by the following:

Reassessment if amount under s. 91(1) is reduced

(6.1) If

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

(*b*) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year (referred to in this paragraph as the "claim year") of the affiliate that ends in the particular year, where the reduction in that foreign accrual property income is

(i) attributable to a foreign accrual property loss (within the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*) of the affiliate for a taxation year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(ii) included in the description of F in the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the claim year, and

(*c*) the taxpayer has filed with the Minister, on or before the filing-due date for that subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the particular year.

(3) Subsections (1) and (2) apply to taxation years that begin after November 1999.

35. (1) The portion of paragraph 161(7)(*a*) of the Act before subparagraph (i) is replaced by the following:

(*a*) the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction, reduction or exclusion of the following amounts were not taken into consideration:

(2) Paragraph 161(7)(*a*) of the Act is amended by striking out "and" at the end of subparagraph (x) and by adding the following after subparagraph (xi):

(xii) any amount by which the amount included under subsection 91(1) for the year is reduced because of a reduction referred to in paragraph 152(6.1)(*b*) in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year of the affiliate that ends in the year; and

(3) Subparagraph 161(7)(*b*)(iii) of the Act is replaced by the following:

(iii) where an amended return of a taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under subsection 49(4) or 152(6) or (6.1) or paragraph 164(6)(*e*), the day on which the amended return or prescribed form was filed, and

(4) Subsections (1) to (3) apply to taxation years that begin after December 18, 2009.

36. (1) Subsection 164(5) of the Act is amended by striking out "or" at the end of paragraph (*h.2*), by adding "or" at the end of paragraph (*h.3*), and by adding the following after paragraph (*h.3*):

(*h.4*) the reduction of the amount included under subsection 91(1) for the year because of a reduction referred to in paragraph 152(6.1)(*b*) in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year of the affiliate that ends in the year; and

(2) Paragraph 164(5)(*k*) of the Act is replaced by the following:

(*k*) where an amended return of a taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed under paragraph (6)(*e*) or subsection 49(4) or 152(6) or (6.1), the day on which the amended return or prescribed form was filed, and

(3) Subsections (1) and (2) apply to taxation years that begin after December 18, 2009.

37. (1) The portion of subsection 256(7) of the Act before paragraph (*a*) is replaced by the following:

Acquiring control

(7) For the purposes of this subsection, of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), sections 18.1 and 37, subsection 40(3.4), the definition "superficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(*h*), subsections 85(1.2), 88(1.1) and (1.2) and 110.1(1.2), sections 111 and 127 and subsection 249(4) and of subsection 5905(5.2) of the *Income Tax Regulations*,

(2) Subsection (1) applies after December 18, 2009.

38. (1) The portion of subparagraph 261(5)(*h*)(i) of the Act before clause (A) is replaced by the following:

(i) the references in section 95 (other than paragraph 95(2)(*f.15*)) and the references in regulations made for the purposes of section 95 or 113 to

(2) The portion of subsection 261(15) of the Act before paragraph (*a*) is replaced by the following:

Amounts carried back

(15) For the purposes of determining the amount that may be deducted, in respect of a particular amount that arises in a taxation year (referred to in this subsection as the "later year") of a taxpayer, under section 111 or subsection 126(2), 127(5), 181.1(4) or 190.1(3) in computing the taxpayer's Canadian tax results for a taxation year (referred to in this subsection as the "current year") that ended before the later year, and for the purposes of determining the amount by which the amount included under subsection 91(1) for the current year is reduced because of a reduction referred to in paragraph 152(6.1)(*b*) in respect of the later year,

(3) Subsection (1) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 18, 2009.

(4) Subsection (2) applies after December 13, 2007.

BUDGET AND ECONOMIC STATEMENT IMPLEMENTATION ACT, 2007

39. (1) The read-as text in paragraph 26(27)(*b*) of the *Budget and Economic Statement Implementation Act, 2007* is replaced by the following:

"controlled foreign affiliate", at any time of a taxpayer resident in Canada, means a foreign affiliate of the taxpayer that

(*a*) is, at that time, controlled

(i) by the taxpayer,

(ii) by the taxpayer and not more than four other persons resident in Canada, or

(iii) by not more than four persons resident in Canada, other than the taxpayer, or

(*b*) would, at that time, be controlled by the taxpayer if the taxpayer owned

(i) each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any of not more than four other persons resident in Canada,

(ii) each share of the capital stock of a corporation that is owned at that time by any of not more than four persons resident in Canada (other than the taxpayer), or

(iii) each share of the capital stock of a corporation that is owned at that time by the taxpayer and each share of the capital stock of a corporation that is owned at that time by any person with whom the taxpayer does not deal at arm's length;

(2) The portion of paragraph 26(35)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007,

(3) The portion of subsection 26(37) of the English version of the Act before the read-as text is replaced by the following:

(37) Subject to subsection (46), paragraphs 95(2)(*g*) to (*g.03*) of the Act, as enacted by subsection (13), apply to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002, except that, for taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002 and before 2009, paragraph 95(2)(*g.03*) of the Act, as enacted by subsection (13), shall be read as if the references to "qualified foreign affiliate" were references to "qualified foreign corporation" and paragraph 95(2)(*g*) of the Act, as enacted by subsection (13), shall be read as follows:

(4) Subsection 26(38) of the Act is replaced by the following:

(38) Subject to subsection (46), paragraphs 95(2)(*n*) and (*p*), (*r*) to (*t*), (*v*) and (*y*) of the Act, as enacted by subsection (16), apply to taxation years, of a foreign affiliate of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007, paragraph 95(2)(*n*) of the Act, as enacted by subsection (16), applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(5) Subsection 26(40) of the Act is replaced by the following:

(40) Paragraph 95(2)(*u*) of the Act, as enacted by subsection (16), applies in respect of taxation years, of foreign affiliates of a taxpayer, that end after 1999. However, if a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007, paragraph 95(2)(*u*) of the Act, as enacted by subsection (16), applies in respect of taxation years, of all foreign affiliates of the taxpayer, that begin after 1994.

(6) The portion of paragraph 26(42)(*b*) of the Act before the read-as text is replaced by the following:

(*b*) if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007, subsection 95(2.2) of the Act, as enacted by subsection (19), also applies to taxation years, of all its foreign affiliates, that begin after 1994 and end before 2000, as though subsection 95(2.2) of the Act, as enacted by subsection (19), read as follows:

(7) Subsections 26(44) and (45) of the Act are replaced by the following:

(44) Subject to subsection (46), subsection (24) applies to the 2001 and subsequent taxation years of a foreign affiliate of a taxpayer. However, if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the day

that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007, that subsection applies to taxation years, of all its foreign affiliates, that begin after 1994.

(45) Subsection (25) applies to taxation years, of a foreign affiliate of a taxpayer, that begin after December 20, 2002. However, if a taxpayer elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007, subsections (11) and (25) apply to taxation years, of all its foreign affiliates, that begin after 1994.

(8) The portion of subsection 26(46) of the Act before paragraph (*a*) is replaced by the following:

(46) If a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the day that is 18 months after the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2007,

(9) Subsection 26(47) of the Act is replaced by the following:

(47) If a taxpayer has made what would, but for this subsection, be a valid election under any of paragraph (35)(*b*), subsections (38) and (40), paragraph (42)(*b*) and subsections (44) to (46) and the taxpayer has, on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes December 14, 2010, filed with the Minister of National Revenue a notice in writing to revoke the election, the election is deemed, otherwise than for the purpose of this subsection, never to have been made.

(10) Subsection 26(48) of the Act is replaced by the following:

(48) Any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that ends before December 14, 2007 and would, in the absence of this subsection, be precluded because of subsections 152(4) to (5) of the Act shall be made to the extent necessary to take into account any of the following:

(*a*) an election made by the taxpayer under any of subsections (35), (38), (40), (42) and (44) to (46) or a revocation referred to in subsection (47) or any provision of this section in respect of which an election is made under any of those subsections by the taxpayer; or

(*b*) subsection 10(3) or any provision of this section (other than any provision referred to in paragraph (*a*) in respect of which the taxpayer has made an election referred to in paragraph (*a*)), if the taxpayer

(i) elects in writing in respect of all of its foreign affiliates that this subsection apply in respect of that provision, and

(ii) files that election with the Minister of National Revenue on or before June 30, 2011.

(11) Subsections (1) to (10) are deemed to have come into force on December 14, 2007.

40. (1) Subsection 5900(3) of the *Income Tax Regulations* is replaced by the following:

(3) For the purposes of subsection 91(5) of the Act, if a person resident in Canada (other than a corporation) receives a dividend on a share of any class of the capital stock of a foreign affiliate of the person, the dividend is prescribed to have been paid out of the taxable surplus of the affiliate.

(2) Subsection (1) applies in respect of dividends received after November 1999.

41. (1) Subsections 5902(1) to (3) of the Regulations are replaced by the following:

5902. (1) If at any time a dividend (such time and each such dividend, respectively, referred to in this subsection and subsection (2) as the "dividend time" and an "elected dividend") is, by virtue of an election made under subsection 93(1) of the Act by a corporation in respect of a disposition, deemed to have been received on a share (each such share referred to in this subsection as an "elected share") of a class of the capital stock of a particular foreign affiliate of the corporation, the following rules apply:

(*a*) for the purposes of subsection 5900(1), in applying the provisions of subsection 5901(1),

(i) the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus, in respect of the corporation at the dividend time, are deemed to be those amounts that would otherwise be determined immediately before the dividend time if

(A) each other foreign affiliate of the corporation in which the affiliate had an equity percentage (within the meaning assigned by subsection 95(4) of the Act) at the dividend time had, immediately before the time that is immediately before the dividend time, paid a dividend equal to its net surplus in respect of the corporation, determined immediately before the time the dividend was paid, and

(B) any dividend referred to in clause (A) that any other foreign affiliate would have received had been received by it immediately before any such dividend that it would have paid, and

(ii) the particular affiliate is deemed to have paid a whole dividend at the dividend time on the shares of that class of its capital stock in an amount determined by the formula

$$A \times B$$

where

A is the total of all amounts each of which is the amount of an elected dividend, and

B is the greater of

(A) one, and

(B) the quotient determined by the formula

C/D

where

C is the amount of the particular affiliate's net surplus determined under subparagraph (*a*)(i), and

D is the greater of

(I) one unit of the currency in which the amount determined for C is expressed, and

(II) the amount that would have been received on the elected shares if the particular affiliate had at the dividend time paid dividends on all shares of its capital stock the total of which was equal to the amount of its net surplus referred to in subparagraph (*a*)(i); and

(*b*) subject to paragraph 5905(5)(*c*), there is to be included, at the dividend time,

(i) under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the particular affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any elected dividend that is prescribed by paragraph 5900(1)(*a*) to have been paid out of the exempt surplus of the particular affiliate,

(ii) under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1) in computing the particular affiliate's taxable surplus or taxable deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any elected dividend that is prescribed by paragraph 5900(1)(*b*) to have been paid out of the taxable surplus of the particular affiliate, and

(iii) under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1) in computing the particular affiliate's underlying foreign tax in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the amount prescribed by paragraph 5900(1)(*d*) to be the foreign tax applicable to such portion of any elected dividend as is prescribed by paragraph 5900(1)(*b*) to have been paid out of the taxable surplus of the particular affiliate.

(2) In this section,

(*a*) for the purpose of paragraph (1)(*a*),

(i) in determining the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, the underlying foreign tax and the net surplus of a particular foreign affiliate of a taxpayer resident in Canada in which any other foreign affiliate of the taxpayer has

an equity percentage (within the meaning assigned by subsection 95(4) of the Act), no amount shall be included in respect of any distribution that would be received by the particular affiliate from that other affiliate, and

(ii) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is the portion of its exempt surplus or exempt deficit and its taxable surplus (including underlying foreign tax applicable) or taxable deficit (and thus net surplus) that, in the circumstances, would reasonably be expected to have been paid on all the shares of that class; and

(*b*) the specified adjustment factor in respect of a disposition is the amount determined by the formula

A/B

where

A is

(i) if the elected dividend is received by the corporation, 100 per cent, and

(ii) if the elected dividend is received by another foreign affiliate of the corporation, the surplus entitlement percentage of the corporation in respect of the other affiliate immediately before the dividend time, and

B is the surplus entitlement percentage of the corporation in respect of the particular affiliate immediately before the dividend time.

(2) Paragraph 5902(6)(*b*) of the Regulations is replaced by the following:

(*b*) the amount that would reasonably be expected to have been received in respect of the share if the particular affiliate had at that time paid dividends on all shares of its capital stock the total of which was equal to the amount determined under subparagraph (1)(*a*)(i) to be its net surplus in respect of the corporation for the purposes of the election.

(3) Subsections (1) and (2) apply in respect of elections made in respect of dispositions that occur after December 18, 2009. However, in applying subsection 5905(5.6) of the Regulations, as enacted by subsection 44(6), subparagraph 5902(1)(*a*)(i) of the Regulations, as enacted by subsection (1), also applies after December 18, 2009.

42. (1) Section 5903 of the Regulations is replaced by the following:

5903. (1) For the purposes of the description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act, subject to subsection (2), the prescribed amount for a year (referred to in this subsection and subsection (2) as the "particular year") is the total of all amounts each of which is a portion designated for the particular year by the taxpayer of the foreign accrual property loss of the affiliate for a taxation year of the affiliate that is

(*a*) one of the twenty taxation years of the affiliate that immediately precede the particular year; or

(*b*) one of the three taxation years of the affiliate that immediately follow the particular year.

(2) For the purposes of this subsection and subsection (1),

(*a*) a portion of a foreign accrual property loss of the affiliate for any taxation year of the affiliate may be designated for the particular year only to the extent that the foreign accrual property loss exceeds the total of all amounts each of which is a portion, of the foreign accrual property loss, designated by the taxpayer for a taxation year of the affiliate that precedes the particular year;

(*b*) no portion of the foreign accrual property loss of the affiliate for a taxation year of the affiliate is to be designated for the particular year until the foreign accrual property losses of the affiliate for the preceding taxation years referred to in paragraph (1)(*a*) have been fully designated; and

(*c*) if any person or partnership that was, at the end of a taxation year (referred to in this paragraph as the "relevant loss year") of the affiliate, a relevant person or partnership in respect of the taxpayer designates for a taxation year (referred to in this paragraph as the "relevant claim year") of the affiliate a particular portion of the foreign accrual property loss of the affiliate for the relevant loss year, there is deemed to have been designated for the relevant claim year by the taxpayer the portion of that loss that is the greater of

(i) the particular portion, and

(ii) the greatest of the portions of that loss that are so designated by any other relevant persons or partnerships in respect of the taxpayer.

(3) For the purposes of this section, and subject to subsection (4), "foreign accrual property loss" of the affiliate for a taxation year of the affiliate means

(*a*) where, at the end of the year, the affiliate is a controlled foreign affiliate of a person or partnership that is, at the end of the year, a relevant person or partnership in respect of the taxpayer, the amount, if any, by which

(i) the total of the amounts determined for D, E, G and H in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the total of the amounts determined for A to C in that formula in that definition in respect of the affiliate for the year; and

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

(4) In computing under subsection (3) the foreign accrual property loss of the affiliate for a taxation year, if the affiliate or another corporation receives a payment described in subsection 5907(1.3) from a non-resident corporation that is, at the time of the payment, a foreign affiliate of a relevant person or partnership in respect of the taxpayer and any portion of the payment can reasonably be considered to relate to a loss or portion of a loss of the affiliate for the year described in the description of D or E in the definition "foreign accrual property

income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss is deemed to be nil.

(5) For the purpose of this section,

(*a*) if there is a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more foreign affiliates of a taxpayer resident in Canada in respect of each of which the taxpayer's surplus entitlement percentage immediately before the merger is not less than 90 per cent to form one corporate entity in respect of which the taxpayer's surplus entitlement percentage immediately after the merger is not less than 90 per cent, the corporate entity is deemed to be the same corporation as, and a continuation of, each of those predecessor affiliates; and

(*b*) if there is a liquidation and dissolution of a foreign affiliate of a taxpayer resident in Canada in respect of which the taxpayer's surplus entitlement percentage immediately before the liquidation and dissolution is not less than 90 per cent into another foreign affiliate of the taxpayer in respect of which the taxpayer's surplus entitlement percentage immediately before and immediately after the liquidation and dissolution is not less than 90 per cent, the other affiliate is deemed to be the same corporation as, and a continuation of, that predecessor affiliate.

(6) In this section, a "relevant person or partnership" in respect of the taxpayer, at any time, means the taxpayer or a person (other than a designated acquired corporation of the taxpayer), or a partnership, that is at that time

(*a*) a person (other than a partnership) that is resident in Canada and does not, at that time, deal at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) with the taxpayer;

(*b*) an antecedent corporation of a relevant person or partnership in respect of the taxpayer;

(*c*) a partnership a member of which is at that time a relevant person or partnership in respect of the taxpayer under this subsection; or

(*d*) where paragraph (1)(*b*) is being applied, a corporation of which the taxpayer is an antecedent corporation.

(7) For the purposes of paragraphs (6)(*a*) to (*d*),

(*a*) if a person or partnership (referred to in this subsection as the "relevant person") is not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) with another person or partnership (referred to in this paragraph as the "particular person") at a particular time, the relevant person is deemed to have existed and not to have dealt at arm's length with the particular person, nor with each antecedent corporation (other than a designated acquired corporation of the particular person) of the particular person, throughout the period that began when the particular person or the antecedent corporation, as the case may be, came into existence and that ends at the particular time; and

(*b*) where paragraph (1)(*b*) is being applied, if a corporation of which a particular person (other than a designated acquired corporation of the corporation) is an antecedent corporation is not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) with another person or partnership at any time, the particular person is deemed to exist and not to be dealing at arm's length with the other person or the partnership, as the case may be, at that time.

(2) Subsection (1) applies to taxation years of a foreign affiliate of a taxpayer that begin after November 1999, except that

(*a*) "twenty taxation years" in paragraph 5903(1)(*a*) of the Regulations, as enacted by subsection (1), is, in respect of foreign accrual property losses for taxation years of the foreign affiliate that end in taxation years of the taxpayer that end

(i) before March 23, 2004, to be read as "seven taxation years", and

(ii) after March 22, 2004 and before 2006, to be read as "ten taxation years";

(*b*) in its application to taxation years that begin before 2001, section 5903 of the Regulations, as enacted by subsection (1), is to be read without reference to its paragraph 5903(2)(*b*);

(*c*) paragraph 5903(3)(*a*) of the Regulations, as enacted by subsection (1), is, in its application to taxation years of the foreign affiliate that begin on or before December 18, 2009, to be read as follows:

(*a*) where, at the end of the year, the affiliate is a controlled foreign affiliate of a person or partnership that is, at the end of the year, a relevant person or partnership in respect of the taxpayer, the amount, if any, by which

(i) the total of the amounts determined for D and E in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the total of the amounts determined for A, B and C in that formula in that definition in respect of the affiliate for the year; and

(*d*) subsection 5903(4) of the Regulations, as enacted by subsection (1), is, in its application to taxation years of the foreign affiliate that begin on or before December 18, 2009, to be read as follows:

(4) In computing under subsection (3) the foreign accrual property loss of the affiliate for a taxation year, if the affiliate or another corporation has received a payment described in subsection 5907(1.3) from another foreign affiliate of the taxpayer and any portion of the payment can reasonably be considered to relate to a loss or portion of a loss of the affiliate for the year described in the description of D or E in the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss is deemed to be nil.

(*e*) subsection 5903(6) of the Regulations, as enacted by subsection (1), is, in its application to taxation years of the foreign affiliate that begin on or before December 18, 2009, to be read as follows:

(6) In this section, a "relevant person or partnership", in respect of a taxpayer, at any time means

(*a*) the taxpayer;

(*b*) any person with whom the taxpayer was not dealing at arm's length;

(*c*) any person with whom the taxpayer would not have been dealing at arm's length if the person had been in existence after the taxpayer came into existence;

(*d*) any predecessor corporation (within the meaning assigned by subsection 87(1) of the Act) of a person described in any of paragraphs (*a*) to (*c*); or

(*e*) any predecessor corporation (within the meaning assigned by paragraph 87(2)(*l.2*) of the Act) of a person described in any of paragraphs (*a*) to (*c*).

(*f*) in its application to taxation years that begin on or before December 18, 2009, section 5903 of the Regulations, as enacted by subsection (1), is to be read without reference to its subsection (7).

43. (1) Paragraph 5904(3)(*a*) of the Regulations is replaced by the following:

(*a*) the net surplus of a foreign affiliate of a person resident in Canada is, in respect of that person, to be computed as if that person were a corporation resident in Canada;

(2) Subsection (1) applies to taxation years of a foreign affiliate of a taxpayer that begin after November 1999.

44. (1) Subsection 5905(1) of the Regulations is replaced by the following:

5905. (1) If, at any time, there is an acquisition or a disposition of shares of the capital stock of a particular foreign affiliate of a corporation resident in Canada and the surplus entitlement percentage of the corporation in respect of the particular foreign affiliate or any other foreign affiliate (the particular affiliate and those other affiliates being referred to individually in this subsection as a "relevant affiliate") of the corporation in which the particular affiliate has an equity percentage (within the meaning assigned by subsection 95(4) of the Act) changes, for the purposes of the definitions "exempt surplus", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), each of the opening exempt surplus or opening exempt deficit, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, as the case may be, of the relevant affiliate in respect of the corporation is, except where the acquisition or disposition occurs in a transaction to which paragraph (3)(*a*) or subsection (5) or (5.1) applies, the amount determined at that time by the formula

$$A \times B/C$$

where

A is the amount of that surplus, deficit or tax, as the case may be, as otherwise determined at that time;

B is the corporation's surplus entitlement percentage immediately before that time in respect of the relevant affiliate; and

C is the corporation's surplus entitlement percentage immediately after that time in respect of the relevant affiliate.

(2) Subsection 5905(2) of the Regulations is repealed.

(3) Subsections 5905(3) and (4) of the Regulations are replaced by the following:

(3) Where at any time (referred to in this subsection as the "merger time") a foreign affiliate (referred to in this subsection as the "merged affiliate") of a corporation resident in Canada has been formed as a result of a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) of two or more corporations (referred to individually in this subsection as a "predecessor corporation"), the following rules apply:

(*a*) for the purposes of the definitions "exempt surplus", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), as they apply in respect of the merged affiliate,

(i) the merged affiliate's opening exempt surplus, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the exempt surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time exceeds the total of all amounts each of which is the exempt deficit of a predecessor corporation, in respect of the corporation, immediately before the merger time,

(ii) the merged affiliate's opening exempt deficit, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the exempt deficit of a predecessor corporation, in respect of the corporation, immediately before the merger time exceeds the total of all amounts each of which is the exempt surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time,

(iii) the merged affiliate's opening taxable surplus, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the taxable surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time exceeds the total of all amounts each of which is the taxable deficit of a predecessor corporation, in respect of the corporation, immediately before the merger time, and

(iv) the merged affiliate's opening taxable deficit, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the taxable deficit of a predecessor corporation, in respect of the corporation, immediately before the merger time exceeds the total of all amounts each of which is the taxable surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time, and

(v) the merged affiliate's opening underlying foreign tax in respect of the corporation shall be the total of all amounts each of which is the underlying foreign tax of a predecessor corporation, in respect of the corporation, immediately before the merger time;

(*b*) for the purposes of paragraph (*a*),

(i) each of the exempt surplus or exempt deficit, taxable surplus or taxable deficit and underlying foreign tax, in respect of the corporation, of each predecessor corporation immediately before the merger time is deemed to be the amount determined by the formula

$$A \times B/C$$

where

A is the amount of that surplus, deficit or tax, as the case may be, as otherwise determined,

B is the surplus entitlement percentage of the corporation immediately before the merger time in respect of the predecessor corporation, and

C is the percentage that would be the surplus entitlement percentage of the corporation immediately after the merger time in respect of the merged affiliate if the net surplus of the merged affiliate were the total of all amounts each of which is the net surplus of a predecessor corporation immediately before the merger time, but

(ii) the values for A, B and C in the formula in subparagraph (i) shall take into account the application of paragraph 5902(1)(*b*) and subsection 5907(8) in respect of the merger; and

(*c*) in respect of any foreign affiliate (other than a predecessor corporation) of the corporation in which a predecessor corporation had an equity percentage (within the meaning assigned by subsection 95(4) of the Act) immediately before the merger time, for the purposes of subsection (1), there is deemed to be an acquisition or a disposition of shares of the capital stock of that affiliate at the merger time.

(4) Subsection 5905(5) of the Regulations is replaced by the following:

(5) If there is, at any time, a disposition by a corporation (referred to in this subsection as the "disposing corporation") resident in Canada of any of the shares (referred to in this subsection as the "disposed shares") of the capital stock of a particular foreign affiliate of the disposing corporation to a taxable Canadian corporation (referred to in this subsection as the "acquiring corporation") with which the disposing corporation is not dealing at arm's length,

(*a*) each of the opening exempt surplus or opening exempt deficit, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, in respect of the acquiring corporation, of the particular affiliate and of each foreign affiliate of the disposing corporation in which the particular affiliate has, immediately before that time, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be the amount, if any,

(i) in the case of its opening exempt surplus, by which the total of its exempt surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its exempt deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(ii) in the case of its opening exempt deficit, by which the total of its exempt deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its exempt surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(iii) in the case of its opening taxable surplus, by which the total of its taxable surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its taxable deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(iv) in the case of its opening taxable deficit, by which the total of its taxable deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its taxable surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, and

(v) in the case of its opening underlying foreign tax, that is the total of its underlying foreign tax in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time;

(*b*) for the purpose of paragraph (*a*), each of the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax of an affiliate in respect of the disposing corporation and the acquiring corporation, determined immediately before that time, is deemed to be the amount determined by the formula

$$A \times B/C$$

where

A is the amount of that surplus, deficit or tax, as the case may be, as determined without reference to this subsection but taking into account the application of subparagraph (*c*)(i), if applicable,

B is the surplus entitlement percentage immediately before that time of the disposing corporation or the acquiring corporation, as the case may be, in respect of the affiliate, determined as if the disposed shares were the only shares owned by the disposing corporation immediately before that time, and

C is the surplus entitlement percentage immediately after that time of the acquiring corporation in respect of the affiliate;

(*c*) if the disposing corporation makes an election under subsection 93(1) of the Act in respect of the disposed shares,

(i) for the purposes of paragraph (*b*), the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax of an affiliate in respect of the disposing corporation, as determined without reference to this subsection, immediately before that time, shall be adjusted in accordance with paragraph 5902(1)(*b*) as if the disposing corporation's surplus entitlement percentage that is referred to in the description of B in paragraph 5902(2)(*b*) were determined as if the disposed shares were the only shares owned by the disposing corporation immediately before that time, and

(ii) no adjustment shall be made to the amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax of an affiliate in respect of the disposing corporation under paragraph 5902(1)(*b*) other than for the purpose of paragraph (*b*); and

(*d*) for greater certainty, no adjustment shall be made under subsection (1) to the exempt surplus or exempt deficit, taxable surplus or taxable deficit, or underlying foreign tax of an affiliate in respect of the disposing corporation.

(5.1) If there is, at any time, an amalgamation within the meaning of subsection 87(1) of the Act and, as a result of the amalgamation, shares of the capital stock of a particular foreign affiliate of a predecessor corporation become property of the new corporation,

(*a*) each of the opening exempt surplus or opening exempt deficit, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, in respect of the new corporation, of the particular affiliate and of each foreign affiliate of the predecessor corporation in which the particular affiliate has, immediately before that time, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be the amount, if any,

(i) in the case of its opening exempt surplus, by which the total of its exempt surplus in respect of each predecessor corporation, determined immediately before that time, exceeds the total of its exempt deficit in respect of each predecessor corporation, determined immediately before that time,

(ii) in the case of its opening exempt deficit, by which the total of its exempt deficit in respect of each predecessor corporation, determined immediately before that time, exceeds the total of its exempt surplus in respect of each predecessor corporation, determined immediately before that time,

(iii) in the case of its opening taxable surplus, by which the total of its taxable surplus in respect of each predecessor corporation, determined immediately before that time, exceeds the total of its taxable deficit in respect of each predecessor corporation, determined immediately before that time,

(iv) in the case of its opening taxable deficit, by which the total of its taxable deficit in respect of each predecessor corporation, determined immediately before that time, exceeds the total of its taxable surplus in respect of each predecessor corporation, determined immediately before that time, and

(v) in the case of its opening underlying foreign tax, that is the total of its underlying foreign tax in respect of each predecessor corporation, determined immediately before that time; and

(*b*) for the purpose of paragraph (*a*), each of the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax of an affiliate in respect of a predecessor corporation, determined immediately before that time, is deemed to be the amount determined by the formula

$$A \times B/C$$

where

A is the amount of that surplus, deficit or tax, as the case may be, as determined without reference to this subsection,

B is the predecessor corporation's surplus entitlement percentage immediately before that time in respect of the affiliate, and

C is the new corporation's surplus entitlement percentage immediately after that time in respect of the affiliate.

(5.11) Subsection (5.12) applies if

(*a*) in the case of a winding-up, an amount has been designated, under paragraph 88(1)(*d*) of the Act by the corporation (referred to in this subsection and subsection (5.12) as the "parent corporation") described in subsection 88(1) of the Act as the parent, in respect of

(i) shares of the capital stock of a corporation (referred to in this subsection and subsection (5.12) as the "particular affiliate") that is, immediately before the winding-up, a foreign affiliate of the corporation (referred to in this subsection and subsection (5.12) as the "subsidiary corporation") resident in Canada that is described in that subsection 88(1) as the subsidiary, or

(ii) an interest in a partnership that holds shares described in subparagraph (i); or

(*b*) in the case of an amalgamation, an amount has been designated, under paragraph 88(1)(*d*) of the Act by the corporation (referred to in this subsection and subsection (5.12) as the "parent corporation") described in subsection 87(11) of the Act as the parent, in respect of

(i) shares of the capital stock of a corporation (referred to in this subsection and subsection (5.12) as the "particular affiliate") that is, immediately before the amalgamation, a foreign affiliate of the corporation (referred to in this subsection and subsection (5.12) as the "subsidiary corporation") resident in Canada that is described in that subsection 87(11) as the subsidiary, or

(ii) an interest in a partnership that holds shares described in subparagraph (i).

(5.12) If this subsection applies, the following rules apply for the purposes of subsections (5) and (5.1):

(*a*) each amount of the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, in respect of the subsidiary corporation, of the particular affiliate and of all foreign affiliates of the subsidiary corporation in which the particular affiliate has, immediately before the winding-up or the amalgamation, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be, immediately before the winding-up or the amalgamation, nil; and

(*b*) each amount (referred to individually in this paragraph as a "relevant balance") of the exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, in respect of the parent corporation, of the particular affiliate and of all foreign affiliates (referred to individually in this paragraph as a "lower-tier affiliate") of the parent corporation in which the particular affiliate has, immediately before the winding-up or the amalgamation, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be, immediately before the winding-up or the amalgamation, the amount that would be determined to be the relevant balance if

(i) in addition to shares or partnership interests, if any, held by the parent corporation that are relevant in computing any relevant balance of the particular affiliate or any lower-tier affiliate of the parent corporation, in respect of the parent corporation, any shares of the capital stock of the particular affiliate, and any interests in partnerships that hold such shares, that were held by the subsidiary corporation at any time in the period (referred to in this paragraph as the "control period") that begins at the first time referred to in subparagraph 88(1)(*d*)(ii) of the Act and ends immediately before the winding-up or the amalgamation, that are relevant in computing any relevant balance of the particular affiliate or any lower-tier affiliate of the subsidiary corporation, in respect of the subsidiary corporation, were held by the parent corporation at the same time in the control period that they were held by the subsidiary corporation,

(ii) the parent corporation had acquired, at that first time, all the shares and partnership interests held, at that first time, by the subsidiary corporation that are relevant in computing any relevant balance of the particular affiliate or any lower-tier affiliate of the subsidiary corporation, in respect of the subsidiary corporation, and

(iii) where the subsidiary corporation acquired or disposed of any shares or partnership interests in the control period that are relevant in computing any relevant balance of the particular affiliate or any lower-tier affiliate of the subsidiary corporation, in respect of the subsidiary corporation, the parent corporation is deemed to have acquired or disposed of, as the case may be, the shares or partnership interests at the same time they were acquired or disposed of by the subsidiary corporation.

(5.13) For the purpose of clause (B) of subparagraph 88(1)(*d*)(ii) of the Act, the prescribed amount is

(*a*) if the property described in that subparagraph is a share of the capital stock of a foreign affiliate of the subsidiary or if that property is an interest in a partnership that holds one or more such shares, the amount determined by the formula

$$A \times B/C$$

where

A is the total of all amounts each of which is the amount, if any, by which

(i) the amount of a dividend received, after the particular time at which the parent last acquired control of the subsidiary, on any share of the capital stock of the foreign affiliate (or any share of the capital stock of the foreign affiliate for which that share was substituted) held by the subsidiary or the partnership, as the case may be, immediately before the winding-up, that was deductible under paragraph 113(1)(*a*) or (*b*) of the Act in computing the taxable income of the subsidiary or of a corporation with which the subsidiary was not dealing at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act in respect of the foreign affiliate)

exceeds

(ii) the portion of that dividend that may reasonably be considered to have reduced the foreign affiliate's exempt surplus or taxable surplus in respect of the subsidiary that arose after the particular time (determined as if a dividend were paid out of the foreign affiliate's exempt surplus or taxable surplus, as the case may be, in respect of the subsidiary, in the reverse order to that in which that surplus of the foreign affiliate in respect of the subsidiary arose),

B is the fair market value of the property immediately before the winding-up, and

C is

(i) if the property is a share, the fair market value, immediately before the winding-up, of all of the shares of the capital stock of the foreign affiliate held by the subsidiary immediately before the winding-up, and

(ii) if the property is an interest in a partnership, the fair market value of the interest in the partnership immediately before the winding-up; and

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

(5) Subsections 5905(5.11) to (5.13) of the Regulations, as enacted by subsection (4), are repealed.

(6) Section 5905 of the Regulations is amended by adding the following in numerical order:

(5.2) Where, at a particular time, control of a corporation resident in Canada has been acquired by a person or a group of persons and, at the particular time, the corporation owns shares of the capital stock of a foreign affiliate of the corporation, there shall be included — under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing the affiliate's exempt surplus or exempt deficit, as the case may be, in respect of the corporation at the time that is immediately before the particular time — the amount, if any, determined by the formula

$$(A + B - C)/D$$

where

A is the amount determined by the formula

$$E \times F$$

where

E is the tax-free surplus balance of the affiliate in respect of the corporation, determined at the time (referred to in this subsection as the "relevant time") that is immediately before the time that is immediately before the particular time, and

F is the corporation's surplus entitlement percentage in respect of the affiliate determined at the relevant time;

B is the total of all amounts each of which is the corporation's cost amount, determined at the particular time, of a share of the capital stock of the affiliate that is owned by the corporation at the particular time;

C is the total of

(*a*) the fair market value, determined at the particular time, of all of the shares of the capital stock of the affiliate that are owned by the corporation at the particular time, and

(*b*) the amount, if any, determined under paragraph 5908(6)(*b*); and

D is the corporation's surplus entitlement percentage in respect of the affiliate determined at the relevant time.

(5.3) The cost amount of a share that is referred to in the description of B in subsection (5.2) shall be determined after taking into account the application of subsection 111(4) of the Act.

(5.4) For the purposes of clause (B) of subparagraph 88(1)(*d*)(ii) of the Act, the prescribed amount is

(*a*) if the property described in that subparagraph is a share of the capital stock of a foreign affiliate of the subsidiary, the amount determined by the formula

$$A \times B$$

where

A is the tax-free surplus balance of the affiliate, in respect of the subsidiary, determined at the time at which the parent last acquired control of the subsidiary, and

B is the percentage that would be the subsidiary's surplus entitlement percentage, determined at that time, in respect of the affiliate if at that time the subsidiary had owned no shares of the capital stock of the affiliate other than the share;

(*b*) if the property described in that subparagraph is an interest in a partnership, the amount determined by subsection 5908(7); and

(*c*) in any other case, nil.

(5.5) For the purposes of subsections (5.2), (5.4), (7.2) and (7.3), the "tax-free surplus balance" of a foreign affiliate of a corporation resident in Canada, in respect of the corporation, at any time, is the total of

(*a*) the amount, if any, by which the affiliate's exempt surplus in respect of the corporation at that time exceeds the affiliate's taxable deficit in respect of the corporation at that time; and

(*b*) the lesser of

(i) the amount, if any, determined by the formula

$$A \times B$$

where

A is the affiliate's underlying foreign tax in respect of the corporation at that time, and

B is the amount by which the corporation's relevant tax factor, for the corporation's taxation year that includes that time, exceeds one, and

(ii) the amount, if any, by which the affiliate's taxable surplus in respect of the corporation at that time exceeds the affiliate's exempt deficit in respect of the corporation at that time.

(5.6) For the purposes of subsection (5.5), the amounts of exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax of a foreign affiliate of corporation resident in Canada, in respect of the corporation, at a particular time are those amounts that would be determined, at the particular time, under subparagraph 5902(1)(*a*)(i) if that subparagraph were applicable at the particular time and the references in that subparagraph to "the dividend time" were references to the particular time.

(7) Subsection 5905(6) of the Regulations is repealed.

(8) Section 5905 of the Regulations is amended by adding the following after subsection (7):

(7.1) Subsection (7.2) applies if

(*a*) a foreign affiliate (referred to in this subsection and subsections (7.2) to (7.6) as the "deficit affiliate") of a corporation resident in Canada has an exempt deficit at any time (referred to in this subsection and subsections (7.2) to (7.6) as the "acquisition time") in respect of the corporation; and

(*b*) at the acquisition time, shares of the capital stock of a foreign affiliate (referred to in this subsection and subsections (7.2) to (7.6) as an "acquired affiliate") of the corporation in which the deficit affiliate has an equity percentage (within the meaning assigned by subsection 95(4) of the Act) are acquired by, or otherwise become property of,

(i) the corporation, or

(ii) another foreign affiliate of the corporation, in the case where the percentage that would, if the deficit affiliate were resident in Canada, be the deficit affiliate's surplus

entitlement percentage in respect of the acquired affiliate immediately after the acquisition time is less than the percentage that would, if the deficit affiliate were so resident, be its surplus entitlement percentage in respect of the acquired affiliate immediately before the acquisition time.

(7.2) If this subsection applies, there is to be included

(*a*) under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) in computing an acquired affiliate's exempt surplus or exempt deficit in respect of the corporation at the time (referred to in subsections (7.6) and 5908(11) as the "adjustment time") that is immediately before the time that is immediately before the time that is immediately before the acquisition time, the amount, if any, equal to the lesser of

(i) the amount determined by the formula

A/B

where

A is the deficit affiliate's exempt deficit in respect of the corporation at the acquisition time, and

B is the percentage that would, if the deficit affiliate were resident in Canada, be the deficit affiliate's surplus entitlement percentage in respect of the acquired affiliate immediately before the acquisition time, and

(ii) the lesser of

(A) the acquired affiliate's tax-free surplus balance in respect of the corporation immediately before the adjustment time, and

(B) either

(I) where there is more than one acquired affiliate, the amount designated by the corporation, in its return of income for the taxation year in which the taxation year of the acquired affiliate that includes the acquisition time ends, in respect of the acquired affiliate, or

(II) in any other case, the amount determined under clause (A); and

(*b*) under subparagraph (vi.1) of the description of A in the definition "exempt surplus" in subsection 5907(1) in computing the deficit affiliate's exempt deficit in respect of the corporation at the time that is immediately after the acquisition time, the total of all amounts each of which is the amount determined in respect of an acquired affiliate by the formula

C × D

where

C is the amount determined under paragraph (*a*) in respect of the acquired affiliate, and

D is the percentage that would, if the deficit affiliate were resident in Canada, be the deficit affiliate's surplus entitlement percentage immediately before the acquisition time in respect of the acquired affiliate.

(7.3) Subsection (7.4) applies if

(*a*) the lesser of

(i) the deficit affiliate's exempt deficit in respect of the corporation immediately before the acquisition time, and

(ii) the total of all amounts each of which is the amount, if any, that is the product of

(A) the tax-free surplus balance immediately before the acquisition time in respect of the corporation of an acquired affiliate, and

(B) the surplus entitlement percentage of the corporation in respect of that acquired affiliate immediately before the acquisition time

exceeds

(*b*) the total of all amounts each of which is the amount, if any, that is the product of

(i) the amount, if any, actually designated under subclause (7.2)(*a*)(ii)(B)(I) in respect of an acquired affiliate, and

(ii) the surplus entitlement percentage of the corporation in respect of that acquired affiliate immediately before the acquisition time.

(7.4) If this subsection applies, the amount designated by the corporation in respect of a particular acquired affiliate is deemed, for the purposes of subclause (7.2)(*a*)(ii)(B)(I),

(*a*) to be the amount determined by the Minister in respect of that particular acquired affiliate; and

(*b*) not to be the amount, if any, actually designated under subclause (7.2)(*a*)(ii)(B)(I).

(7.5) Subsection (7.6) applies if

(*a*) subsection (7.2) applies in respect of the acquired affiliate;

(*b*) the deficit affiliate, or any other foreign affiliate of the corporation in which the deficit affiliate has, immediately before the acquisition time, an equity percentage (which percentage has, for the purposes of this subsection, the meaning assigned by subsection 95(4) of the Act and which deficit affiliate or other affiliate is referred to in subsections (7.6) and 5908(12) as the "direct holder"), has, immediately before the acquisition time, a direct equity percentage (within the meaning assigned by that subsection 95(4)) in any other foreign affiliate (referred to in paragraph (*c*) and subsections (7.6) and 5908(12) as the "subject affiliate") of the corporation; and

(*c*) the subject affiliate is the acquired affiliate or has, immediately before the acquisition time, an equity percentage in the acquired affiliate.

(7.6) Subject to paragraph 5908(11)(*c*), for the purposes of paragraph 92(1.1)(*a*) of the Act, if this subsection applies, there shall be added, in computing on or after the adjustment

time the direct holder's adjusted cost base of a share of the capital stock of the subject affiliate, the amount determined by the formula

$$A \times B$$

where

A is the amount determined under paragraph (7.2)(*a*) in respect of the acquired affiliate; and

B is the percentage that would, if the direct holder were resident in Canada, be the direct holder's surplus entitlement percentage in respect of the acquired affiliate immediately before the acquisition time if the direct holder owned only the share.

(7.7) For the purposes of paragraph 93(3)(*c*) of the Act, if an amount (referred to in this subsection and subsection 5908(12) as the "adjustment amount") is required by subsection 92(1.1) of the Act to be added in computing the adjusted cost base of a share of the capital stock of a foreign affiliate of a corporation resident in Canada,

(*a*) where paragraph 92(1.1)(*a*) of the Act applies, the prescribed amount is the adjustment amount; and

(*b*) where paragraph 92(1.1)(*b*) of the Act applies, the prescribed amount is the amount determined under subsection 5908(12).

(9) Subsection 5905(8) of the Regulations is repealed.

(10) Subsection 5905(9) of the Regulations is repealed.

(11) Subsection (1) applies in respect of acquisitions and dispositions that occur after December 18, 2009.

(12) Subsection (2) applies in respect of redemptions, acquisitions and cancellations that occur after December 18, 2009.

(13) Subsection (3) applies in respect of foreign mergers that occur after December 18, 2009.

(14) Subsections 5905(5) and (5.1) of the Regulations, as enacted by subsection (4), and subsection (7) apply in respect of dispositions and amalgamations that occur, and windings-up that begin, after December 18, 2009.

(15) Subsections 5905(5.11) and (5.12) of the Regulations, as enacted by subsection (4), apply in respect of an amalgamation that occurs, or a winding-up that begins, after February 27, 2004, except that, if subsection 5905(6) of the Regulations applies in respect of the amalgamation or winding-up, then the portion of subsection 5905(5.12) of the Regulations, as so enacted, before its paragraph (*a*) is to be read as follows:

(5.12) If this subsection applies, the following rules apply for the purposes of subsections (5) and (6):

(16) Subsection 5905(5.13) of the Regulations, as enacted by subsection (4), applies to windings-up that begin, and amalgamations that occur, after February 27, 2004.

(17) Subsection (5) applies in respect of acquisitions of control that occur after December 18, 2009.

(18) Subsections 5905(5.2) to (5.4) of the Regulations, as enacted by subsection (6), apply in respect of acquisitions of control that occur after December 18, 2009, except where the acquisition of control results from an acquisition of shares made under an agreement in writing entered into before December 18, 2009.

(19) Subsections 5905(5.5) and (5.6) of the Regulations, as enacted by subsection (6), apply after December 18, 2009.

(20) Subsection (8) applies where a share of the capital stock of a foreign affiliate of a corporation is acquired by, or otherwise becomes property of, a person after December 18, 2009.

(21) Subsection (9) applies in respect of dispositions that occur after December 18, 2009.

(22) Subsection (10) applies in respect of issuances that occur after December 18, 2009.

45. (1) Subsection 5906(2) of the Regulations is replaced by the following:

(2) The expression "permanent establishment" means

(*a*) for the purposes of paragraph (1)(*a*) and the definition "earnings" in subsection 5907(1) (which paragraph or definition is referred to in this paragraph as a "provision"),

(i) if the expression is given a particular meaning in a tax treaty with a country, a permanent establishment within the meaning assigned by that tax treaty with respect to the business carried on in that country by the foreign affiliate referred to in the provision, and

(ii) in any other case, a fixed place of business of the affiliate, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, or if the affiliate does not have any fixed place of business, the principal place at which the affiliate's business is conducted; and

(*b*) for the purposes of subdivision i of Division B of Part I of the Act,

(i) if the expression is given a particular meaning in a tax treaty with a country, a permanent establishment within the meaning assigned by that tax treaty if the person or partnership referred to in the relevant portion of that subdivision (which person or partnership is referred to in this paragraph and subsection (3) as the "person") is a resident of that country for the purpose of that tax treaty, and

(ii) in any other case, a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a timberland, a factory, a workshop or a warehouse, or if the person does not have any fixed place of business, the principal place at which the person's business is conducted.

(3) For the purposes of subparagraphs (2)(*a*)(ii) and (*b*)(ii),

(*a*) if the affiliate or the person, as the case may be, carries on business through an employee or agent, established in a particular place, who has general authority to contract for the affiliate or the person or who has a stock of merchandise owned by the affiliate or the person from which the employee or agent regularly fills orders, the affiliate or the person is deemed to have a fixed place of business at that place;

(*b*) if the affiliate or the person, as the case may be, is an insurance corporation, the affiliate or the person is deemed to have a fixed place of business in each country in which the affiliate or the person is registered or licensed to do business;

(*c*) if the affiliate or the person, as the case may be, uses substantial machinery or equipment at a particular place at any time in a taxation year, the affiliate or the person is deemed to have a fixed place of business at that place;

(*d*) the fact that the affiliate or the person, as the case may be, has business dealings through a commission agent, broker or other independent agent or maintains an office solely for the purchase of merchandise at a particular place does not of itself mean that the affiliate or the person has a fixed place of business at that place; and

(*e*) the fact that the affiliate or the person, as the case may be, has a subsidiary controlled corporation at a place or a subsidiary controlled corporation engaged in trade or business at a place does not of itself mean that the affiliate or person has a fixed place of business at that place.

(2) Subsection (1) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999 except that, for taxation years of the affiliate that end on or before December 18, 2009, the portion of paragraph (*b*) of subsection 5906(2) of the Regulations, as enacted by subsection (1), before its subparagraph (i) is to be read as follows:

(*b*) for the purposes of subdivision i of Division B of Part I (other than the definitions "excluded income" and "excluded revenue" in subsection 95(2.5)) of the Act,

46. (1) The definition "loss" in subsection 5907(1) of the Regulations is replaced by the following:

"loss", of a foreign affiliate of a taxpayer resident in Canada for a taxation year of the affiliate from an active business, means

(*a*) in the case of an active business carried on by it in a country, the amount of its loss for the year from the active business carried on in the country computed by applying the provisions of paragraph (*a*) of the definition "earnings" respecting the computation of earnings from that active business carried on in that country, with any modifications that the circumstances require, and

(*b*) in any other case, the total of all amounts each of which is an amount of a loss that is required under paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's income or loss from an active business for the year; (*perte*)

(2) Paragraph (*b*) of the definition "earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) in any other case, the total of all amounts each of which is an amount of income that is required under paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's income or loss from an active business for the year; (*gains*)

(3) Subparagraph (*a*)(ii) of the definition "exempt earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(ii) the amount of the taxable capital gains for the year referred to in any of subparagraphs (*c*)(i), (*d*)(iii), (*e*)(i) and (*f*)(iv) of the definition "net earnings", and

(4) The definition "exempt earnings" in subsection 5907(1) of the Regulations is amended by adding the following after paragraph (*a*):

(*a.1*) the amount determined by the formula

A – B

where

A is the total of all amounts each of which is a particular amount that would be included, in respect of a particular business of the particular affiliate, by paragraph (*c*), (*c.1*) or (*c.2*) of the definition "capital dividend account" in subsection 89(1) of the Act in determining the particular affiliate's capital dividend account at the end of the year if

(i) the particular affiliate were the corporation referred to in that definition,

(ii) the references in paragraphs (*c.1*) and (*c.2*) of that definition, and in paragraph (*c*) of that definition as that paragraph read in its application to taxation years that ended before February 28, 2000, to "a business" were read as references to a business that

(A) is not an active business (as defined in subsection 95(1) of the Act), or

(B) is an active business (as defined in that subsection 95(1)) the particular affiliate's earnings from which for the year are determined under subparagraph (*a*)(iii) of the definition "earnings", and

(iii) the particular amount did not include any amount that can reasonably be considered to have accrued while no person or partnership that carried on the particular business was a specified person or partnership (within the meaning of section 95 of the Act) in respect of the particular corporation, and

B is the amount determined for A at the end of the particular affiliate's taxation year that immediately precedes the year,

(5) Paragraph (*d*) of the definition "exempt earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(*d*) where the year is the 1976 or any subsequent taxation year of the particular affiliate and the particular affiliate is, throughout the year, resident in a designated treaty country,

(i) the particular affiliate's net earnings for the year from an active business carried on by it in Canada or a designated treaty country, or

(ii) the particular affiliate's earnings for the year from an active business to the extent that they derive from

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

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

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

(B) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(A) of the Act where the income is derived from amounts that are paid or payable by the life insurance corporation referred to in that clause and are for expenditures that would, if that life insurance corporation were a foreign affiliate of the particular corporation, be deductible in computing its exempt earnings or exempt loss for a taxation year,

(C) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(B) of the Act to the extent that the amounts paid or payable referred to in that clause are for expenditures that are deductible in computing the exempt earnings or exempt loss, for a taxation year, of the other foreign affiliate referred to in that clause,

(D) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(C) of the Act to the extent that the amounts paid or payable referred to in that clause are for expenditures that are deductible in computing its exempt earnings or exempt loss for a taxation year,

(E) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(D) of the Act where

(I) the country referred to in subclause 95(2)(*a*)(ii)(D)(IV) of the Act is a designated treaty country, and

(II) that income would be required to be so included if

1. paragraph (*a*) of the definition "excluded property" in subsection 95(1) of the Act were read as follows:

(*a*) used or held by the foreign affiliate principally for the purpose of gaining or producing income from an active business carried on by it in a designated treaty country (within the meaning assigned by subsection 5907(11) of the *Income Tax Regulations*),

2. paragraph (*c*) of that definition "excluded property" were read as follows:

(*c*) property all or substantially all of the income from which is, or would be, if there were income from the property, income from an active business (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph (2)(*a*) if that paragraph were read without reference to subparagraph (v)) that is included in computing the foreign affiliate's exempt earnings, or exempt loss, as defined in subsection 5907(1) of the *Income Tax Regulations*, for a taxation year,

(F) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(iii) of the Act to the extent that the trade accounts receivable referred to in that subparagraph arose in the course of an active business carried on by the other foreign affiliate referred to in that subparagraph the income or loss from which is included in computing its exempt earnings or exempt loss for a taxation year,

(G) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(iv) of the Act to the extent that the loans or lending assets referred to in that subparagraph arose in the course of an active business carried on by the other foreign affiliate referred to in that subparagraph the income or loss from which is included in computing its exempt earnings or exempt loss for a taxation year,

(H) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(v) of the Act, where all or substantially all of its income, from the property described in that subparagraph, is, or would be if there were income from the property, income from an active business (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph 95(2)(*a*) of the Act if that paragraph were read without reference to its subparagraph (v) and, for greater certainty, excludes income arising as a result of the disposition of the property) that is included in computing its exempt earnings or exempt loss for a taxation year, or

(I) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(vi) of the Act, where the agreement for the purchase, sale or exchange of currency referred to in that subparagraph can reasonably be considered to have been made by the particular affiliate to reduce its risk with respect to an amount of income or loss that is included in computing its exempt earnings or exempt loss for a taxation year, or

(6) Subparagraph (*a*)(ii) of the definition "exempt loss" in subsection 5907(1) of the Regulations is replaced by the following:

(ii) the amount of the allowable capital losses for the year referred to in any of subparagraphs (*c*)(i), (*d*)(iii), (*e*)(i) and (*f*)(iv) of the definition "net loss", and

(7) The definition "exempt loss" in subsection 5907(1) of the Regulations is amended by adding the following after paragraph (*a*):

(*a.1*) the total of all amounts each of which is the portion of an eligible capital expenditure of the affiliate, in respect of a business of the affiliate, that was not included at any time in the affiliate's cumulative eligible capital in respect of the business, where

(i) the business

(A) is not an active business (as defined in subsection 95(1) of the Act), or

(B) is an active business (as defined in subsection 95(1) of the Act) the affiliate's earnings from which for the year are determined under subparagraph (*a*)(iii) of the definition "earnings", and

(ii) in computing its income for the year, the affiliate has deducted an amount described in paragraph 24(1)(*a*) of the Act for the year in respect of the business,

(8) Paragraph (*c*) of the definition "exempt loss" in subsection 5907(1) of the Regulations is replaced by the following:

(*c*) where the year is the 1976 or any subsequent taxation year of the affiliate and the affiliate is, throughout the year, resident in a designated treaty country,

(i) the affiliate's net loss for the year from an active business carried on by it in Canada or a designated treaty country, or

(ii) the amount by which

(A) the affiliate's loss for the year from an active business to the extent determined by applying the provisions of subparagraph (*d*)(ii) of the definition "exempt earnings" in respect of the year with any modifications that the circumstances require

exceeds

(B) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax that was refunded in respect of the amount determined under clause (A), or

(9) Paragraphs (*b*) and (*c*) of the definition "exempt surplus" in subsection 5907(1) of the Regulations are replaced by the following:

(*b*) the last time for which the opening exempt surplus of the subject affiliate in respect of the corporation was required to be determined under section 5905, and

(*c*) the last time for which the opening exempt deficit of the subject affiliate in respect of the corporation was required to be determined under section 5905

(10) Subparagraph (i) of the description of A of the definition "exempt surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(i) the opening exempt surplus, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*b*),

(11) The description of A of the definition "exempt surplus" in subsection 5907(1) of the Regulations is amended by striking out the word "or" at the end of subparagraph (vi) and by adding the following after that subparagraph:

(vi.1) each amount that is required, under section 5905, to be included under this subparagraph in the period and before the particular time, or

(12) Subparagraph (i) of the description of B of the definition "exempt surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(i) the opening exempt deficit, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*c*),

(13) Subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(v) each amount that is required under section 5902 or 5905 to be included under this subparagraph, or subparagraph (1)(*d*)(xii) as it applies to taxation years that end before February 22, 1994, in the period and before the particular time, or

(14) The definition "net earnings" in subsection 5907(1) of the Regulations is amended by striking out "and" at the end of paragraph (*c*) and by adding the following after paragraph (*d*):

(*e*) from the disposition of a property that is an excluded property of the affiliate that is described in paragraph (*c*) of the definition "excluded property" in subsection 95(1) of the Act but that would not be an excluded property of the affiliate if that paragraph were read in the manner described in sub-subclause (*d*)(ii)(E)(II)2 of the definition "exempt earnings" is the amount, if any, by which

(i) the portion of the affiliate's taxable capital gain for the year from the disposition of the property that accrued after its 1975 taxation year

exceeds

(ii) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax that was paid in respect of the amount determined under subparagraph (i), and

(*f*) from a particular disposition of a property, that is an excluded property of the affiliate because of paragraph (*c.1*) of the definition "excluded property" in subsection 95(1) of the Act, that related to

(i) an amount that was receivable under an agreement that relates to the sale of a particular property the taxable capital gain or allowable capital loss from the sale of which is included under any of paragraphs (*c*) to (*e*) of this definition or of the definition "net loss", as the case may be,

(ii) an amount that was receivable and was a property that was described in paragraph (*c*) of that definition "excluded property" but that would not have been an excluded property of the affiliate if that paragraph were read in the manner described in sub-subclause (*d*)(ii)(E)(II)2 of the definition "exempt earnings", or

(iii) an amount payable, or an amount of indebtedness, described in clause (*c.1*)(ii)(B) of that definition "excluded property" arising in respect of the acquisition of an excluded property of the affiliate any taxable capital gain or allowable capital loss from the dis-

position of which would, if that excluded property were disposed of, be included under any of paragraphs (*c*) to (*e*) of this definition or of the definition "net loss", as the case may be,

is the amount, if any, by which

(iv) the portion of the affiliate's taxable capital gain for the year from the particular disposition that accrued after its 1975 taxation year

exceeds

(v) the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax that was paid for the year in respect of the amount determined under subparagraph (iv); (*gains nets*)

(15) The definition "net loss" in subsection 5907(1) of the Regulations is amended by striking out "and" at the end of paragraph (*c*) and by adding the following after paragraph (*d*):

(*e*) from the disposition of a property, that is an excluded property of the affiliate that is described in paragraph (*c*) of the definition "excluded property" in subsection 95(1) of the Act but that would not be an excluded property of the affiliate if that paragraph were read in the manner described in sub-subclause (*d*)(ii)(E)(II)2 of the definition "exempt earnings" is the amount, if any, by which

(i) the portion of the affiliate's allowable capital loss for the year from the disposition of the property that accrued after its 1975 taxation year

exceeds

(ii) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax that was refunded in respect of the amount determined under subparagraph (i), and

(*f*) from a particular disposition of a property, that is an excluded property of the affiliate because of paragraph (*c.1*) of the definition "excluded property" in subsection 95(1) of the Act, that related to

(i) an amount that was receivable under an agreement that relates to the sale of a particular property the taxable capital gain or allowable capital loss from the sale of which is included under any of paragraphs (*c*) to (*e*) of the definition "net earnings"or of this definition, as the case may be,

(ii) an amount that was receivable and was a property that was described in paragraph (*c*) of that definition "excluded property" but that would not have been an excluded property of the affiliate if that paragraph were read in the manner described in sub-subclause (*d*)(ii)(E)(II)2 of the definition "exempt earnings", or

(iii) an amount payable, or an amount of indebtedness, described in clause (*c.1*)(ii)(B) of that definition "excluded property" arising in respect of the acquisition of an excluded property of the affiliate any taxable capital gain or allowable capital loss from the disposition of which would, if that excluded property were disposed of, be included under

any of paragraphs (*c*) to (*e*) of the definition "net earnings" or of this definition, as the case may be,

is the amount, if any, by which

(iv) the portion of the affiliate's allowable capital loss for the year from the particular disposition that accrued after its 1975 taxation year

exceeds

(v) the portion of any income or profits tax refunded by the government of a country for the year to the affiliate that can reasonably be regarded as tax that was refunded in respect of the amount determined under subparagraph (iv); (*perte nette*)

(16) Subparagraphs (*b*)(iii) to (v) of the definition "taxable earnings" in subsection 5907(1) of the Regulations are replaced by the following:

(iii) the affiliate's earnings for the year as determined under paragraph (*b*) of the definition "earnings" minus the portion of any income or profits tax paid to the government of a country for a year by the affiliate that can reasonably be regarded as tax in respect of those earnings, or

(iv) to the extent not included under subparagraph (ii), the affiliate's net earnings for the year determined under paragraphs (*c*) to (*f*) of the definition "net earnings",

(17) Subparagraphs (*b*)(iii) and (iv) of the definition "taxable loss" in subsection 5907(1) of the Regulations are replaced by the following:

(iii) the affiliate's loss for the year as determined under paragraph (*b*) of the definition "loss" minus the portion of any income or profits tax refunded by the government of a country for a year to the affiliate that can reasonably be regarded as tax refunded in respect of that loss, or

(iv) to the extent not included under subparagraph (ii), the affiliate's net loss for the year determined under paragraphs (*c*) to (*f*) of the definition "net loss",

(18) Paragraphs (*b*) and (*c*) of the definition "taxable surplus" in subsection 5907(1) of the Regulations are replaced by the following:

(*b*) the last time for which the opening taxable surplus of the subject affiliate in respect of the corporation was required to be determined under section 5905, and

(*c*) the last time for which the opening taxable deficit of the subject affiliate in respect of the corporation was required to be determined under section 5905

(19) Subparagraph (i) of the description of A of the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(i) the opening taxable surplus, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*b*),

(20) The description of A of the definition "taxable surplus" in subsection 5907(1) of the Regulations is amended by adding the following after subparagraph (iv):

(iv.1) each amount that is required under section 5905 to be included under this subparagraph in the period and before the particular time, or

(21) Subparagraph (i) of the description of B of the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(i) the opening taxable deficit, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*c*),

(22) Subparagraph (v) of the description of B of the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(v) each amount that is required under section 5902 or 5905 to be included under this subparagraph, or subparagraph (1)(*k*)(xi) as it applies to taxation years that end before February 22, 1994, in the period and before the particular time, or

(23) The definition "underlying foreign tax" in subsection 5907(1) of the Regulations is amended by adding "and" at the end of paragraph (*a*) and by replacing paragraphs (*b*) and (*c*) with the following:

(*b*) the last time for which the opening underlying foreign tax of the subject affiliate in respect of the corporation was required to be determined under section 5905

(24) Subparagraph (i) of the description of A of the definition "underlying foreign tax" in subsection 5907(1) of the Regulations is replaced by the following:

(i) the opening underlying foreign tax, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*b*),

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

(iii) each amount that is required under section 5902 or 5905 to be included under this subparagraph, or subparagraph (1)(*l*)(x) as it applies to taxation years that end before February 22, 1994, in the period and before the particular time, or

(26) Paragraph (*b*) of the definition "underlying foreign tax applicable" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) any additional amount in respect of the whole dividend that the corporation claims in its return of income under Part I of the Act in respect of the whole dividend, not exceeding the amount that is the lesser of

(i) the amount by which the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation exceeds the amount determined under paragraph (*a*), and

(ii) the amount by which the underlying foreign tax of the affiliate in respect of the corporation immediately before the whole dividend was paid exceeds the amount determined under paragraph (*a*);

(27) Paragraph (*b*) of the definition "whole dividend" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) where a whole dividend is deemed by subparagraph 5902(1)(*a*)(ii) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that subparagraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

(28) The portion of the definition "gains exonérés" in subsection 5907(1) of the French version of the Regulations before paragraph (*a*) is replaced by the following:

« gains exonérés » En ce qui concerne une société étrangère affiliée d'une société donnée pour une année d'imposition de la société affiliée, le total des sommes représentant chacune l'une des sommes ci-après, moins la partie de l'impôt sur le revenu ou sur les bénéfices payé par la société affiliée pour l'année au gouvernement d'un pays qu'il est raisonnable de considérer comme un impôt sur les gains visés à l'alinéa *c*) ou au sous-alinéa *d*)(ii) :

(29) The portion of paragraph (*a*) of the definition "gains exonérés" in subsection 5907(1) of the French version of the Regulations after subparagraph (iii) is replaced by the following:

pour l'application du présent alinéa, lorsque la société affiliée a disposé d'immobilisations qui étaient des actions du capital-actions d'une autre société étrangère affiliée de la société donnée en faveur d'une autre société qui était, immédiatement après la disposition, une société étrangère affiliée de la société donnée, est exclue des gains en capital de la société affiliée pour l'année la fraction de ces gains qui correspond au total des sommes représentant chacune l'excédent de la juste valeur marchande, à la fin de l'année d'imposition 1975 de la société affiliée, de l'une des actions dont il a été disposé sur son prix de base rajusté;

(30) Subsection 5907(1.02) of the Regulations is repealed.

(31) Section 5907 of the Regulations is amended by adding the following after subsection (1.01):

(1.02) For the purposes of paragraph (*d*) of the definition "exempt earnings" and paragraph (*c*) of the definition "exempt loss" in subsection (1), if a foreign affiliate of a corporation becomes a foreign affiliate of the corporation in a taxation year of the affiliate, otherwise than as a result of a transaction between persons that do not deal with each other at arm's length, and the affiliate is resident in a designated treaty country at the end of the year, the affiliate is deemed to be so resident throughout the year.

(32) Subparagraph 5907(1.1)(*b*)(ii) of the Regulations is replaced by the following:

(ii) an amount is paid by the primary affiliate to a secondary affiliate in respect of a reduction or refund, because of a loss or a tax credit of the secondary affiliate for a taxation year, of the income or profits tax that would otherwise have been payable by the primary affiliate for the year on behalf of the consolidated group

(A) in respect of the primary affiliate,

(I) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the exempt surplus or included in the exempt deficit, as the case may be, of the secondary affiliate shall, at the end of the year to which the loss or the tax credit relates, be deducted from the exempt surplus or added to the exempt deficit, as the case may be, of the primary affiliate, and

(II) the portion of the amount so paid that can reasonably be regarded as relating to an amount deducted from the taxable surplus or included in the taxable deficit, as the case may be, of the secondary affiliate shall, at the end of the year to which the loss or the tax credit relates, be deducted from the taxable surplus or added to the taxable deficit, as the case may be, of the primary affiliate and be added to the underlying foreign tax of the primary affiliate, and

(B) in respect of the secondary affiliate, the amount is deemed to be a refund to the secondary affiliate, for the year to which the loss or the tax credit relates, of income or profits tax in respect of the loss or the tax credit,

(33) The portion of subsection 5907(1.3) of the Regulations before paragraph (*a*) is replaced by the following:

(1.3) For the purpose of paragraph (*b*) of the definition "foreign accrual tax" in subsection 95(1) of the Act and subject to subsection (1.4),

(34) Section 5907 of the Regulations is amended by adding the following after subsection (1.3):

(1.4) If the amount, or any portion of it, prescribed by paragraph (1.3)(*a*) or (*b*) can reasonably be considered to be in respect of a loss of another corporation that is a controlled foreign affiliate of a person or partnership that is, at the end of a taxation year of the other corporation, a relevant person or partnership (within the meaning of subsection 5903(6)) in respect of the taxpayer, then the amount so prescribed shall be reduced to the extent that it can reasonably be considered to be in respect of the portion of that loss, for that taxation year, that would not be a foreign accrual property loss (within the meaning of subsection 5903(3)) of that other corporation if section 5903 were read without reference to subsection 5903(4).

(35) Subsections 5907(2.7) and (2.8) of the Regulations are replaced by the following:

(2.7) Notwithstanding any other provision of this Part, if an amount (referred to in this subsection as the "inclusion amount") is included in computing the income or loss from an active business of a foreign affiliate of a taxpayer for a taxation year under subparagraph 95(2)(*a*)(i) or (ii) of the Act and the inclusion amount is in respect of a particular amount paid or payable,

(*a*) in the case where clause 95(2)(*a*)(ii)(D) of the Act is applicable, by the second affiliate referred to in that clause,

(i) the particular amount is to be deducted in computing the second affiliate's income or loss from an active business carried on by it in the country in which it is resident for its earliest taxation year in which that amount was paid or payable,

(ii) the second affiliate is deemed to have carried on an active business in that country for that earliest taxation year, and

(iii) in computing the second affiliate's income or loss for a taxation year from any source, no amount is to be deducted in respect of the particular amount except as required under subparagraph (i); and

(*b*) in any other case, by the other foreign affiliate referred to in subparagraph 95(2)(*a*)(i) or (ii), as the case may be, or by a partnership of which the other foreign affiliate is a member, the particular amount is, except where it has been deducted under paragraph (2)(*j*) in computing the other foreign affiliate's earnings or loss from an active business,

(i) to be deducted in computing the earnings or loss of the other foreign affiliate or the partnership, as the case may be, from the active business for its earliest taxation year in which the particular amount was paid or payable, and

(ii) not to be deducted in computing its earnings or loss from the active business for any other taxation year.

(36) Subsection 5907(5) of the Regulations is replaced by the following:

(5) For the purposes of this section, each capital gain, capital loss, taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer from the disposition of property shall be computed in accordance with the rules set out in subsection 95(2) of the Act and, for the purposes of subsection (6), if any such gain or loss is required to be computed in Canadian currency, the amount of such gain or loss shall be converted from Canadian currency into the currency referred to in subsection (6) at the rate of exchange prevailing on the date of disposition of the property.

(37) Subsection 5907(6) of the Regulations is replaced by the following:

(6) All amounts referred to in subsections (1) and (2) shall be maintained on a consistent basis from year to year in the currency of the country in which the foreign affiliate of the corporation resident in Canada is resident or any currency that the corporation resident in Canada demonstrates to be reasonable in the circumstances.

(38) Subsection 5907(12) of the Regulations is repealed.

(39) Subject to section 50, subsections (1) and (2) apply to taxation years of a foreign affiliate of a taxpayer that end after 1999.

(40) Subsections (3), (6) and (14) to (16) apply in respect of dispositions of property that occur after December 18, 2009.

(41) Subject to section 50, subsection (4) applies to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002, except that the description of A in paragraph (*a.1*) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (4), is, for taxation years of the foreign affiliate that

begin on or before December 18, 2009, to be read without reference to its subparagraph (iii).

(42) Subject to section 50, subsection (5) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999, except that

(*a*) the portion of paragraph (*d*) of the definition "exempt earnings" in subsection 5907(1) of the Regulations before its subparagraph (i), as enacted by subsection (5), is, in its application to taxation years of the foreign affiliate that begin on or before December 18, 2009, to be read as follows:

(*d*) where the year is the 1976 or any subsequent taxation year of the particular affiliate and the particular affiliate is resident in a designated treaty country,

(*b*) subclause (*d*)(ii)(E)(II) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (5), is, in its application to taxation years of the foreign affiliate that begin after 2008 and on or before June 18, 2010, to be read as follows:

(II) that income would be required to be so included if paragraph (*c*) of the definition "excluded property" in subsection 95(1) of the Act were read as follows:

(*c*) property all or substantially all of the income from which is deemed, or would be deemed, if there were income from the property, to be income from an active business by paragraph (2)(*a*) (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph (2)(*a*) if that paragraph were read without reference to its subparagraph (v)) that is derived from amounts payable by payers who are, or would be, if they were foreign affiliates of the taxpayer, entitled to deduct the amounts in computing their exempt earnings or exempt loss, as defined in subsection 5907(1) of the *Income Tax Regulations*, for a taxation year,

(*c*) subject to paragraph (*d*), subparagraph (*d*)(ii) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (5), is, in its application to taxation years of the foreign affiliate that end after 1999 and begin before 2009, to be read as follows:

(ii) the particular affiliate's earnings for the year from an active business to the extent that they derive from

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

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

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

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

(B) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(A) of the Act to the extent that the amounts paid or payable referred to in that clause are for expenditures that would be deductible in computing the exempt earnings or exempt loss for a taxation year of the non-resident corporation or the partnership, as the case may be, referred to in that clause if it were a foreign affiliate of the particular corporation,

(C) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(B) of the Act to the extent that the amounts paid or payable referred to in that clause are for expenditures that

(I) are deductible in computing the exempt earnings or exempt loss, for a taxation year, of the other foreign affiliate referred to in that clause, or

(II) would be deductible in computing the exempt earnings or exempt loss, for a taxation year, of the partnership referred to in that clause if the partnership were a foreign affiliate of the particular corporation,

(D) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(C) of the Act to the extent that the amounts paid or payable referred to in that clause are for expenditures that would be deductible in computing the exempt earnings or exempt loss, for a taxation year, of the partnership referred to in that clause if the partnership were a foreign affiliate of the particular corporation,

(E) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(D) of the Act where

(I) the country referred to in subclause 95(2)(*a*)(ii)(D)(IV) of the Act is a designated treaty country, and

(II) that income would be required to be so included if paragraph (*c*) of the definition "excluded property" in subsection 95(1) of the Act were read as follows:

(*c*) property all or substantially all of the income from which is deemed, or would be deemed if there were income from the property, to be income from an active business by paragraph (2)(*a*) (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph (2)(*a*) if that paragraph were read without reference to its subparagraph (v)) that is derived from amounts payable by payers who are, or would be, if they were foreign affiliates of the taxpayer, entitled to deduct the

amounts in computing their exempt earnings or exempt loss, as defined in subsection 5907(1) of the *Income Tax Regulations*, for a taxation year,

(F) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under clause 95(2)(*a*)(ii)(E) of the Act where the income is derived from amounts that are paid or payable by the life insurance corporation referred to in that clause and are for expenditures that would, if that life insurance corporation were a foreign affiliate of the particular corporation, be deductible in computing its exempt earnings or exempt loss for a taxation year,

(G) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(iii) of the Act to the extent that the trade accounts receivable referred to in that subparagraph arose in the course of an active business carried on by the non-resident corporation referred to in that subparagraph the income or loss from which would be included in computing its exempt earnings or exempt loss for a taxation year if it were a foreign affiliate of the particular corporation,

(H) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(iv) of the Act to the extent that the loans or lending assets referred to in that subparagraph arose in the course of an active business carried on by the non-resident corporation referred to in that subparagraph the income or loss from which would be included in computing its exempt earnings or exempt loss for a taxation year if it were a foreign affiliate of the particular corporation,

(I) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(v) of the Act, where all or substantially all of its income, from the property described in that subparagraph, is, or would be if there were income from the property, income from an active business (which, for this purpose, includes income that would be deemed to be income from an active business by paragraph 95(2)(*a*) of the Act if that paragraph were read without reference to its subparagraph (v) and, for greater certainty, excludes income arising as a result of the disposition of the property) that is included in computing its exempt earnings or exempt loss for a taxation year, or

(J) income that is required to be included in computing the particular affiliate's income or loss from an active business for the year under subparagraph 95(2)(*a*)(vi) of the Act, where the agreement for the purchase, sale or exchange of currency referred to in that subparagraph can reasonably be considered to have been made by the particular affiliate to reduce its risk with respect to an amount of income or loss that is included in computing its exempt earnings or exempt loss for a taxation year, or

(*d*) subclause (*d*)(ii)(E)(II) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as set out in the read-as text contained in paragraph (*c*), is, in its

application to taxation years of the foreign affiliate that end after 1999 and begin before December 21, 2002, to be read as follows:

(II) that income would be required to be so included if paragraph (*c*) of the definition "excluded property" in subsection 95(1) of the Act were read without reference to amounts receivable referred to in that paragraph (*c*), where the interest on the amounts is not, or would not if interest were payable on the amounts, be deductible in computing the debtor's exempt earnings or exempt loss for a taxation year,

(43) Subsections (7), (31), (36) and (37) apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 18, 2009.

(44) Subject to section 50, subsection (8) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999, except that the portion of paragraph (*c*) of the definition "exempt loss" in subsection 5907(1) of the Regulations before subparagraph (i), as enacted by subsection (8), is, in its application to taxation years of the foreign affiliate that begin on or before December 18, 2009, to be read as follows:

(*c*) where the year is the 1976 or any subsequent taxation year of the affiliate and the affiliate is resident in a designated treaty country,

(45) Subsections (9), (10), (12), (13), (18), (19) and (21) to (25) apply after November 1999.

(46) Subsections (11) and (20) apply where a share of the capital stock of a foreign affiliate of a corporation is acquired by, otherwise becomes property of, or is disposed of by, a person after December 20, 2002.

(47) Subject to section 50, subsection (17) applies to taxation years of a foreign affiliate of a taxpayer that end after 1999, except that, in respect of dispositions of property that occur before December 18, 2009, subparagraph (*b*)(iv) of the definition "taxable loss" in subsection 5907(1) of the Regulations, as enacted by subsection (17), is to be read as follows:

(iv) to the extent not included under subparagraph (ii), the affiliate's net loss for the year determined under paragraphs (*c*) and (*d*) of the definition "net loss",

(48) Subsection (26) applies to whole dividends paid on the shares of a class of the capital stock of a foreign affiliate of a corporation after December 18, 2009.

(49) Subsection (27) applies to elections made in respect of dispositions that occur after December 18, 2009.

(50) Subsections (28) and (29) apply to taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002.

(51) Subsections (30) and (35) apply to taxation years of a foreign affiliate of a taxpayer that begin after 2008.

(52) Subsection (32) applies to payments made after December 20, 2002.

(53) Subsections (33) and (34) apply to taxation years of a foreign affiliate of a taxpayer that begin after November 1999.

(54) Subsection (38) applies after December 18, 2009.

47. (1) The Regulations are amended by adding the following after section 5907:

5908. (1) For the purposes of this subsection, subsections (2) to (7), paragraph 5902(2)(*b*), and section 5905, if at any time shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada are, based on the assumptions contained in paragraph 96(1)(*c*) of the Act, owned by a partnership, or are deemed under this subsection to be owned by a partnership, each member of the partnership is deemed to own at that time the number of shares of that class that is determined by the formula

$$A \times B/C$$

where

A is the number of shares of that class that are so owned or so deemed owned by the partnership;

B is the fair market value of the member's interest in the partnership at that time; and

C is the fair market value of all members' interests in the partnership at that time.

(2) For the purposes of subsections (4) and 5905(1), (5) and (7.1), if a person is deemed by subsection (1) to own at a particular time a different number of shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada (which shares so deemed owned are referred to in this subsection as "affiliate shares") than the person was deemed by that subsection to have owned immediately before the particular time, the number of affiliate shares equal to that difference is deemed to be

(*a*) disposed of, at the particular time, by the person, when that person is deemed to own fewer affiliate shares at the particular time than immediately before it; and

(*b*) acquired by, at the particular time, the person, when that person is deemed to own more affiliate shares at the particular time than immediately before it.

(3) For the purposes of subsection (2),

(*a*) if a partnership of which a person is a member at any time does not own, and (but for this subsection) is not deemed by subsection (1) to own, any shares of a class of the capital stock of the foreign affiliate at that time, subsection (1) is deemed to have applied in respect of the person and to have deemed the person to own, because of subsection (1) in respect of the partnership, no shares of that class at that time; and

(*b*) if a corporation resident in Canada or a foreign affiliate of such a corporation disposes of or acquires its entire interest in a partnership that, based on the assumptions contained in paragraph 96(1)(*c*) of the Act, owns shares of a class of the capital stock of a non-resident corporation, the corporation resident in Canada or the foreign affiliate, as the case may be, is deemed at the time that is immediately after the disposition or immediately

before the acquisition, as the case may be, to own, because of subsection (1) in respect of the partnership, no shares of that class.

(4) For the purposes of subsection 5905(5), if at any time a corporation resident in Canada (referred to in this subsection as the "disposing corporation") disposes of shares of a class of the capital stock of a foreign affiliate of the disposing corporation and, as a consequence of the same transaction or event (other than one to which neither paragraph (2)(*a*) nor (2)(*b*) applies) that caused the disposition, a taxable Canadian corporation with which the disposing corporation is not, at that time, dealing at arm's length acquires shares of that class, the disposing corporation is, at that time, deemed to have disposed of, to the taxable Canadian corporation, the number of the shares of that class that is determined by the formula

$$A \times B$$

where

A is the number of shares of that class disposed of by the disposing corporation; and

B is

(*a*) where the taxable Canadian corporation acquires, because of paragraph (2)(*b*), shares of that class, the fraction determined by the formula

$$C/D$$

where

C is the number of shares of that class that is deemed by that paragraph to be acquired by the taxable Canadian corporation as a result of the transaction or event, and

D is the total of all amounts each of which is the number of shares of that class that is deemed by that paragraph to be acquired by a person as a result of the transaction or event; and

(*b*) in any other case, 1.

(5) For the purpose of subsection 5905(5.1), if a predecessor corporation described in that subsection is, at the time that is immediately before the amalgamation described in that subsection, a member of a particular partnership that, based on the assumptions contained in paragraph 96(1)(*c*) of the Act, owns, at that time, shares of the capital stock of a foreign affiliate of the predecessor corporation and the predecessor corporation's interest in the particular partnership, or in another partnership that is a member of the particular partnership, becomes, upon the amalgamation, property of the new corporation described in that subsection, the shares of the capital stock of the affiliate that are deemed under subsection (1) to be owned by the predecessor corporation at that time are deemed to become property of the new corporation upon the amalgamation.

(6) In applying subsection 5905(5.2), if the corporation is a member of a partnership that, based on the assumptions contained in paragraph 96(1)(*c*) of the Act, owns shares (referred to individually in paragraph (*a*) as a "relevant share") of the capital stock of the affiliate at the particular time,

(*a*) for the purposes of the description of B in subsection 5905(5.2), the corporation's cost amount of each relevant share at the particular time is to be determined by the formula

$$P \times Q/R$$

where

P is the partnership's cost amount of that relevant share at the particular time,

Q is the number of shares of the capital stock of the affiliate that are deemed by subsection (1), in respect of the partnership, to be owned by the corporation at the particular time, and

R is the total number of relevant shares at the particular time; and

(*b*) for the purposes of paragraph (*b*) of the description of C in subsection 5905(5.2), the amount determined under this paragraph is the total of all amounts each of which is the amount that would be the corporation's portion of a gain that would be deemed under subsection 92(5) of the Act to be a gain of the member of the partnership from the disposition of a share of the capital stock of the affiliate by the partnership if that share were disposed of immediately before the particular time.

(7) For the purposes of paragraph 5905(5.4)(*b*), the amount determined by this subsection is the amount determined by the following formula for shares of the capital stock of a foreign affiliate of the subsidiary that were deemed by subsection (1), in respect of the partnership, to be owned by the subsidiary at the time at which the parent last acquired control of the subsidiary:

$$A \times B$$

where

A is the tax-free surplus balance of the affiliate, in respect of the subsidiary, at that time; and

B is the percentage that would be the subsidiary's surplus entitlement percentage in respect of the affiliate at that time if the only shares of that capital stock that were owned at that time by the subsidiary were the shares of that capital stock that were deemed by subsection (1), in respect of the partnership, to be owned by the subsidiary at the time at which the parent last acquired control of the subsidiary.

(8) If a particular corporation resident in Canada or a particular foreign affiliate of a particular corporation resident in Canada is a member of a particular partnership, the particular partnership owns (based on the assumptions contained in paragraph 96(1)(*c*) of the Act) shares of a class of the capital stock of a foreign affiliate of the particular corporation and the particular partnership disposes of any of those shares,

(*a*) any reference in this Part (other than subsections 5902(5) and (6)) to subsection 93(1) of the Act is deemed to include a reference to subsection 93(1.2) of the Act;

(*b*) an election under subsection 93(1.2) of the Act by the particular corporation is to be made by filing the prescribed form with the Minister on or before

(i) where the particular corporation is the disposing corporation referred to in that subsection, the particular corporation's filing-due date for its taxation year that includes the last day of the particular partnership's fiscal period in which the disposition was made, and

(ii) where the particular affiliate is the disposing corporation referred to in that subsection, the particular corporation's filing-due date for its taxation year that includes the last day of the particular affiliate's taxation year that includes the last day of the disposing partnership's fiscal period in which the disposition was made; and

(*c*) the prescribed amount for the purposes of subparagraph 93(1.2)(*a*)(ii) of the Act is the lesser of

(i) the taxable capital gain, if any, of the particular affiliate otherwise determined in respect of the disposition, and

(ii) the amount determined by the formula

$$A \times B \times C/D$$

where

A is the fraction referred to in paragraph 38(*a*) of the Act that applies to the particular affiliate's taxation year that includes the last day of the particular partnership's fiscal period that includes the time of the disposition,

B is the amount that could reasonably be expected to have been received in respect of all the shares of that class if the second foreign affiliate referred to in subsection 93(1.2) of the Act had, immediately before that time, paid dividends on all shares of its capital stock the total of which was equal to the amount determined under subparagraph 5902(1)(*a*)(i) to be its net surplus in respect of the particular corporation,

C is the number of shares of that class that is determined under subsection 93(1.3) of the Act, and

D is the total number of issued shares of that class immediately before that time.

(9) For the purposes of this Part, if a person or partnership is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership, the person or partnership is deemed to be a member of the other partnership.

(10) For the purposes of paragraph 95(2)(*j*) of the Act, the adjusted cost base to a foreign affiliate of a taxpayer of an interest in a partnership at any time is prescribed to be the cost to the affiliate of the interest as otherwise determined at that time, and for those purposes

(*a*) there shall be added to that cost such of the following amounts as are applicable:

(i) any amount included in the earnings of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to profits of the partnership,

(ii) the affiliate's incomes as described by the description of A in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to profits of the partnership,

(iii) any amount included in computing the exempt earnings or taxable earnings, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital gain of the partnership,

(iv) where the affiliate has, at any time before that time and in a taxation year ending after 1971, made a contribution of capital to the partnership otherwise than by way of a loan, such part of the amount of the contribution as cannot reasonably be regarded as a gift made to or for the benefit of any other member of the partnership who was related to the affiliate,

(v) such portion of any income or profits tax refunded before that time by the government of a country to the partnership as may reasonably be regarded as tax refunded in respect of an amount described in any of subparagraphs (*b*)(i) to (iii), and

(vi) the amount, if any, determined under paragraph (11)(*b*);

(*b*) there shall be deducted from that cost such of the following amounts as are applicable:

(i) any amount included in the loss of the affiliate for a taxation year ending after 1971 that may reasonably be considered to relate to a loss of the partnership,

(ii) the affiliate's losses as described by the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act for a taxation year ending after 1971 and before that time that can reasonably be considered to relate to the losses of the partnership,

(iii) any amount included in computing the exempt loss or taxable loss, as the case may be, of the affiliate for a taxation year ending after 1971 and before that time that may reasonably be considered to relate to a capital loss of the partnership,

(iv) any amount received by the affiliate before that time and in a taxation year ending after 1971 as, on account or in lieu of payment of, or in satisfaction of, a distribution of the affiliate's share of the partnership profits or partnership capital, and

(v) such portion of any income or profits tax paid before that time to the government of a country by the partnership as may reasonably be regarded as tax paid in respect of an amount described in any of subparagraphs (*a*)(i) to (iii); and

(*c*) for greater certainty, where any interest of a foreign affiliate in a partnership was reacquired by the affiliate after having been previously disposed of, no adjustment that was required to be made under this subsection before such reacquisition shall be made under this subsection to the cost to the affiliate of the interest as reacquired property of the affiliate.

(11) If a particular foreign affiliate of a corporation resident in Canada is at any time a member of a partnership that, based on the assumptions contained in paragraph 96(1)(*c*) of

the Act, owns a share of the capital stock of another foreign affiliate of the corporation and the particular affiliate is at that time a direct holder referred to in subsection 5905(7.6), the following rules apply:

(*a*) for the purposes of paragraph 92(1.1)(*b*) of the Act, there shall be added, in computing at or after that time the partnership's adjusted cost base of the share, the total of all amounts each of which is the amount determined, in respect of an acquired affiliate referred to in that subsection, by the formula

A × B

where

A is the amount, if any, determined under paragraph 5905(7.2)(*a*) in respect of the acquired affiliate, and

B is the percentage that would, if the partnership were a corporation resident in Canada, be the partnership's surplus entitlement percentage in respect of the acquired affiliate, at the adjustment time, if the partnership owned only the share;

(*b*) for the purposes of subparagraph (10)(*a*)(vi), the amount determined under this paragraph is the amount determined by the formula

A × B/C

where

A is the total of all amounts each of which is the amount, if any, determined under paragraph (*a*) in respect of a share of the capital stock of the other affiliate,

B is the fair market value, at the adjustment time, of the particular affiliate's interest in the partnership, and

C is the fair market value, at the adjustment time, of all members' interests in the partnership; and

(*c*) no amount is to be added under subsection 5905(7.6) to the particular affiliate's adjusted cost base of the share.

(12) For the purposes of paragraph 5905(7.7)(*b*), the amount determined under this subsection is the amount determined by the formula

A × B

where

A is the adjustment amount; and

B is the percentage that would, if the direct holder were resident in Canada, be the surplus entitlement percentage of the direct holder in respect of the subject affiliate.

(2) Subsections 5908(1) and (2) of the Regulations, as enacted by subsection (1), apply for taxation years of a foreign affiliate of a taxpayer that begin after November 1999, except that those subsections, as so enacted, are, in their application to acquisitions, dispositions, redemptions, cancellations, foreign mergers, amalgamations and

issuances that occur, and windings-up that begin, on or before December 18, 2009, to be read as follows:

5908. (1) In determining,

(*a*) for the purposes of this Part (other than section 5904), the equity percentage at any time of a person in a corporation,

(*b*) for the purposes of this section and section 5905, the surplus entitlement at any time of a share owned by a corporation resident in Canada of the capital stock of a foreign affiliate of the corporation in respect of a particular foreign affiliate of the corporation, and

(*c*) for the purposes of this Part and of the definition "surplus entitlement percentage" in subsection 95(1) of the Act, the surplus entitlement percentage at any time of a corporation resident in Canada in respect of a particular foreign affiliate of the corporation,

if at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, those shares are deemed to be owned at that time by each member of the partnership in a proportion equal to the proportion of all such shares that

(*d*) the fair market value of the member's interest in the partnership at that time

is of

(*e*) the fair market value of all members' interests in the partnership at that time.

(2) For the purposes of this section and section 5905, if the number of shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada deemed by subsection 93.1(1) of the Act to be owned by a person at a particular time is different from the number so deemed immediately before the particular time

(*a*) where the number of shares of that class deemed to be owned by the person has decreased, the person is deemed to have disposed of, at the particular time, the number of shares of that class equal to the amount of the decrease;

(*b*) where the number of shares of that class deemed to be owned by the person has increased, the person is deemed to have acquired, at the particular time, the number of shares of that class equal to the amount of the increase;

(*c*) a person (referred to in this paragraph as the "seller") that is deemed by paragraph (*a*) to have disposed of, at a particular time, shares of a class of the capital stock of the foreign affiliate is deemed to have disposed of those shares to the persons (referred to in this paragraph as the "acquirers") deemed in paragraph (*b*) to have acquired shares of that class at that time and the number of shares of that class deemed to have been acquired at that time by a particular acquirer from the seller shall be determined by the formula

$$A \times B/C$$

where

A is the number of shares of that class acquired by the particular acquirer at that time,

B is the number of shares of that class disposed of by the seller at that time, and

C is the number of shares of that class acquired by all acquirers at that time; and

(*d*) persons (referred to in this paragraph as the "acquirers") that are deemed by paragraph (*b*) to have acquired, at a particular time, shares of a class of the capital stock of the foreign affiliate are deemed to have acquired those shares from a person (referred to in this paragraph as the "seller") deemed in paragraph (*a*) to have disposed of shares of that class at that time and the number of shares of that class deemed to have been disposed of by the seller to a particular acquirer at that time shall be determined by the formula

$$A \times B/C$$

where

A is the number of shares of that class disposed of by the seller,

B is the number of shares of that class acquired by the particular acquirer at that time, and

C is the number of shares of that class disposed of by all sellers at that time.

(3) Subsections 5908(3) to (5) of the Regulations, as enacted by subsection (1), apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 18, 2009.

(4) Subsections 5908(6) and (7) of the Regulations, as enacted by subsection (1), apply in respect of acquisitions of control that occur after December 18, 2009, except where the acquisition of control results from an acquisition of shares made under an agreement in writing entered into before December 18, 2009.

(5) Subsection 5908(8) of the Regulations, as enacted by subsection (1), applies in respect of elections made under subsection 93(1.2) of the *Income Tax Act* in respect of dispositions that occur after November 1999.

(6) Subsection 5908(9) of the Regulations, as enacted by subsection (1), applies for taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, for taxation years of the foreign affiliate that end on or before Announcement Date, that subsection 5908(9) is to be read as follows:

(9) For the purposes of this section and paragraph 5907(2.7)(*b*), if any corporation is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership, the corporation is deemed to be a member of the other partnership.

(7) Subsection 5908(10) of the Regulations, as enacted by subsection (1), applies after December 18, 2009.

(8) Subsections 5908(11) and (12) of the Regulations, as enacted by subsection (1), apply where a share of the capital stock of a foreign affiliate of a corporation is acquired by, or otherwise becomes property of, a person after December 18, 2009.

48. (1) The Regulations are amended by adding the following after section 5909:

5910. (1) If a foreign affiliate of a corporation resident in Canada carries on in a particular taxation year an active business that is a foreign oil and gas business in a taxing country, the affiliate is deemed for the purposes of this Part to have paid for the particular year, as an income or profits tax to the government of the taxing country in respect of its earnings from the business for the particular year, an amount equal to the lesser of

(*a*) the amount, if any, determined by the formula

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

where

A is the percentage determined under subsection (2) for the particular year,

B is the amount determined under subsection (3) in respect of the business for the particular year, and

C is the total of all amounts each of which is an amount that would, but for this subsection, be an income or profits tax paid to the government of the taxing country by the affiliate for the particular year in respect of its earnings from the business for the particular year; and

(*b*) the affiliate's production tax amount for the business in the taxing country for the particular year.

(2) The percentage determined under this subsection for the particular year is the percentage determined by the formula

$$P - Q$$

where

P is the percentage set out in paragraph 123(1)(*a*) of the Act for the corporation's taxation year that includes the last day of the particular year; and

Q is the corporation's general rate reduction percentage (within the meaning assigned by definition in subsection 123.4(1) of the Act) for that taxation year of the corporation.

(3) The amount determined under this subsection in respect of the business for the particular year is

(*a*) where the affiliate's earnings from the business for the particular year are required to be determined under subparagraph (*a*)(iii) of the definition "earnings" in subsection 5907(1), the amount that would be determined to be the affiliate's earnings for the particular year from the business if the affiliate

(i) had, in computing its income from the business for each taxation year (referred to in this subparagraph as an "earnings year") that is the particular year or is any preceding taxation year that begins after December 18, 2009,

(A) claimed all deductions that it could have claimed under the Act, up to the maximum amount deductible in computing the income from the business for that earnings year, and

(B) made all claims and elections and taken all steps under applicable provisions of the Act, or of enactments implementing amendments to the Act or regulations in respect of the Act, to maximize the amount of any deduction referred to clause (A), and

(ii) had, in computing its income from the business for any preceding taxation year that began before December 19, 2009, claimed all deductions, if any, that it actually claimed under the Act, up to the maximum amount deductible, and made all claims and elections, if any, and taken all steps, if any, under applicable provisions of the Act, or of enactments implementing amendments to the Act or regulations in respect of the Act, that it actually made; and

(*b*) in any other case, the affiliate's earnings from the business for the particular year.

(4) In this section, "foreign oil and gas business", "production tax amount" and "taxing country" have the meanings assigned by subsection 126(7) of the Act.

(2) Subsection (1) applies in respect of production tax amounts that become receivable by the government of a taxing country in taxation years of a taxpayer's foreign affiliate that begin after the date (referred to in this subsection as the "application date") that is the earlier of December 31, 2002 and the designated date. The designated date is the later of

(*a*) December 31, 1994; and

(*b*) any date that the taxpayer designates in writing for the purpose of this subsection, if the designation is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to.

However, in their application to taxation years of the foreign affiliate that begin after the application date and on or before December 18, 2009, subsections 5910(2) and (3) of the Regulations, as enacted by subsection (1), are to be read as follows:

(2) The percentage determined under this subsection for the particular year is 40 per cent.

(3) The amount determined under this subsection in respect of the business for the particular year is the amount that would, if the definition "earnings" in subsection 5907(1) were read without reference to its subparagraphs (*a*)(i) and (ii), be the foreign affiliate's earnings from the business in the taxing country for the particular year.

49. (1) The portion of section 8201 of the Regulations before paragraph (*a*) is replaced by the following:

8201. For the purposes of subsection 16.1(1), the definition "outstanding debts to specified non-residents" in subsection 18(5), subsections 34.2(6), 112(2), 125.4(1) and 125.5(1), the definition "taxable supplier" in subsection 127(9), subparagraph 128.1(4)(*b*)(ii), paragraphs 181.3(5)(*a*) and 190.14(2)(*b*), the definition "Canadian banking business" in subsection 248(1) and paragraph 260(5)(*a*) of the Act, a "permanent establishment" of a person or partnership (either of whom is referred to in this section as the "person") means a fixed place of business of the person, including an office, a branch, a mine, an oil well, a farm, a

timberland, a factory, a workshop or a warehouse if the person has a fixed place of business and, where the person does not have any fixed place of business, the principal place at which the person's business is conducted, and

(2) Subsection (1) applies to taxation years that end after December 18, 2009.

50. (1) If a taxpayer has made a valid election under subsection 26(46) of the *Budget and Economic Statement Implementation Act, 2007*,

(*a*) subsections 46(1), (2) and (8) (with the portion of paragraph (*c*) of the definition "exempt loss" in subsection 5907(1) of the Regulations before subparagraph (i) being read in the manner described in subsection 46(44)) also apply to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000,

(*b*) subsection 46(4) (with paragraph (*a.1*) of the definition "exempt earnings" in subsection 5907(1) of the Regulations being read in the manner described in subsection 46(41)) also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and on or before December 20, 2002,

(*c*) subparagraph (*d*)(ii) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection 46(5) and being read in the manner described in paragraph 46(42)(*c*), but without reference to paragraph 46(42)(*d*), also applies for taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000, except that, for those taxation years,

(i) clause (A) of that subparagraph (*d*)(ii), as so read, is to be read without reference to its subclause (II),

(ii) if the taxpayer has not made a valid election under paragraph 26(35)(*b*) of that Act, clause (E) of that subparagraph (*d*)(ii), as so read, is to be read as if it also contained a subclause (I.1) that read as follows:

(I.1) the shares of a foreign affiliate (referred to in this subclause as the "non-qualifying affiliate") that is not resident and subject to income taxation in a designated treaty country are not considered relevant for the purpose of determining whether shares of the third affiliate that is referred to in clause 95(2)(*a*)(ii)(D) of the Act are excluded property unless the shares of the third affiliate would not have been excluded property if the shares of all such non-qualifying affiliates were not excluded property, and

(iii) each reference to "income or loss" in clauses (H) and (I) of that subparagraph (*d*)(ii), as so read, is to be replaced by a reference to "income", and

(*d*) subsection 46(17) (with subparagraph (*b*)(iv) of the definition "taxable loss" in subsection 5907(1) of the Regulations being read in the manner described in subsection 46(47)) also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000.

(2) If a taxpayer has not made a valid election under subsection 26(46) of the *Budget and Economic Statement Implementation Act, 2007* but has made a valid election under paragraph 26(35)(*b*) of that Act, subparagraph (*d*)(ii) of the definition "exempt earn-

ings" in subsection 5907(1) of the Regulations, as enacted by subsection 46(5) and being read in the manner described in paragraphs 46(42)(*c*) and (*d*), also applies to taxation years, of all foreign affiliates of the taxpayer, that begin after 1994 and end before 2000.

51. Subject to section 52, if a corporation resident in Canada elects in writing in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the corporation's filing-due date for the corporation's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to, the following rules apply, namely,

(*a*) if there is an election (referred to in this section as a "designated section 93 election") made by the corporation under subsection 93(1) or (1.2) of the Act in respect of a disposition of shares (referred to in this section as the "designated shares") of the capital stock of a foreign affiliate of the corporation that occurs after December 20, 2002 and before December 19, 2009, other than a disposition that is required to be made under an agreement in writing made by the vendor before December 21, 2002,

(i) section 92 of the Act is, in respect of the designated shares, to be read as if it also contained the following subsections:

Where subsection (1.4) applies

(1.2) Subsection (1.4) applies to a holder of a share (referred to in this subsection and subsections (1.3) and (1.4) as the "relevant share") of a foreign affiliate (referred to in subsection (1.3) as the "relevant foreign affiliate") of a particular corporation resident in Canada in computing at any time (referred to in this subsection and subsection (1.3) as the "computation time") the adjusted cost base to the holder of the relevant share, if, at the computation time, there is a specified section 93 election related to the relevant share.

Specified section 93 election

(1.3) An election made by the particular corporation resident in Canada under subsection 93(1) or (1.2), as the case may be, in respect of a share of a particular foreign affiliate of the particular corporation that is disposed of at a time (referred to in this subsection and subsection (1.4) as the "election time") before the computation time is, at the computation time, a specified section 93 election related to the relevant share if

(*a*) the particular foreign affiliate has, at the election time, an equity percentage in the relevant foreign affiliate;

(*b*) the relevant foreign affiliate was, at the election time, a foreign affiliate of the particular corporation;

(*c*) throughout the period that begins at the election time and ends at the computation time,

(i) the holder held the relevant share, and

(ii) the holder was

(A) a foreign affiliate of the particular corporation,

(B) a foreign affiliate of a corporation resident in Canada that was related to the particular corporation,

(C) a partnership of which a foreign affiliate of the particular corporation was a member, or

(D) a partnership of which a foreign affiliate, of a corporation resident in Canada that was related to the particular corporation, was a member;

(*d*) the relevant share was, at the election time, excluded property of the holder (or would have been, at the election time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation); and

(*e*) the relevant share is, at the computation time, excluded property of the holder (or would have been, at the computation time, excluded property of the holder if the holder had been a foreign affiliate of the particular corporation or of a corporation resident in Canada that is related to the particular corporation).

Adjustments to adjusted cost base

(1.4) If this subsection applies, for the purposes of computing, at any time after the election time, the exempt surplus or deficit, the taxable surplus or deficit, and the underlying foreign tax, of the holder, in respect of the particular corporation resident in Canada or in respect of any other person that would, at the time after the election time, be a designated person in respect of the particular corporation, the following rules apply in determining the adjusted cost base to the holder of the relevant share:

(*a*) there shall be added, to the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election, and

(*b*) there shall be deducted, from the adjusted cost base to the holder of the relevant share, the amount prescribed in respect of the relevant share in respect of the specified section 93 election.

Designated person

(1.5) For the purposes of subsection (1.4), a designated person, in respect of a particular corporation, at any time means

(*a*) any person with whom the particular corporation was not dealing at arm's length;

(*b*) any person with whom the particular corporation would not have been dealing at arm's length if the person had been in existence after the particular corporation came into existence;

(*c*) any predecessor corporation (within the meaning assigned by subsection 87(1) of the Act) of a person described in paragraph (*a*) or (*b*); or

(*d*) any predecessor corporation (within the meaning assigned by paragraph 87(2)(*l.2*) of the Act) of a person described in paragraph (*a*) or (*b*).

(ii) subsection 5902(1) of the Regulations is, in respect of the designated section 93 election, to be read as follows:

5902. (1) If, at a particular time, one or more shares (each of which is referred to in this subsection as a "disposed share") of a class (referred to in this subsection as the "specified class") of the capital stock of a particular foreign affiliate of a corporation resident in Canada are disposed of by a particular shareholder of the particular foreign affiliate and, because of an election made under subsection 93(1) of the Act in respect of that disposition, a dividend is deemed under subsection 93(1) of the Act to have been received on a disposed share at the time (referred to in this subsection and section 5905 as the "dividend time") that is immediately before the particular time, the following rules apply:

(*a*) the amount of the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt surplus" in respect of the corporation resident in Canada) at the time (in this section and in section 5905 referred to as the "calculation time") that is immediately before the dividend time, is deemed to be the amount that would be its exempt surplus, in respect of the corporation resident in Canada, at the calculation time if

(i) the particular foreign affiliate and each other foreign affiliate of the corporation resident in Canada in which the particular foreign affiliate had, at the calculation time, an equity percentage (each of which other foreign affiliates is referred to in this section as a "subsidiary affiliate") had (except for the purpose of determining consolidated net surplus in respect of the corporation resident in Canada in subparagraph (iii)), at the calculation time, no amount of exempt deficit, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the amount that would be the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which it has, immediately before the calculation time, a direct equity percentage if that exempt surplus were, immediately before the calculation time, determined in the following manner:

(A) the exempt surplus, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt surplus of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt surplus, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt surplus in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt surplus, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph

as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such a consolidated net surplus, in respect of the corporation resident in Canada, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*b*) the amount of the particular foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated exempt deficit" in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its exempt deficit, in respect of the corporation resident in Canada, at that time, if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, taxable surplus or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that exempt deficit were, immediately before the calculation time, determined in the following manner:

(A) the exempt deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the exempt deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate has, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the exempt deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's exempt deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the exempt deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its exempt deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated exempt deficit (determined in accordance with this paragraph on the

assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the exempt deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*c*) the amount of the particular foreign affiliate's taxable surplus and underlying foreign tax, in respect of the corporation resident in Canada, (referred to, respectively, in this subsection as the "consolidated taxable surplus", and "consolidated underlying foreign tax", in respect of the corporation resident in Canada) at the calculation time, is deemed to be the amount that would be its taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, at that time, if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable deficit, in respect of the corporation resident in Canada,

(ii) the amount of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by an amount equal to the total of all amounts each of which is the particular foreign affiliate's proportionate share of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable surplus and underlying foreign tax were, immediately before the calculation time, determined in the following manner:

(A) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable surplus, or underlying foreign tax, respectively, of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable surplus, and underlying foreign tax, respectively, in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable surplus, or underlying foreign tax, as the case may be, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable surplus (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable surplus, and consolidated underlying foreign tax, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable surplus, and underlying foreign tax, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*d*) the amount of the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, (in this subsection referred to as the "consolidated taxable deficit" in respect of the corporation resident in Canada) at the calculation time is deemed to be the amount that would be its taxable deficit, in respect of the corporation resident in Canada, at that time if

(i) the particular foreign affiliate and each subsidiary affiliate had (except for the purpose of determining consolidated net surplus, in respect of the corporation resident in Canada, in subparagraph (iii)), at the calculation time, no amount of exempt surplus, exempt deficit or taxable surplus, in respect of the corporation resident in Canada,

(ii) the amount of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate, were, immediately before the calculation time, increased by the total of all amounts each of which is an amount equal to the particular foreign affiliate's proportionate share of the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which the particular foreign affiliate has, immediately before the calculation time, a direct equity percentage if that taxable deficit were, immediately before the calculation time, determined in the following manner:

(A) the taxable deficit, in respect of the corporation resident in Canada, of the subsidiary affiliate, were increased by the subsidiary affiliate's proportionate share of the taxable deficit of a foreign affiliate of the corporation resident in Canada in which the subsidiary affiliate had, immediately before the time that is immediately before the calculation time, a direct equity percentage, and

(B) the taxable deficit, in respect of the corporation resident in Canada, of a subsidiary affiliate in which another subsidiary affiliate has a direct equity percentage, were increased because of this subparagraph before the increase in that other subsidiary affiliate's taxable deficit in respect of the corporation resident in Canada,

(iii) for the purpose of subparagraph (ii), the proportionate share, at any time, of a foreign affiliate (referred to in this subparagraph as the "calculating foreign affiliate") of the corporation resident in Canada, of the taxable deficit, in respect of the corporation resident in Canada, of another foreign affiliate (referred to in this subparagraph as the "providing foreign affiliate") of the corporation resident in Canada in which the calculating foreign affiliate has a direct equity percentage were equal to the proportion determined by the following formula:

A/B

where

A is the amount of dividends that would be received, at that time, by the calculating foreign affiliate from the providing foreign affiliate if, at that time, the providing foreign affiliate had paid dividends on all of its shares and the total of those dividends were equal to its consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

B is the amount of the providing foreign affiliate's consolidated net surplus (determined using the provisions of this subsection on the assumption that the providing

foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, or, where it does not have such consolidated net surplus, its consolidated taxable deficit (determined in accordance with this paragraph on the assumption that the providing foreign affiliate were the particular foreign affiliate), in respect of the corporation resident in Canada, at that time, and

(iv) in determining, under this paragraph, the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada,

(A) no amount were included, directly or indirectly, in respect of taxable deficit, in respect of the corporation resident in Canada, of the particular shareholder, of the particular foreign affiliate, that disposed of the disposed share, and

(B) no amount were included, directly or indirectly, in respect of the taxable deficit, in respect of the corporation resident in Canada, of the particular foreign affiliate or any subsidiary affiliate more than once;

(*e*) for the purpose of applying subsection 5901(1) to subsection 5900(1), and for the purpose of paragraph (*f*),

(i) the particular foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(ii) the particular foreign affiliate's exempt deficit in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iii) the particular foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(iv) the particular foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, exceeds the amount of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time (or, if there is no such excess, nil),

(v) the particular foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount of the particular foreign affiliate's consolidated underlying foreign tax, in respect of the corporation resident in Canada, at that time, and

(vi) the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount, if any, by which

(A) the total of the particular foreign affiliate's consolidated exempt surplus, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, at that time,

exceeds

(B) the total of the particular foreign affiliate's consolidated exempt deficit, in respect of the corporation resident in Canada, at that time, and the particular foreign affiliate's consolidated taxable deficit, in respect of the corporation resident in Canada, at that time;

(*f*) the attributed net surplus in respect of a disposed share of the specified class in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time, is deemed to be equal to the amount that would be received by the holder of the disposed share, in respect of the disposed share, at the dividend time, if the particular foreign affiliate paid a dividend, at that time, on all of its shares, the total of which was equal to the amount of its consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time;

(*g*) for the purpose of applying subsection 5901(1) to subsection 5900(1), the amount of the whole dividend paid by the particular foreign affiliate, at the dividend time, on the shares of the specified class is deemed to be equal to the amount obtained when the total of all amounts each of which is an amount deemed by subsection 93(1) of the Act to have been received as a dividend on a disposed share of the specified class is multiplied by the greater of

(i) one, and

(ii) the amount determined by the formula

A/B

where

A is the amount determined, under subparagraph (*e*)(vi), to be the amount of the particular foreign affiliate's consolidated net surplus in respect of the corporation, immediately before the dividend time, and

B is the greater of

(A) one, and

(B) the total of all amounts each of which is the amount determined, under paragraph (*f*), to be the amount of the attributed net surplus, in respect of a disposed share of the specified class, in respect of the particular foreign affiliate's consolidated net surplus, in respect of the corporation resident in Canada, immediately before the dividend time; and

(*h*) for the purposes of paragraphs (*a*) to (*d*), the consolidated net surplus, at any time, in respect of a corporation resident in Canada, of a particular foreign affiliate of the corporation resident in Canada, is the amount that would be determined in paragraph (*e*) in respect of the particular foreign affiliate if the reference in that paragraph to the expression "immediately before the dividend time" were read as a reference to the expression "at any time".

(iii) section 5902 of the Regulations is, in respect of the designated section 93 election, to be read without reference to its subsection (2),

(iv) subsection 5902(3) of the Regulations is, in respect of the designated section 93 election, to be read as follows:

(3) If a corporation resident in Canada elects, under subsection 93(1) of the Act, in respect of the disposition of a share of the capital stock of a foreign affiliate of the corporation, no adjustment, other than an adjustment referred to in subsection 5905(2), (4), (6) or (8), may be made to the foreign affiliate's

(*a*) exempt surplus in respect of the corporation;

(*b*) exempt deficit in respect of the corporation;

(*c*) taxable surplus in respect of the corporation;

(*d*) taxable deficit in respect of the corporation; or

(*e*) underlying foreign tax in respect of the corporation.

(v) subsection 5902(6) of the Regulations is, in respect of the designated section 93 election, to be read as follows:

(6) The amount designated in an election deemed by subsection 93(1.1) of the Act to have been made under subsection 93(1) of the Act is prescribed to be the amount that is the lesser of

(*a*) the capital gain, if any, otherwise determined in respect of the disposition of the share, and

(*b*) the amount of attributed net surplus (as determined under paragraph (1)(*f*)) in respect of the share.

(*b*) in respect of acquisitions that occur after February 27, 2004 and before December 19, 2009, subsection 5905(1) of the Regulations is to be read as follows:

5905. (1) If, at any time, other than in the course of a transaction to which subsection (2) or (5) applies, a corporation resident in Canada or a foreign affiliate of such a corporation acquires in any manner whatever shares of the capital stock of another corporation that was,

immediately after that time, a foreign affiliate of the corporation (in this subsection referred to as the "acquired affiliate") and as a result of that acquisition the surplus entitlement percentage of the corporation in respect of the acquired affiliate and in respect of any other foreign affiliate of the corporation resident in Canada (the acquired affiliate and each such other foreign affiliate each being referred to in this subsection as the "particular relevant foreign affiliate"), increases, the following rules apply:

(*a*) for the purposes of this Part, the amount of the exempt surplus or exempt deficit, the taxable surplus or taxable deficit, and the underlying foreign tax, in respect of the corporation, of the particular relevant foreign affiliate is (unless subsection (8) applies to the particular relevant foreign affiliate because of the acquisition of the shares) to be, at that time, adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, immediately before that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately before that time

is of

(ii) the surplus entitlement percentage, immediately after that time, of the corporation in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time, and

(*b*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), the adjusted amounts determined under paragraph (*a*) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation.

(*c*) in respect of dispositions in respect of which a designated section 93 election was made,

(i) subsection 5905(2) of the Regulations is to be read as follows:

(2) If at any time (referred to in this subsection as the "disposition time") a particular foreign affiliate of a corporation resident in Canada redeems, acquires or cancels (other than a redemption, an acquisition or a cancellation in respect of which an adjustment has previously been made under this subsection or subsection (1) as it read prior to November 13, 1981) in any manner whatever (otherwise than by way of a winding-up) one or more shares (referred to in this subsection and subsections (16) to (23) as "disposed shares") of any class of its capital stock, the following rules apply:

(*a*) if, because of an election made by the corporation under subsection 93(1) of the Act in respect of the disposition of the disposed shares, a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is deemed to have been re-

ceived on the disposed shares, by the corporation or by another foreign affiliate of the corporation, for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the particular foreign affiliate or of another foreign affiliate (the particular foreign affiliate and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") of the corporation resident in Canada in which the particular foreign affiliate has an equity percentage at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, there is to be included, under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) the amount of the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) the amount of the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) the amount of the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the particular foreign affiliate's consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the portion, of the particular foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition), that is prescribed, by paragraph 5900(1)(*d*), to be applicable to the portion of the whole dividend (as determined, under paragraph 5902(1)(*g*), in respect of the disposition dividend in respect of the disposed shares) paid on shares of the specified class that is prescribed, by paragraph 5900(1)(*c*), to have been paid out of the particular foreign affiliate's consolidated taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor in respect of the particular relevant foreign affiliate, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the particular relevant foreign affiliate's exempt deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (vi.1) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iv.1) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included that time, had ended immediately before that time

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(*c*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (*b*), in respect of the particular relevant foreign affiliate, in respect of the corporation resident in Canada, are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

(ii) subsection 5905(4) of the Regulations is to be read as follows:

(4) For the purpose of subsection (3),

(*a*) if, at any time, a foreign affiliate of a corporation resident in Canada disposes of one or more shares (referred to in this subsection and subsections (16) to (23) as the "disposed shares") of a class of the capital stock of a predecessor corporation and the foreign affiliate is, because of an election made under subsection 93(1) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on the disposed shares, for the purposes of the adjustments required by paragraphs (*b*) and (3)(*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of each predecessor corporation and of each other foreign affiliate of the corporation resident in Canada in which a predecessor foreign affiliate has an equity percentage (the particular predecessor corporation and each such other foreign affiliate being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the foreign merger, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

B is the amount of the consolidated underlying foreign tax (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, of the particular predecessor corporation that issued the disposed shares, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included, under subparagraph (vi.1) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate, and

(v) in computing the particular relevant foreign affiliate's taxable deficit, in respect of the corporation resident in Canada, at the balance adjustment time, there is to be included, under subparagraph (iv.1) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, immediately before that time, of the particular relevant foreign affiliate; and

(*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making that adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition.

(iii) the portion of subsection 5905(5) of the Regulations between paragraphs (*c*) and (*d*) is to be read as follows:

the following rules apply for the purposes of this Part in respect of the particular affiliate and each other foreign affiliate of the predecessor corporation in which the particular affiliate has an equity percentage (the particular affiliate and each such other foreign affiliate each being referred to in subsections (16) to (23) as the "particular relevant foreign affiliate"):

(iv) subsection 5905(6) of the Regulations is to be read as follows:

(6) For the purpose of subsection (5), the following rules apply:

(*a*) if paragraph (5)(*a*) applies and the predecessor corporation is, because of an election made under subsection 93(1) of the Act, deemed to have received a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") on one or more of the shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of the particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") disposed of, at that time, for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the predecessor corporation, of a particular relevant foreign affiliate at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the disposition time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(*a*) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate, for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time if

(I) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(II) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed share that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's taxable deficit allocation in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of a predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, the following rules apply:

(A) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and the issuing foreign affiliate has, at that time, an amount of consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, there is to be included under subparagraph (v) of

the description of B in the definition "taxable surplus" in subsection 5907(1), the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) of the Act in respect of the disposition of the disposed shares, deemed to be received on the disposed shares by the person that disposed of the disposed shares, that is prescribed by paragraph 5900(1)(*b*) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the predecessor corporation, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time,

(B) if the amount determined, in respect of the particular relevant foreign affiliate for either B or D in the formula in clause (A) is nil, the amount determined, in respect of the particular relevant foreign affiliate, by that formula is deemed to be nil,

(C) there is to be included, under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the amount of particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(I) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(II) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

(D) there is to be included in subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), an amount equal to the particular relevant foreign affiliate's exempt deficit allocation in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) an amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for either B or D in the formula is nil)

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the predecessor corporation, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the predecessor corporation, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the surplus entitlement percentage of the predecessor corporation in respect of the particular relevant foreign affiliate at the balance adjustment time, determined on the assumption that the disposed shares were the only shares owned by the predecessor corporation at that time, and

(B) an amount determined by the formula

$$A \times (B + C)/D$$

where

A is the underlying foreign tax, in respect of the particular predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate in respect of the disposition of the disposed shares,

B is the amount determined under clause (ii)(C) in respect of the particular relevant foreign affiliate, in respect of the predecessor corporation, in respect of the disposition of the disposed shares,

C is the exempt deficit allocation, in respect of the predecessor corporation, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares, and

D is the taxable surplus in respect of the predecessor corporation, at the balance adjustment time, of the particular relevant foreign affiliate,

(iv) in computing the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi.1) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iv.1) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the predecessor corporation, of the particular relevant foreign affiliate, immediately before that time; and

(*b*) the exempt surplus or the exempt deficit, the taxable surplus or the taxable deficit and the underlying foreign tax in respect of a predecessor corporation (within the meaning assigned by subsection (5)) and in respect of the acquiring corporation (within the meaning assigned by subsection (5)) of a particular relevant foreign affiliate is, at the balance adjustment time, to be adjusted to become the proportion of the amount of the surplus, deficit or underlying foreign tax determined without reference to this paragraph that

(i) the surplus entitlement percentage, immediately before the time of the latest of the transactions referred to in paragraphs (5)(*a*), (*b*) and (*c*), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumptions

(A) that the taxation year of the particular relevant foreign affiliate that otherwise would have included the balance adjustment time had ended immediately before that time, and

(B) if the transaction is a disposition referred to in paragraph (5)(*a*), that the shares referred to in that paragraph were the only shares owned by the predecessor corporation at the balance adjustment time

is of

(ii) the surplus entitlement percentage, immediately after the time of the latest of the transactions referred to in paragraphs (5)(*a*), (*b*) and (*c*), of the predecessor corporation or the acquiring corporation, as the case may be, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year of the particular relevant foreign affiliate that otherwise would have included that time had ended immediately after that time.

(v) subsection 5905(8) of the Regulations is to be read as follows:

(8) If, at any time, a dividend (referred to in this subsection and subsections (18) and (21) as the "disposition dividend") is, because of an election made by a corporation resident in Canada under subsection 93(1) of the Act, deemed to have been received on one or more shares (each of which is referred to in this subsection and subsections (16) to (23) as a "disposed share") of a class of the capital stock of a particular foreign affiliate (referred to in this subsection as the "issuing foreign affiliate") of the corporation resident in Canada that were disposed (which disposition is referred in this subsection and subsections (16) to (23) as the "disposition") to the corporation resident in Canada or to another corporation that was, immediately after the disposition, a foreign affiliate of the corporation resident in Canada, the following rules apply:

(*a*) for the purpose of the adjustment required by paragraph (*b*),

(i) in computing the exempt surplus, in respect of the corporation resident in Canada, of the issuing foreign affiliate or another foreign affiliate of the corporation resident in Canada in which the issuing foreign affiliate has an equity percentage (the issuing foreign affiliate and each such other foreign affiliate each being referred to in this subsection and subsections (16) to (23) as the "particular relevant foreign affiliate") at the time (referred to in this subsection and subsections (16) to (22) as the "balance adjustment time") that is immediately before the time of the disposition, there is to be included under subparagraph (v) of the description of B in the definition "exempt surplus" in subsection 5907(1), the total of

(A) an amount equal to the exempt surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the exempt deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the taxable deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(ii) in computing the taxable surplus, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (v) of the description of B in the definition "taxable surplus" in subsection 5907(1), the total of

(A) an amount equal to the taxable surplus reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(B) an amount equal to the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares, and

(C) an amount equal to the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposed shares,

(iii) in computing the underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1), the total of

(A) the amount determined by the formula (which is deemed to be nil, if, in respect of the particular relevant foreign affiliate, the value determined for B in the formula is nil)

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's underlying foreign tax, in respect of the corporation resident in Canada, at the balance adjustment time, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

B is the amount of the issuing foreign affiliate's consolidated underlying foreign tax (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition,

C is the total of all amounts each of which is the amount, determined by paragraph 5900(1)(*d*), to be the amount of foreign tax applicable to the portion of the disposition dividend prescribed to have been paid out of the taxable surplus of the issuing foreign affiliate, that relates to a disposed share, in respect of the disposition, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate of the corporation resident in Canada, of the foreign affiliate of the corporation resident in Canada that disposed of the disposed shares, in respect of the disposition of the disposed shares, and

(B) the amount of the underlying foreign tax reduction in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, in respect of the disposition of the disposed shares,

(iv) in computing the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (vi.1) of the description of A in the definition "exempt surplus" in subsection 5907(1), an amount equal to the exempt deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time, and

(v) in computing the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, at the balance adjustment time, there is to be included under subparagraph (iv.1) of the description of A in the definition "taxable surplus" in subsection 5907(1), an amount equal to the taxable deficit, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate, immediately before that time;

(*b*) the amount, at the balance adjustment time, of exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate is to be adjusted to become the proportion of that amount, determined without making this adjustment, that

(i) the surplus entitlement percentage, at the balance adjustment time, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate that otherwise would have included that time, had ended immediately before that time

is of

(ii) the surplus entitlement percentage, immediately after the time of the disposition, of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, determined on the assumption that the taxation year, of the particular relevant foreign affiliate, that otherwise would have included the balance adjustment time, had ended at the time of the disposition; and

(*c*) for the purposes of applying the definitions "exempt deficit", "exempt surplus", "taxable deficit", "taxable surplus" and "underlying foreign tax", in subsection 5907(1), the amounts determined under paragraph (*b*) are deemed to be the opening exempt deficit, opening exempt surplus, opening taxable deficit, opening taxable surplus, and opening underlying foreign tax, as the case may be, of the particular relevant foreign affiliate, in respect of the corporation resident in Canada.

(vi) section 5905 of the Regulations is to be read as if it also contained the following subsections:

(16) The exempt deficit allocation, of a particular relevant foreign affiliate in respect of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(*a*) the amount determined by the formula

$$1/E \times [(A - B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time if the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(ii) if the particular relevant foreign affiliate is the issuing foreign affiliate, 1; and

(*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (*a*) is nil, nil.

(17) The exempt deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(*a*) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated exempt surplus (as determined under subparagraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of its consolidated exempt deficit (as

determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that, under subsections 5905(10) to (13), would be determined, at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) if the value determined, in respect of the particular relevant foreign affiliate, for the description of any of A, B or D in the formula in subparagraph (i) is nil, nil; and

(*b*) the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus, in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated exempt deficit (as determined under paragraph 5902(1)(*b*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares that is equal to or greater than the amount of its consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

(18) The exempt surplus reduction in respect of a corporation resident in Canada, of a particular relevant foreign affiliate in respect of disposed shares is

(*a*) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated exempt surplus, in respect of the corporation resident in Canada, (as determined under paragraph 5902(1)(*a*)) of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (referred to in this subsection as the "issuing foreign affiliate"), in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the disposition dividend that is, because of an election made under subsection 93(1) of the Act in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(*a*) to have been paid out of the issuing foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for either of A or B, in the formula in paragraph (*a*) is nil, nil; and

(*c*) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (17)(*b*), nil.

(19) The taxable deficit allocation, of a particular relevant foreign affiliate of a corporation resident in Canada, in respect of disposed shares of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") is, if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of exempt surplus in respect of the corporation resident in Canada and the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(*a*) the amount determined by the formula

$$1/E \times [(A - B) \times C/D]$$

where

A is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under subparagraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under subparagraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion of the amount of the particular relevant foreign affiliate's exempt surplus, in respect of the corporation resident in Canada, immediately before the disposition of the disposed shares, that may reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is the amount of the issuing foreign affiliate's consolidated exempt surplus (as determined under paragraph 5902(1)(*a*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, and

E is

(i) subject to subparagraph (ii), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time, where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections; and

(ii) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1; and

(*b*) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of D or E in the formula in paragraph (*a*) is nil, nil.

(20) The taxable deficit reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of disposed shares, is

(*a*) if the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus, in respect of the corporation resident in Canada, and the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate") has, at the balance adjustment time, consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, that exceeds the amount of the issuing foreign affiliate's consoli-

dated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

(i) the amount determined by the formula

$$A/B \times C/D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the amount of the issuing foreign affiliate's consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

D is

(A) subject to clause (B), the surplus entitlement percentage, of the issuing foreign affiliate, in respect of the particular relevant foreign affiliate, that would be determined under subsections 5905(10) to (13) at the balance adjustment time where the issuing foreign affiliate were the "corporation resident in Canada" referred to in those subsections and the particular relevant foreign affiliate were the "particular foreign affiliate" referred to in those subsections, and

(B) where the particular relevant foreign affiliate is the issuing foreign affiliate, 1, and

(ii) where the amount determined, in respect of the particular relevant foreign affiliate, for the description of A, B or D in the formula in subparagraph (i) is nil, nil; and

(*b*) the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, if

(i) the particular relevant foreign affiliate has, at the balance adjustment time, an amount of taxable surplus in respect of the corporation resident in Canada, and

(ii) the issuing foreign affiliate has, at that time, an amount of consolidated taxable deficit (as determined under paragraph 5902(1)(*d*)), in respect of the corporation resident in Canada, in respect of the disposition that is equal to or greater than the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares.

(21) The taxable surplus reduction, in respect of a corporation resident in Canada, of a particular relevant foreign affiliate, in respect of disposed shares, is

(*a*) the amount determined by the formula

$$A/B \times C \times D$$

where

A is the portion of the amount of the particular relevant foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, at the balance adjustment time, that can reasonably be considered to have been included in computing the amount of the consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares, of the particular foreign affiliate, of the corporation resident in Canada, that issued the disposed shares (in this subsection referred to as the "issuing foreign affiliate"),

B is the amount of the issuing foreign affiliate's consolidated taxable surplus (as determined under paragraph 5902(1)(*c*)), in respect of the corporation resident in Canada, in respect of the disposition of the disposed shares,

C is the portion, of the disposition dividend that is, because of an election made under subsection 93(1) of the Act, in respect of the disposition of the disposed shares, received on the disposed shares by the person that disposed of those shares and that is prescribed by paragraph 5900(1)(*b*) to have been paid out of the issuing foreign affiliate's taxable surplus, in respect of the corporation resident in Canada, and

D is the specified adjustment factor, in respect of the corporation resident in Canada, in respect of the particular relevant foreign affiliate, of the person that disposed of the disposed shares;

(*b*) if the amount determined, in respect of the particular relevant foreign affiliate, for the description of A or B in the formula in paragraph (*a*) is nil, nil; and

(*c*) if an amount is determined, in respect of the particular relevant foreign affiliate, under paragraph (20)(*b*), nil.

(22) The underlying foreign tax reduction in respect of the corporation resident in Canada, of a particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares, is the amount determined by the following formula:

$$A \times (B + C)/D$$

where

A is the underlying foreign tax in respect of the corporation resident in Canada, at the balance adjustment time, of the particular relevant foreign affiliate;

B is the taxable deficit reduction, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares;

C is the exempt deficit allocation, in respect of the corporation resident in Canada, of the particular relevant foreign affiliate of the corporation resident in Canada, in respect of the disposition of the disposed shares; and

D is the taxable surplus in respect of the corporation resident in Canada of the particular relevant foreign affiliate, at the balance adjustment time.

(23) The specified adjustment factor, in respect of a corporation resident in Canada, in respect of a particular relevant foreign affiliate of the corporation resident in Canada, of the person that disposed of disposed shares, in respect of the disposition of the disposed shares, is the amount determined by the formula

A/B

where

A is

(*a*) where the corporation resident in Canada disposed of the disposed shares, 100 per cent, and

(*b*) where another foreign affiliate of the corporation resident in Canada disposed of the disposed shares, the surplus entitlement percentage of the corporation resident in Canada in respect of that other foreign affiliate, immediately before the disposition of the disposed shares; and

B is the surplus entitlement percentage of the corporation resident in Canada in respect of the particular relevant foreign affiliate, immediately before the disposition of the disposed shares.

(*d*) if there is a designated section 93 election,

(i) the Regulations shall, in respect of the designated shares, be read as if they also contained a section 5905.1 that read as follows:

5905.1 (1) The amount prescribed for the purpose of paragraph 92(1.4)(*a*) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which

(i) the fair market value of the relevant share, at the election time

exceeds

(ii) the adjusted cost base, at the time of the disposition, of the relevant share to the holder, and

(*b*) the amount determined by the following formula:

A/C × (C – B)

where

A is the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be

determined under paragraph 5902(1)(*f*) to be the attributed net surplus in respect of the relevant share in respect of the specified section 93 election,

B is the amount that would be determined under subparagraph 5902(1)(*e*)(vi) to be the consolidated net surplus in respect of the relevant affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of, immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect of the whole dividend referred to in paragraph 5902(1)(*g*) in respect of the specified section 93 election were made, and

C is the amount that would be determined under subparagraph 5902(1)(*e*)(vi) to be the consolidated net surplus in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

(2) The amount prescribed for the purpose of paragraph 92(1.4)(*b*) of the Act, in respect of a relevant share referred to in that paragraph, in respect of a relevant specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which the adjusted cost base, at the time of the disposition, of the relevant share to the holder exceeds the fair market value of the relevant share, at the election time, and

(*b*) the amount determined by the following formula:

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

where

A is the amount that would be determined to be the attributed net surplus in respect of the relevant share under paragraph 5902(1)(*f*) in respect of the specified section 93 election, if

(i) the relevant share was the disposed share, and the relevant foreign affiliate was the disposed foreign affiliate, in respect of the specified section 93 election, and

(ii) the consolidated net surplus in respect of the relevant foreign affiliate was the amount, if any, determined, in respect of the relevant foreign affiliate, under the description of C,

B is the amount, if any, by which the total that would be determined under clause 5902(1)(*e*)(vi)(B) exceeds the total that would be determined under clause 5902(1)(*e*)(vi)(A), in respect of the relevant foreign affiliate, if

(i) the relevant foreign affiliate was the disposed affiliate referred to in subsection 5902(1),

(ii) the relevant share was the disposed share referred to in subsection 5902(1) that was disposed of immediately following the disposition of the disposed shares to which the specified section 93 election applied, and

(iii) before that determination, in respect of the relevant foreign affiliate and each foreign affiliate of the particular corporation resident in Canada in which the relevant foreign affiliate had an equity percentage, the adjustments that are required by section 5905 to be made, in respect the whole dividend referred to in paragraph 5902(1)(*g*) in respect of the specified section 93 election, were made, and

C is the amount, if any, by which the total that would be determined under clause 5902(1)(*e*)(vi)(B) exceeds the total that would be determined under clause 5902(1)(*e*)(vi)(A), in respect of the relevant affiliate in respect of the specified section 93 election, if the relevant foreign affiliate was the disposed foreign affiliate referred to in subsection 5902(1) and the relevant share was the disposed share referred to in subsection 5902(1).

(3) If the amount determined in each of the formulae in paragraphs (1)(*b*) and (2)(*b*) in respect of the relevant share referred to in paragraph 92(1.4)(*a*) of the Act is nil, the amount determined for B in the formula in paragraph (1)(*b*) in respect of the relevant affiliate is greater than nil and the amount determined for C in the formula in paragraph (2)(*b*) in respect of the relevant affiliate is greater than nil, the amount prescribed for the purpose of paragraph 92(1.4)(*a*) of the Act, in respect of the relevant share referred to in that paragraph, in respect of a specified section 93 election related to the relevant share, is the lesser of

(*a*) the amount, if any, by which the fair market value of the relevant share, at the election time, exceeds the adjusted cost base, at the time of the disposition, of the relevant share to the holder; and

(*b*) the amount that would, if the relevant share was the disposed share and the relevant affiliate was the disposed affiliate in respect of the specified section 93 election, be determined under paragraph 5902(1)(*f*) to be the attributed net surplus in respect of the relevant share if the consolidated net surplus of the relevant foreign affiliate were the amount determined for B in the formula in paragraph (1)(*b*).

(ii) paragraph (*b*) of the definition "whole dividend" in subsection 5907(1) of the Regulations is, in respect of the designated section 93 election, to be read as follows:

(*b*) where a whole dividend is deemed by paragraph 5902(1)(*g*) to have been paid at the same time on shares of more than one class of the capital stock of an affiliate, for the purpose only of that paragraph, the whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate is deemed to be the total of all

amounts each of which is a whole dividend deemed to have been paid at that time on the shares of a class of the capital stock of the affiliate, and

(iii) paragraph 5908(8)(*c*) of the Regulations, as enacted by subsection 47(1), is, in respect of the designated section 93 election, to be read as follows:

(*c*) the prescribed amount for the purposes of subparagraph 93(1.2)(*a*)(ii) of the Act is the lesser of

(i) the taxable capital gain, if any, of the particular affiliate otherwise determined in respect of the disposition, and

(ii) the amount that is one-half of the amount referred to in paragraph 5902(6)(*b*),

52. (1) Subsection (2) applies if

(*a*) a corporation has made an election under section 51;

(*b*) the corporation has made an election under subsection 93(1) or (1.2) of the *Income Tax Act* in respect of a disposition of a share of the capital stock of a foreign affiliate of the corporation that occurs after December 20, 2002 and on or before February 27, 2004 (other than a disposition required to be made under an agreement in writing made by a vendor on or before December 20, 2002), or in respect of a disposition that occurs after February 27, 2004 and that is required to be made under an agreement in writing made by a vendor after December 20, 2002 and before February 28, 2004; and

(*c*) the corporation elects in writing to apply subsection (2) in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the corporation's filing-due date for the corporation's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to.

(2) If this subsection applies, section 51 does not apply in respect of dispositions referred to in paragraph (1)(*b*) and the Regulations shall be read, in respect of the dispositions, as if section 5902 of the Regulations also contained a subsection (6.1) that read as follows:

(6.1) If an election under subsection 93(1) of the Act is made at any time by a particular corporation resident in Canada in respect of a share of the capital stock of a foreign affiliate (in this subsection referred to as the "particular affiliate") of the particular corporation that is disposed of to the particular corporation, to another corporation resident in Canada with which the particular corporation does not deal at arm's length or to another foreign affiliate of the particular corporation, the amount of the particular affiliate's exempt surplus or exempt deficit, taxable surplus or taxable deficit, underlying foreign tax and net surplus in respect of the particular corporation at that time is to be determined under paragraph (1)(*a*) as if the amount of any dividend referred to in subparagraph (1)(*a*)(i) or (ii) were nil.

ASSESSMENTS

53. Any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that ends before the day on which this Act is assented to that would, in the absence of this section, be precluded because of subsections 152(4) to (5) of the Act shall be made to the extent necessary to take into account any of the following:

(*a*) sections 50 to 52 or any provision of section 46 in respect of which section 50 applies in respect of the taxpayer, or

(*b*) any provision of sections 29 to 38 and 40 to 49 (other than a provision of section 46 that is described under paragraph (*a*)), if the taxpayer

(i) elects in writing in respect of all of its foreign affiliates that this section apply in respect of that provision, and

(ii) files that election with the Minister of National Revenue on or before June 30, 2011.

PART 3

OTHER AMENDMENTS IN RESPECT OF INCOME TAX

INCOME TAX ACT

54. (1) Subparagraph 6(1)(*a*)(i) of the *Income Tax Act* is replaced by the following:

(i) derived from the contributions of the taxpayer's employer to or under a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a private health services plan, a registered pension plan or a supplementary unemployment benefit plan,

private insurance plan benefits

(2) Paragraph 6(1)(*f*) of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of paragraph (iii) and by adding the following after subparagraph (iii):

(iii.1) a plan described in any of subparagraphs (i) to (iii) that is administered or provided by an employee life and health trust

(3) Paragraph 6(1)(*g*) of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) a designated employee benefit (as defined in subsection 144.1(1));

(4) Subsections (1) to (3) apply after 2009.

55. (1) The portion of subsection 7(1) of the Act before paragraph (*a*) is replaced by the following:

Agreement to issue securities to employees

7. (1) Subject to subsection (1.1), where a particular qualifying person has agreed to sell or issue securities of the particular qualifying person (or of a qualifying person with which the particular qualifying person does not deal at arm's length) to an employee of the particular

qualifying person (or of a qualifying person with which the particular qualifying person does not deal at arm's length),

(2) Subsection 7(1) of the Act is amended by adding the following after paragraph (*b*):

(*b.1*) if the employee has transferred or otherwise disposed of rights under the agreement in respect of some or all of the securities to the particular qualifying person (or a qualifying person with which the particular qualifying person does not deal at arm's length) with whom the employee was not dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

is deemed to have been received, in the taxation year in which the employee made the disposition, by the employee because of the employee's employment;

(3) Subsection 7(1) of the Act is amended by adding the following after paragraph (*d*):

(*d.1*) if rights of the employee under the agreement have, by one or more transactions between persons not dealing at arm's length, become vested in a particular person who has transferred or otherwise disposed of rights under the agreement to a particular qualifying person (or a qualifying person with which the particular qualifying person does not deal at arm's length) with whom the particular person was not dealing at arm's length, a benefit equal to the amount, if any, by which

(i) the value of the consideration for the disposition

exceeds

(ii) the amount, if any, paid by the employee to acquire those rights

is deemed to have been received, in the taxation year in which the particular person made the disposition, by the employee because of the employee's employment, unless at the time of the disposition the employee was deceased, in which case such a benefit is deemed to have been received by the particular person in that year as income from the duties of an employment performed by the particular person in that year in the country in which the employee primarily performed the duties of the employee's employment; and

(4) Subsection 7(1.3) of the Act is replaced by the following:

Order of disposition of securities

(1.3) For the purposes of this subsection, subsection (1.1), subdivision c, paragraph 110(1)(*d.01*), subparagraph 110(1)(*d.1*)(ii) and subsections 110(2.1) and 147(10.4), and subject to subsection (1.31), a taxpayer is deemed to dispose of securities that are identical properties in the order in which the taxpayer acquired them and, for this purpose,

(*a*) if a taxpayer acquires a particular security (other than under circumstances to which subsection (1.1) or 147(10.1) applies) at a time when the taxpayer also acquires or holds

one or more other securities that are identical to the particular security and are, or were, acquired under circumstances to which subsection (1.1) or 147(10.1) applied, the taxpayer is deemed to have acquired the particular security at the time immediately preceding the earliest of the times at which the taxpayer acquired those other securities; and

(*b*) if a taxpayer acquires, at the same time, two or more identical securities under circumstances to which subsection (1.1) applied, the taxpayer is deemed to have acquired the securities in the order in which the agreements under which the taxpayer acquired the rights to acquire the securities were made.

(5) Paragraph 7(1.5)(*a*) of the Act is replaced by the following:

(*a*) a taxpayer disposes of or exchanges securities of a particular qualifying person that were acquired by the taxpayer under circumstances to which subsection (1.1) applied (in this subsection referred to as the "exchanged securities"),

(6) Subsection 7(1.7) of the Act is replaced by the following:

Rights ceasing to be exercisable

(1.7) For the purposes of subsections 7(1) and 110(1), if a taxpayer receives at a particular time one or more particular amounts in respect of rights of the taxpayer to acquire securities under an agreement referred to in subsection (1) ceasing to be exercisable in accordance with the terms of the agreement, and the cessation would not, if this Act were read without reference to this subsection, constitute a transfer or disposition of those rights by the taxpayer,

(*a*) the taxpayer is deemed to have disposed of those rights at the particular time to a person with whom the taxpayer was dealing at arm's length and to have received the particular amounts as consideration for the disposition; and

(*b*) for the purpose of determining the amount, if any, of the benefit that is deemed to have been received as a consequence of the disposition referred to in paragraph (*a*), the taxpayer is deemed to have paid an amount to acquire those rights equal to the amount, if any, by which

(i) the amount paid by the taxpayer to acquire those rights (determined without reference to this subsection)

exceeds

(ii) the total of all amounts each of which is an amount received by the taxpayer before the particular time in respect of the cessation.

(7) The portion of subsection 7(7) of the Act before the definition "qualifying person" is replaced by the following:

Definitions

(7) The following definitions apply in this section and in subsection 47(3), paragraphs 53(1)(*j*) and 110(1)(*d*) and (*d.01*) and subsections 110(1.1), (1.2), (1.5) to (1.8) and (2.1).

(8) Subsections 7(8) and (9) of the Act are repealed.

(9) Section 7 of the Act is amended by adding the following after subsection (9):

Reorganization

(9.1) If, in the course of a reorganization that gives rise to a dividend that would, in the absence of paragraph 55(3)(*b*), be subject to subsection 55(2), rights to acquire securities

listed on a designated stock exchange (referred to in this subsection as "public options") under an agreement to sell or issue securities referred to in subsection (1) are exchanged for rights to acquire securities that are not listed on a designated stock exchange (referred to in this subsection as "private options"), and the private options are subsequently exchanged for public options, the private options are deemed to be rights to acquire shares that are listed on a designated stock exchange for the purposes of subparagraph 7(9)(*d*)(ii).

(10) Subsections 7(9.1), as enacted by subsection (9), and (10) to (15) of the Act are repealed.

(11) Subsections (1), (4) to (8) and (10) apply in respect of rights exercised after 4:00 p.m. Eastern Standard Time, March 4, 2010.

(12) Subsections (2) and (3) apply to dispositions of rights occurring after 4:00 p.m. Eastern Standard Time, March 4, 2010.

(13) Subsection (9) applies after 1999 and before 4:00 p.m. Eastern Standard Time, March 4, 2010, except that, for the period before December 14, 2007, the reference in subsection 7(9.1) of the Act, as enacted by subsection (9), to "designated stock exchange" shall be read as a reference to "prescribed stock exchange".

56. (1) Paragraph 18(1)(*m*) of the Act is replaced by the following:

Limitation re employee stock option expenses

(*m*) an amount in respect of which an election was made by or on behalf of the taxpayer under subsection 110(1.1);

(2) Subsection 18(1) of the Act is amended by adding the following after paragraph (*o.2*):

Employee life and health trust

(*o.3*) except as expressly permitted by paragraph 20(1)(*s*), contributions to an employee life and health trust;

(3) Paragraph 18(9)(*a*) of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) subject to clause (iii)(B) and subsections 144.1(4) to (7), as consideration for a "designated employee benefit" (as defined in subsection 144.1(1)) to be provided after the end of the year (other than consideration payable in the year, to a corporation that is licensed to provide insurance, for insurance coverage in respect of the year);

(4) Subsection (1) applies in respect of transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time, March 4, 2010.

(5) Subsections (2) and (3) apply after 2009.

57. (1) Subsection 20(1) of the Act is amended by adding the following after paragraph (*r*):

Employer's contributions under an employee life and health trust

(*s*) such amount in respect of employer contributions paid to a trustee under an employee life and health trust as is permitted by subsections 144.1(4) to (7);

(2) Subsection (1) applies after 2009.

58. Subsection 33.1(6) of the Act is replaced by the following:

Election

(6) For the purposes of subsections (4) and (5), where a taxpayer so elects in the taxpayer's return of income for a taxation year or in a prescribed form filed with the Minister within 90 days after the day of sending of a notice of assessment for the year or a notification that no tax is payable for the year, an eligible deposit recorded in the books of account of an international banking centre business of the taxpayer at the end of a day in the year is deemed not to have been recorded at any time in the day in the books of account of that business and shall be deemed to have been recorded throughout that day in the books of account of another international banking centre business of the taxpayer designated by the taxpayer in the election.

59. (1) Section 40 of the Act is amended by adding the following after subsection (3.2):

Deemed capital gain under subsection 180.1

(3.21) An amount determined under paragraph 180.1(2)(*b*) shall be included in computing a taxpayer's income for a taxation year under this Part.

(2) Subsection (1) is deemed to have come into force on March 4, 2010.

60. (1) Subparagraph 56(1)(*a*)(iv) of the Act is replaced by the following:

(iv) a benefit under the *Unemployment Insurance Act*, other than a payment relating to a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act, or a benefit under Part I, VII.1, VIII or VIII.1 of the *Employment Insurance Act*,

(2) Subsection 56(1) of the Act is amended by striking-out "and" at the end of paragraph (*z*), by renumbering paragraph (*aa*) as paragraph (*z.1*), by adding "and" at the end of paragraph (*z.1*) and by adding the following after paragraph (*z.1*):

Employee life and health trust

(*z.2*) the total of all amounts, each of which is an amount received in the year by the taxpayer that is required to be included in income under subsection 144.1(11) except to the extent that the amount was required under subsection 70(2) to be included in computing the income for the year by the taxpayer or other person resident in Canada.

(3) Subsection (1) applies to the 2011 and subsequent taxation years.

(4) Subsection (2) applies after 2009.

61. (1) Paragraph 60(*m*) of the Act is replaced by the following:

(*m*) such amount in respect of payments to a registered disability savings plan as is permitted under section 60.02;

(2) Subsection (1) applies after March 3, 2010.

62. (1) Section 60.02 of the Act is replaced by the following:

Definitions

60.02 (1) The definitions in this subsection apply in this section and section 146.4,

"eligible individual" « *particulier admissible* »

"eligible individual" means a child or grandchild of a deceased annuitant under a registered retirement savings plan or a registered retirement income fund, or of a deceased member of a registered pension plan, who was financially dependent on the deceased for support, at the time of the deceased's death, by reason of mental or physical infirmity.

"eligible proceeds" « *produit admissible* »

"eligible proceeds" means an amount (other than an amount that was deducted under paragraph 60(*l*) in computing the eligible individual's income) received by an eligible individual as a consequence of the death after March 3, 2010 of a parent or grandparent of the eligible individual that is

(*a*) a refund of premiums (as defined in subsection 146(1));

(*b*) an eligible amount under subsection 146.3(6.11); or

(*c*) a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) out of or under a registered pension plan.

"specified RDSP payment" « *paiement de REEI déterminé* »

"specified RDSP payment" in respect of an eligible individual means a payment that

(*a*) is made to a registered disability savings plan under which the eligible individual is the beneficiary;

(*b*) complies with the conditions set out in paragraphs 146.4(4)(*f*) to (*h*);

(*c*) is made after June 2011; and

(*d*) has been designated in prescribed form for a taxation year by the holder of the plan and the eligible individual at the time that the payment is made.

"transitional eligible proceeds" « *produit admissible transitoire* »

"transitional eligible proceeds" of a taxpayer means

(*a*) any amount (other than an amount that is eligible proceeds or an amount that was deducted under paragraph 60(*l*) in computing the taxpayer's income) that is received by the taxpayer as a consequence of the death of an individual after 2007 and before 2011 out of or under

(i) a registered retirement savings plan or registered retirement income fund, or

(ii) a registered pension plan (other than an amount that is received as part of a series of periodic payments or that relates to an actuarial surplus); or

(*b*) as an amount withdrawn from the taxpayer's registered retirement savings plan or a registered retirement income fund (in this subsection referred to as the "RRSP withdrawal") if

(i) the taxpayer previously deducted an amount under paragraph 60(*l*) in respect of an amount that would be described by paragraph (*a*) if it were read without reference to "other than an amount that is eligible proceeds or an amount that was deducted under paragraph 60(*l*) in computing the taxpayer's income",

(ii) the RRSP withdrawal is included in computing the taxpayer's income for the year of the withdrawal, and

(iii) the RRSP withdrawal does not exceed the amount deducted under subparagraph (i).

Rollover to RDSP on death

(2) There may be deducted in computing the income for a taxation year of a taxpayer who is an eligible individual an amount that

(*a*) does not exceed the lesser of

(i) the total specified RDSP payments made in the year or within 60 days after the end of the year (or within any longer period after the end of the year that is acceptable to the Minister) in respect of the taxpayer; and

(ii) the total amount of eligible proceeds that is included in computing the taxpayer's income in the year; and

(*b*) was not deducted in computing the taxpayer's income for a preceding taxation year.

Application of subsections (4) and (5)

(3) Subsections (4) and (5) do not apply unless

(*a*) a taxpayer who was the annuitant under a registered retirement savings plan or a registered retirement income fund or was a member of a registered pension plan died after 2007 and before 2011;

(*b*) the taxpayer was, immediately before the taxpayer's death, the parent or grandparent of an eligible individual;

(*c*) transitional eligible proceeds were received from the plan or fund by

(i) an eligible individual in respect of the taxpayer,

(ii) a person who was the spouse or common-law partner of the taxpayer immediately before the taxpayer's death, or

(iii) a person who is a beneficiary of the taxpayer's estate or who directly received transitional eligible proceeds as a consequence of the death of the taxpayer; and

(*d*) the transitional eligible proceeds were included in computing the income of a person for a taxation year.

Transitional rule

(4) There may be deducted in computing the income of a taxpayer described in paragraph (3)(*c*) for a taxation year an amount approved by the Minister that does not exceed the lesser of

(*a*) the total specified RDSP payments made by the taxpayer before 2012, and

(*b*) the amount of transitional eligible proceeds included in computing the taxpayer's income for the year.

Transitional rule — deceased taxpayer

(5) There may be deducted in computing the income of a taxpayer for the taxation year in which the taxpayer died an amount approved by the Minister that does not exceed the lesser of

(*a*) the total specified RDSP payments made before 2012 by an individual described in subparagraph (3)(*c*)(iii), and

(*b*) the amount by which the total of all amounts that were included in computing the taxpayer's income for the year under subsection 146(8.8) or 146.3(6) exceeds the total of all amounts, if any, that were deducted in computing the taxpayer's income for the year under subsection 146(8.92) or 146.3(6.3).

Limitation

(6) The total amounts that may be deducted under subsections (4) and (5) in respect of transitional eligible proceeds received in respect of the death of a taxpayer shall not exceed the total transitional eligible proceeds received in respect of the deceased taxpayer.

(2) Subsection (1) applies after March 3, 2010.

63. (1) Paragraphs (*h*) and (*i*) of the definition "principal-business corporation" in subsection 66(15) of the Act are replaced by the following:

(*h*) the generation or distribution of energy, or the production of fuel, using property described in Class 43.1 or 43.2 of Schedule II to the *Income Tax Regulations*, and

(*i*) the development of projects for which it is reasonable to expect that at least 50% of the capital cost of the depreciable property to be used in each project would be the capital cost of property described in Class 43.1 or 43.2 of Schedule II to the *Income Tax Regulations*,

(2) Subsection (1) applies to 2004 and subsequent taxation years.

64. The portion of subsection 70(2) of the Act before paragraph (*a*) is replaced by the following:

Amounts receivable

(2) Where a taxpayer who has died had at the time of death rights or things (other than any capital property or any amount included in computing the taxpayer's income by virtue of subsection (1)), the amount of which when realized or disposed of would have been included in computing the taxpayer's income, the value of the rights or things at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died, unless the taxpayer's legal representative has, not later than the later of the day that is one year after the date of death of the taxpayer and the day that is 90 days after the sending of any notice of assessment in respect of the tax of the taxpayer for the year

of death, elected otherwise, in which case the legal representative shall file a separate return of income for the year under this Part and pay the tax for the year under this Part as if

65. (1) Paragraph 75(3)(*b*) of the Act is replaced by the following:

(*b*) by an employee life and health trust, an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(*a*)), a trust described in paragraph (*a.1*) of the definition "trust" in subsection 108(1), or a trust described in paragraph 149(1)(*y*);

(2) Subsection (1) applies after 2009.

66. (1) Paragraph 87(2)(*j.3*) of the Act is replaced by the following:

employee benefit plans etc.

(*j*.3) for the purposes of paragraphs 12(1)(*n.1*) to (*n.3*) and 20(1)(*r*), (*s*), (*oo*) and (*pp*), section 32.1, paragraph 104(13)(*b*), subsections 144.1(4) to (7) and Part X1.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) applies after 2009.

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

Denial of foreign accrual tax

(4.1) For the purposes of the definition "foreign accrual tax" in subsection 95(1), foreign accrual tax applicable to a particular amount included in computing a taxpayer's income under subsection (1) for a taxation year of the taxpayer in respect of a particular foreign affiliate of the taxpayer shall not include any income or profits tax paid in respect of, or any amount prescribed in respect of the particular affiliate to be foreign accrual tax applicable to, the particular amount if at any time in the taxation year (referred to in this subsection as the "affiliate year") of the particular affiliate that ends in the taxation year of the taxpayer

(*a*) a particular person or partnership that is, at any time in the affiliate year, a pertinent person or partnership in respect of the taxpayer is considered, under the income tax laws (referred to in subsections (4.2) and (4.3) as the "relevant foreign tax law") of any country other than Canada under the laws of which any income of the particular affiliate is subject to income taxation,

(i) to own less than all of the shares of the capital stock of a corporation that is, at any time in the affiliate year, a pertinent person or partnership in respect of the taxpayer that are considered to be owned by the particular person or partnership for the purposes of the Act, or

(ii) to have a lesser direct or indirect share of the income of a partnership that is, at any time in the affiliate year, a pertinent person or partnership in respect of the taxpayer than the particular person or partnership is considered to have for the purposes of the Act; or

(*b*) if the taxpayer is a partnership, the direct or indirect share of the income of the partnership of any member of the partnership that is, at any time in the affiliate year, a person resident in Canada, or that is a person or partnership that is, at any time in the affiliate

year, a pertinent person or partnership in respect of such a person, is, under the income tax laws (referred to in subsection (4.3) as the "relevant foreign tax law") of any country other than Canada under the laws of which any income of the partnership is subject to income taxation, less than the member's direct or indirect share of the income for the purposes of the Act.

Exception — hybrid entities

(4.2) For the purposes of subparagraph (4.1)(*a*)(i), a pertinent person or partnership in respect of the taxpayer is not to be considered to own less than all of the shares of the capital stock of a corporation under the relevant foreign tax law that are considered to be owned for the purposes of the Act solely because the pertinent person or partnership or the corporation is not treated as a corporation under the relevant foreign tax law.

Exceptions — partnerships

(4.3) For the purposes of subparagraph (4.1)(*a*)(ii) and paragraph (4.1)(*b*), a member of a partnership is not to be considered to have a lesser direct or indirect share of the income of the partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*a*) a difference between the relevant foreign tax law and the Act in the manner of

(i) computing the income of the partnership, or

(ii) allocating the income of the partnership because of the admission to, or withdrawal from, the partnership of any of its members;

(*b*) the treatment of the partnership as a corporation under the relevant foreign tax law; or

(*c*) the fact that the member is not treated as a corporation under the relevant foreign tax law.

Tiered partnerships

(4.4) For the purposes of subsections (4.1) to (4.3), if a person or partnership is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership, the person or partnership is deemed to be a member of the other partnership.

Pertinent person or partnership

(4.5) For the purposes of this subsection and subsections (4.1) and (4.2), a "pertinent person or partnership" in respect of a taxpayer at any time means a person or a partnership that is, at that time,

(*a*) the taxpayer;

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

(*c*) a foreign affiliate of

(i) the taxpayer,

(ii) a person that is at that time a pertinent person or partnership in respect of the taxpayer under this subsection because of paragraph (*b*), or

(iii) a partnership that is at that time a pertinent person or partnership in respect of the taxpayer under this subsection because of paragraph (*d*); or

(*d*) a partnership a member of which is at that time a pertinent person or partnership in respect of the taxpayer under this subsection.

(2) Subsection (1) applies to income or profits tax paid, and amounts prescribed in respect of a foreign affiliate of a taxpayer to be foreign accrual tax applicable, in respect of amounts included in computing the taxpayer's income under subsection 91(1) of the Act for taxation years of the taxpayer that end after March 4, 2010, except that, for taxation years of the taxpayer that end on or before Announcement Date,

(*a*) subsections 91(4.1) and (4.2) of the Act, as enacted by subsection (1), are to be read as follows:

(4.1) For the purposes of the definition "foreign accrual tax" in subsection 95(1), foreign accrual tax applicable to a particular amount included in computing a taxpayer's income under subsection (1) for a taxation year in respect of a particular foreign affiliate of the taxpayer shall not include any income or profits tax paid, or any amount prescribed in respect of the particular affiliate to be foreign accrual tax applicable, in respect of the particular amount where that particular amount is earned during a period in which

(*a*) if the taxpayer is a partnership, the share of the income of any member of the partnership that is a person resident in Canada is, under the income tax laws (referred to in subsection (4.3) as the "relevant foreign tax law") of any country, other than Canada, under the laws of which the income of the partnership is subject to income taxation, less than its share of the income for the purposes of the Act, or

(*b*) in any other case, the taxpayer is considered, under the income tax laws (referred to in subsection (4.2) as the "relevant foreign tax law") of any country, other than Canada, under the laws of which the income of the particular affiliate is subject to income taxation, to own less than all of the shares of the capital stock of the particular affiliate, of another foreign affiliate of the taxpayer in which the particular affiliate has an equity percentage, or of another foreign affiliate of the taxpayer that has an equity percentage in the particular affiliate, that are considered to be owned by the taxpayer for the purposes of the Act.

(4.2) For the purposes of paragraph (4.1)(*b*), a taxpayer is not to be considered to own less than all of the shares of the capital stock of a foreign affiliate of the taxpayer under the relevant foreign tax law that are considered to be owned by the taxpayer for the purposes of the Act solely because the taxpayer or the foreign affiliate is not treated as a corporation under the relevant foreign tax law.

(*b*) the portion of subsection 91(4.3) of the Act before paragraph (*a*), as enacted by subsection (1), is to be read as follows:

(4.3) For the purposes of paragraph (4.1)(*a*), a member of a partnership is not to be considered to have a lesser share of the income of the partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*c*) section 91 of the Act is to be read without reference to its subsections (4.4) and (4.5), as enacted by subsection (1).

68. (1) The portion of the definition "foreign accrual tax" in subsection 95(1) of the Act before paragraph (*a*) is replaced by the following:

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

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

(2) Subsection (1) applies to taxation years of a taxpayer that end after March 4, 2010.

69. (1) Subsection 104(6) of the Act is amended by striking out "and" at the end of paragraph (*a.3*) and by adding the following after paragraph (*a.3*):

(*a.4*) in the case of an employee life and health trust, an amount that became payable by the trust in the year as a designated employee benefit (as defined in subsection 144.1(1)); and

(2) Subsection (1) applies after 2009.

70. (1) The portion of section 107.1 of the Act before subparagraph (*a*)(i) is replaced by the following:

Distribution by certain employment-related trusts

107.1 Where at any time any property of an employee life and health trust, an employee trust, a trust governed by an employee benefit plan or a trust described in paragraph (*a.1*) of the definition "trust" in subsection 108(1) has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

(*a*) in the case of an employee life and health trust, an employee trust or a trust described in paragraph (*a.1*) of the definition "trust" in subsection 108(1),

(2) Subsection (1) applies after 2009.

71. (1) Paragraph 107.4(1)(*j*) of the Act is replaced by the following:

(*j*) if the contributor is an amateur athlete trust, a cemetery care trust, an employee life and health trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(*a*)), a trust described in paragraph 149(1)(*o.4*) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered disability savings plan, a registered education savings plan, a registered supplementary unemployment benefit plan or a TFSA, the particular trust is the same type of trust.

(2) Subsection (1) applies after 2009.

72. (1) Paragraph (*a*) of the definition "trust" in subsection 108(1) of the Act is replaced by the following:

(*a*) an amateur athlete trust, an employee life and health trust, an employee trust, a trust described in paragraph 149(1)(*o.4*) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrange-

ment, a registered disability savings plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan or a TFSA,

(2) Subsection (1) applies after 2009.

73. (1) Subparagraph 110(1)(*d*)(i) of the Act is replaced by the following:

(i) the security was acquired under the agreement by the taxpayer or a person not dealing at arm's length with the taxpayer in circumstances described in paragraph 7(1)(*c*),

(i.1) the security

(A) is a prescribed share at the time of its sale or issue, as the case may be,

(B) would have been a prescribed share if it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement,

(C) would have been a unit of a mutual fund trust at the time of its sale or issue if those units issued by the trust that were not identical to the security had not been issued, or

(D) would have been a unit of a mutual fund trust if

(I) it were issued or sold to the taxpayer at the time the taxpayer disposed of rights under the agreement, and

(II) those units issued by the trust that were not identical to the security had not been issued,

(2) Section 110 of the Act is amended by adding the following after subsection (1):

Election by a particular qualifying person

(1.1) For the purpose of computing the taxable income of a taxpayer for a taxation year, paragraph (1)(*d*) shall be read without reference to its subparagraph (i) in respect of all rights granted to the taxpayer under an agreement to sell or issue securities referred to in subsection 7(1) if

(*a*) the particular qualifying person elects in prescribed form that neither the particular qualifying person nor any person not dealing at arm's length with the particular qualifying person will deduct in computing its income for a taxation year any amount (other than a designated amount described in subsection (1.2)) in respect of a payment to or for the benefit of a taxpayer for the taxpayer's transfer or disposition of rights under the agreement;

(*b*) the particular qualifying person files the election with the Minister;

(*c*) the particular qualifying person provides the taxpayer with evidence in writing of the election; and

(*d*) the taxpayer files the evidence with the Minister with the taxpayer's return of income for the year in which a deduction under paragraph (1)(*d*) is claimed.

Designated amount

(1.2) For the purposes of subsection (1.1), an amount is a designated amount if the following conditions are met:

(*a*) the amount would otherwise be deductible in computing the income of the particular qualifying person in the absence of subsection (1.1);

(*b*) the amount is payable to a person

(i) with whom the particular qualifying person deals at arm's length, and

(ii) who is neither an employee of the particular qualifying person nor of any person not dealing at arm's length with the particular qualifying person; and

(*c*) the amount is payable in respect of an arrangement entered into for the purpose of managing the particular qualifying person's financial risk associated with a potential increase in value of the securities under the agreement described in subsection (1.1).

(3) Subsections (1) and (2) apply in respect of acquisitions of securities and transfers or dispositions of rights occurring after 4:00 p.m. Eastern Standard Time, March 4, 2010.

74. (1) The portion of paragraph 111(4)(*e*) of the Act before subparagraph (i) is replaced by the following:

(*e*) each capital property owned by the corporation immediately before that time (other than a property in respect of which an amount would, but for this paragraph, be required by paragraph (*c*) to be deducted in computing its adjusted cost base to the corporation or a depreciable property of a prescribed class to which, but for this paragraph, subsection (5.1) would apply) as is designated by the corporation in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is sent to the corporation, is deemed to have been disposed of by the corporation immediately before the time that is immediately before that time for proceeds of disposition equal to the lesser of

(2) Section 111 of the Act is amended by adding the following after subsection (7.2):

Non-capital losses of employee life and health trusts

(7.3) Paragraph (1)(*a*) does not apply in computing the taxable income of a trust for a taxation year if the trust is, in the year, an employee life and health trust.

Non-capital losses of employee life and health trusts

(7.4) For the purposes of computing the taxable income of an employee life and health trust for a taxation year, there may be deducted such portion as the trust may claim of the trust's non-capital losses for the three taxation years immediately preceding and the three taxation years immediately following the year.

Non-capital losses of employee life and health trusts

(7.5) Notwithstanding paragraph (1)(*a*) and subsection (7.4), no amount in respect of the trust's non-capital losses for a taxation year in which the trust was an employee life and health trust may be deducted in computing the trust's taxable income for another taxation year (referred to in this subsection as the "specified year") if

(*a*) the trust was not an employee life and health trust for the specified year, or

(*b*) the trust is an employee life and health trust that, because of the application of subsection 144.1(3), is not permitted to deduct any amount under subsection 104(6) for the specified year.

(3) Variable E of the definition "non-capital loss" in subsection 111(8) of the Act is amended by adding the following after paragraph (*a*):

(*a.1*) an amount deductible under paragraph 104(6)(*a.4*) in computing the taxpayer's income for the year;

(4) Subsections (2) and (3) apply after 2009.

75. (1) Section 118.7 of the Act is replaced by the following:

Credit for EI premiums and CPP contributions

118.7 For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of

(*a*) the total of all amounts each of which is an amount payable by the individual as an employee's premium or a self-employment premium for the year under the *Employment Insurance Act*, not exceeding the maximum amount of such premiums payable by the individual for the year under that Act,

(*b*) the total of all amounts each of which is an amount payable by the individual for the year as an employee's contribution under the *Canada Pension Plan* or under a provincial pension plan defined in section 3 of that Act, not exceeding the maximum amount of such contributions payable by the individual for the year under the plan, and

(*c*) the amount by which

(i) the total of all amounts each of which is an amount payable by the individual in respect of self-employed earnings for the year as a contribution under the *Canada Pension Plan* or under a provincial pension plan within the meaning assigned by section 3 of that Act (not exceeding the maximum amount of such contributions payable by the individual for the year under the plan)

exceeds

(ii) the amount deductible under paragraph 60(*e*) in computing the individual's income for the year.

(2) Subsection (1) applies to the 2010 and subsequent taxation years.

76. (1) The definition "adjusted income" in subsection 122.5(1) of the Act is replaced by the following:

"adjusted income" « *revenu rajusté* »

"adjusted income", of an individual for a taxation year in relation to a month specified for the taxation year, means the total of the individual's income for the taxation year and the income for the taxation year of the individual's qualified relation, if any, in relation to the specified month, both calculated as if in computing that income no amount were

(*a*) included

(i) under paragraph 56(1)(*q.1*) or subsection 56(6),

(ii) in respect of any gain from a disposition of property to which section 79 applies, or

(iii) in respect of a gain described in subsection 40(3.21); or

(*b*) deductible under paragraph 60(*y*) or (*z*).

(2) Section 122.5 of the Act is amended by adding the following after subsection (3):

Shared-custody parent

(3.01) Notwithstanding subsection (3), if an eligible individual is a shared-custody parent (within the meaning assigned by section 122.6, but with the words "qualified dependant" in that section having the meaning assigned by subsection (1)) in respect of one or more qualified dependants at the beginning of a month, the amount deemed by subsection (3) to have been paid during a specified month is equal to the amount determined by the following formula

$$1/2 \times (A + B)$$

where

A is the amount determined by the formula in subsection (3), calculated without reference to this subsection, and

B is the amount determined by the formula in subsection (3), calculated without reference to this subsection and subparagraph (*b*)(ii) of the definition "eligible individual" in section 122.6,

(3) Paragraph 122.5(6)(*b*) of the Act is replaced by the following:

(*b*) in the absence of an agreement referred to in paragraph (*a*), the person is deemed to be, in relation to that month, a qualified dependant of the individuals, if any, who are, at the beginning of that month, eligible individuals (within the meaning assigned by section 122.6, but with the words "qualified dependant" in that section having the meaning assigned by subsection (1)) in respect of that person; and

(4) Subsection (1) applies to the 2000 and subsequent taxation years.

(5) Subsections (2) and (3) apply for amounts that are deemed to be paid during months after June 2011.

77. (1) The definition "adjusted income" in section 122.6 of the Act is replaced by the following:

"adjusted income" « *revenu modifié* »

"adjusted income", of an individual for a taxation year, means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if in computing that income no amount were

(*a*) included

(i) under paragraph 56(1)(*q.1*) or subsection 56(6),

(ii) in respect of any gain from a disposition of property to which section 79 applies, or

(iii) in respect of a gain described in subsection 40(3.21), or

(*b*) deductible under paragraph 60(*y*) or (*z*);

(2) Paragraph (*b*) of the definition "eligible individual" in section 122.6 of the Act is replaced by the following:

(b) is a parent of the qualified dependant who

(i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant, or

(ii) is a shared-custody parent in respect of the qualified dependant,

(3) Subsection 122.6(1) of the Act is amended by adding the following in alphabetical order:

"shared-custody parent" in respect of a qualified dependent at a particular time means, where the presumption referred to in paragraph (*f*) of the definition "eligible individual" does not apply in respect of the qualified dependant, an individual who is one of the two parents of the qualified dependant who

(*a*) are not at that time cohabitating spouses or common-law partners of each other,

(*b*) reside with the qualified dependant on an equal or near equal basis, and

(*c*) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors,

(4) Subsection (1) applies to the 2000 and subsequent taxation years.

(5) Subsections (2) and (3) apply for overpayments that are deemed to arise after June 2011.

78. (1) Section 122.61 of the Act is amended by adding the following after subsection (1):

Shared-custody parent

(1.1) Notwithstanding subsection (1), if an eligible individual is a shared-custody parent in respect of one or more qualified dependants at the beginning of a month, the overpayment

deemed by subsection (1) to have arisen during the month is equal to the amount determined by the formula

$$1/2 \times (A + B)$$

where

A is the amount determined by the formula in subsection (1), calculated without reference to this subsection, and

B is the amount determined by the formula in subsection (1), calculated without reference to this subsection and subparagraph (*b*)(ii) of the definition "eligible individual" in section 122.6,

(2) Subsection (1) applies for overpayments that are deemed to arise after June 2011.

79. (1) Paragraph (*b*) of the definition "adjusted net income" in subsection 122.7(1) of the Act is replaced by the following:

(*b*) in computing that income, no amount were included under paragraph 56(1)(*q.1*) or subsection 56(6), in respect of any gain from a disposition of property to which section 79 applies or in respect of a gain described in subsection 40(3.21); and

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

80. (1) Section 126 of the Act is amended by adding the following after subsection (4.1):

Denial of foreign tax credit

(4.11) If a taxpayer is a member of a partnership, any income or profits tax paid to the government of a particular country other than Canada — in respect of the income of the partnership for a period during which the taxpayer's direct or indirect share of the income of the partnership under the income tax laws (referred to in subsection (4.12) as the "relevant foreign tax law") of any country other than Canada under the laws of which any income of the partnership is subject to income taxation, is less than the taxpayer's direct or indirect share of the income for the purposes of the Act — is not included in computing the taxpayer's business-income tax or non-business-income tax for any taxation year.

Exceptions

(4.12) For the purposes of subsection (4.11), a taxpayer is not to be considered to have a lesser direct or indirect share of the income of a partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*a*) a difference between the relevant foreign tax law and the Act in the manner of

(i) computing the income of the partnership, or

(ii) allocating the income of the partnership because of the admission to, or withdrawal from, the partnership of any of its members;

(*b*) the treatment of the partnership as a corporation under the relevant foreign tax law; or

(*c*) the fact that the taxpayer is not treated as a corporation under the relevant foreign tax law.

Tiered partnerships

(4.13) For the purposes of subsections (4.11) and (4.12), if a taxpayer is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership, the taxpayer is deemed to be a member of the other partnership.

(2) The portion of the definition "business-income tax" in subsection 126(7) of the Act before paragraph (*a*) is replaced by the following:

"business-income tax" « *impôt sur le revenu tiré d'une entreprise* »

"business-income tax" paid by a taxpayer for a taxation year in respect of businesses carried on by the taxpayer in a country other than Canada (referred to in this definition as the "business country") means, subject to subsections (4.1) to (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as tax in respect of the income of the taxpayer from a business carried on by the taxpayer in the business country, but does not include a tax, or the portion of a tax, that can reasonably be regarded as relating to an amount that

(3) The portion of the definition "non-business-income tax" in subsection 126(7) of the Act before paragraph (*a*) is replaced by the following:

"non-business-income tax" « *impôt sur le revenu ne provenant pas d'une entreprise* »

"non-business-income tax" paid by a taxpayer for a taxation year to the government of a country other than Canada means, subject to subsections (4.1) to (4.2), the portion of any income or profits tax paid by the taxpayer for the year to the government of that country that

(4) Subsections (1) to (3) apply to income or profits tax paid for taxation years of a taxpayer that end after March 4, 2010, except that, for taxation years of the taxpayer that end on or before Announcement Date,

(*a*) subsection 126(4.11) of the Act, as enacted by subsection (1), is to be read as follows:

(4.11) If a taxpayer is a member of a partnership, any income or profits tax paid to the government of a particular country other than Canada — in respect of the income of the partnership for a period during which the taxpayer's share of the income of the partnership under the income tax laws (referred to in subsection (4.12) as the "relevant foreign tax law") of any country other than Canada under the laws of which the income of the partnership is subject to income taxation, is less than the taxpayer's share of the income for the purposes of the Act — is not included in computing the taxpayer's business-income tax or non-business-income tax for any taxation year.

(*b*) the portion of subsection 126(4.12) of the Act before paragraph (*a*), as enacted by subsection (1), is to be read as follows:

(4.12) For the purposes of subsection (4.11), a taxpayer is not to be considered to have a lesser share of the income of a partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*c*) section 126 of the Act is to be read without reference to its subsection (4.13), as enacted by subsection (1).

81. (1) Paragraph 127.55(*f*) of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) an employee life and health trust.

(2) Subsection (1) applies after 2009.

82. (1) Paragraph 128.1(4)(*c*) of the Act is replaced by the following:

Employee life and health trust

(*b.1*) notwithstanding paragraph (*b*), if the taxpayer is or was at any time an employee life and health trust,

(i) the taxpayer is deemed

(A) to have disposed, at the time (in this paragraph referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer for proceeds equal to its fair market value at the time of disposition, which proceeds are deemed to have become receivable and to have been received by the taxpayer at the time of disposition, and

(B) to have carried on a business at the time of disposition, and

(ii) each property of the taxpayer is deemed

(A) to have been described in the inventory of the business referred to in clause (i)(B), and

(B) to have a cost of nil at the time of disposition;

Reacquisition

(*c*) the taxpayer is deemed to have reacquired, at the particular time, each property deemed by paragraph (*b*) or (*b.1*) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of the property;

(2) Paragraph (*a*) of the definition "excluded right or interest" in subsection 128.1(10) of the Act is amended by adding the following after subparagraph (vi):

(vi.1) an employee life and health trust,

(3) Subsections (1) and (2) apply after 2009.

83. (1) The portion of paragraph 129(1)(*a*) of the Act before subparagraph (i) is replaced by the following:

(*a*) may, on sending the notice of assessment for the year, refund without application an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(2) Paragraph 129(1)(*b*) of the Act is replaced by the following:

(*b*) shall, with all due dispatch, make the dividend refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(*a*).

84. Paragraph 131(2)(*b*) of the Act is replaced by the following:

(*b*) shall, with all due dispatch, make that capital gains refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(*a*).

85. Paragraph 132(1)(*b*) of the Act is replaced by the following:

(*b*) shall, with all due dispatch, make that capital gains refund after sending the notice of assessment if an application for it has been made in writing by the trust within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the trust for the year if that subsection were read without reference to paragraph 152(4)(*a*).

86. Paragraphs 133(6)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may, on sending the notice of assessment for the year, refund without application its allowable refund for the year; and

(*b*) shall, with all due dispatch, make that allowable refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable by the corporation for the year if that subsection were read without reference to paragraph 152(4)(*a*).

87. (1) The definition "transition year" in subsection 138(12) of the Act is replaced by the following:

"transition year" of a life insurer means

"transition year"
« *année transitoire* »

(*a*) in respect of the accounting standards adopted by the Accounting Standards Board and effective as of October 1, 2006, the life insurer's first taxation year that begins after September 2006; and

(*b*) in respect of the International Financial Reporting Standards adopted by the Accounting Standards Board and effective as of January 1, 2011, the life insurer's first taxation year that begins after 2010;

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

"deposit accounting insurance policy" in respect of a life insurer's taxation year means an insurance policy of the life insurer that, according to generally accepted accounting principles, is not an insurance contract for that taxation year;

"deposit accounting insurance policy"
« *police d'assurance à comptabilité de dépôt* »

"excluded policy" « *police exclue* »

"excluded policy" in respect of a life insurer's base year means an insurance policy of the life insurer that would be a deposit accounting insurance policy for the life insurer's base year if the International Financial Reporting Standards adopted by the Accounting Standards Board and effective as of January 1, 2011 applied for that base year;

(3) Section 138 of the Act is amended by adding the following after subsection (17):

IFRS transition — reversals

(17.1) In applying subsections (18) and (19) to a life insurer for a taxation year of the life insurer in respect of the International Financial Reporting Standards adopted by the Accounting Standards Board and effective as of January 1, 2011,

(*a*) the reference to "policy reserve" in B of the formula in the definition "reserve transition amount" in subsection (12) is to be read as a reference to "policy reserve determined without reference to the life insurer's excluded policies";

(*b*) the reference in those subsections to "that ends after the beginning of the transition year" is to be read as a reference to "that ends no sooner than two years after the beginning of the transition year"; and

(*b*) the reference in those subsections to "the first day of the transition year" is to be read as a reference to "the first day of the first year that ends no sooner than two years after the beginning of the transition year ".

(4) Subsections (1) to (3) apply to taxation years that begin after 2010.

88. (1) The Act is amended by adding the following after section 144:

Employee Life and Health Trust

Definitions

144.1 (1) The following definitions apply in this section.

"actuary" « *actuaire* »

"actuary" means a Fellow of the Canadian Institute of Actuaries.

"class of beneficiaries" « *catégorie de bénéficiaires* »

"class of beneficiaries" of a trust means a group of beneficiaries who have identical rights or interests under the trust.

"designated employee benefit" « *prestation désignée* »

"designated employee benefit" means a benefit from a group sickness or accident insurance plan, a group term life insurance policy or a private health services plan.

"employee" « *employé* »

"employee" means a current or former employee of an employer and includes an individual in respect of whom the employer has assumed responsibility for the provision of designated employee benefits as a result of the acquisition by the employer of a business in which the individual was employed.

"key employee" « *employé clé* »

"key employee", of an employer in respect of a taxation year, means an employee who

(*a*) was at any time in the taxation year or in a preceding taxation year, a specified employee of the employer; or

(*b*) was an employee whose employment income from the employer in any two of the five taxation years preceding the year exceeded five times the Year's Maximum Pensionable Earnings (as determined under section 18 of the *Canada Pension Plan*) for the calendar year in which the employment income was earned.

Employee Life and Health Trust

(2) A trust that is established for employees of one or more employers (each referred to in this subsection as a "participating employer") is an employee life and health trust for a taxation year if, throughout the taxation year, the terms that govern the trust provide that:

(*a*) the only purpose of the trust is to provide designated employee benefits to, or for the benefit of, persons described in subparagraphs (*d*) (i) or (ii), and

(*b*) on wind-up or reorganization, the property of the trust may only be distributed to

(i) each remaining beneficiary of the trust who is described in subparagraph (d)(i) or (ii) (other than a key employee or an individual who is related to a key employee) on a *pro rata* basis;

(ii) another employee life and health trust; or

(iii) after the death of the last beneficiary described in subparagraph (d)(i) or (ii), Her Majesty in right of Canada or a province;

(*c*) the trust is required to be resident in Canada, determined without reference to section 94;

(*d*) the only permitted beneficiaries of the trust are persons each of whom is

(i) an employee of a participating employer,

(ii) an individual who is or was

(A) the spouse or common law partner of an employee of a participating employer, or

(B) a member of the household of an employee of a participating employer, who is connected to the employee by blood relationship, marriage or adoption,

(iii) another employee life and health trust, or

(iv) Her Majesty in right of Canada or a province;

(*e*) the trust contains at least one class of beneficiaries where

(i) the members of the class represent at least 25% of all of the beneficiaries of the trust who are employees of the participating employer, and

(ii) at least 75% of the members of the class are not key employees of the participating employer;

(*f*) the rights under the trust of each key employee of a participating employer are not more advantageous than the rights of a class of beneficiaries described in paragraph (*e*);

(*g*) no participating employer, nor any person who does not deal at arm's length with a participating employer, has any rights under the trust as a beneficiary or otherwise, except rights to

(i) designated employee benefits,

(ii) to enforce covenants, warranties or similar provisions regarding the maintenance of the trust as an employee life and health trust; or

(iii) prescribed payments;

(*h*) the trust may not make a loan to, or an investment in, a participating employer or a person or partnership with whom the participating employer does not deal at arm's length;

(*i*) representatives of one or more participating employers do not constitute the majority of the trustees of the trust or otherwise control the trust.

Breach of terms etc.

(3) No amount may be deducted in a taxation year by an employee life and health trust pursuant to subsection 104(6) if in the taxation year the trust

(*a*) is not operated in accordance with the terms required by subsection (2) to govern the trust, or

(*b*) is operated or maintained primarily for the benefit of one or more key employees or their family members described in subparagraph (d)(ii).

Deductibility of employer contributions

(4) In computing the income of an employer,

(*a*) the employer may deduct for a taxation year the portion of its contributions to an employee life and health trust made in the year that may reasonably be regarded as having been contributed to enable the trust to

(i) pay premiums to an insurance corporation that is licensed to provide insurance under the laws of Canada or a province for insurance coverage for the year in respect of designated employee benefits for beneficiaries described in subparagraph (2)(*d*)(i) or (ii); or

(ii) provide

(A) group term life insurance as described in clause 18(9)(*a*)(iii)(B), or

(B) any designated employee benefits payable in the year to, or for the benefit of, beneficiaries described in subparagraph (2)(*d*)(i) or (ii); and

(*b*) the portion of any contribution made to an employee life and health trust that exceeds the amount deductible under paragraph (*a*) and that may reasonably be regarded as enabling the trust to provide or pay benefits described in subparagraphs (*a*)(i) or (ii) in a subsequent taxation year is deductible for that year.

Actuarial determination

(5) For the purposes of subsection (4), if, in respect of an employer's obligations to fund an employee life and health trust, a report has been prepared by an independent actuary, using accepted actuarial principles and practices, before the time of a contribution by the employer, the portion of the contribution that the report specifies to be reasonably required to enable the employee life and health trust to provide designated employee benefits to beneficiaries described in subparagraph (2)(d)(i) or (ii) for a taxation year is, in the absence

of evidence to the contrary, presumed to have been contributed to enable the trust to provide those benefits for the year.

Multi-employer plans

(6) Notwithstanding subsection (4), an employer may deduct in computing its income for a taxation year the amount that it is required to contribute for the year to an employee life and health trust if the following conditions are met at the time that the contribution is made:

(*a*) it is reasonable to expect that

(i) at no time in the year will more than 95 per cent of the employees who are beneficiaries of the trust be employed by a single employer or by a related group of employers, and

(ii) at least 15 employers will contribute to the trust in respect of the year or at least 10 per cent of the employees who are beneficiaries of the trust will be employed in the year by more than one participating employer and, for the purpose of this condition, all employers who are related to each other are deemed to be a single employer;

(*b*) employers contribute to the trust under a collective bargaining agreement and in accordance with a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the trust; and

(*c*) contributions that are to be made by each employer are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer or some other measure that is specific to each employee with respect to whom contributions are made to the trust.

Maximum deductible

(7) The amount deducted in a taxation year by an employer in computing its income in respect of contributions made to an employee life and health trust shall not exceed the amount determined by the formula

$$A - B$$

where

A is the total of all amounts contributed by the employer to the trust in the year or in a preceding taxation year, and

B is the total of all amounts deducted by the employer in a preceding taxation year in respect of amounts contributed by the employer to the trust.

Employer promissory note

(8) If an employer issues a promissory note or provides other evidence of its indebtedness to an employee life and health trust in respect of its obligation to the trust,

(*a*) the issuance of the note or the provision of the evidence of indebtedness to the trust is not a contribution to the trust; and

(*b*) a payment by the employer to the trust in full or partial satisfaction of its liability under the note or the evidence of indebtedness, whether stated to be of principal or interest or any other amount, is deemed to be an employer contribution to the trust that is subject to this section and not a payment of principal or interest on the note or indebtedness.

Trust status — subsequent times

(9) For the purposes of determining whether an amount is deductible by an employer under subsection (4), if a trust was an employee life and health trust at the time that a promissory note or other evidence of indebtedness referred to in subsection (8) was issued or provided, the trust is deemed to be an employee life and health trust at each time that an employer contribution is deemed to have been made under paragraph (8)(*b*) in respect of the note or other indebtedness.

Employee contributions

(10) For the purposes of paragraph 6(1)(*f*), subsection 6(4) and paragraph 118.2(2)(*q*), employee contributions to an employee life and health trust, to the extent that they are, and are identified by the trust at the time of contribution as, contributions in respect of a particular designated employee benefit, are deemed to be payments by the employee in respect of the particular designated employee benefit.

Income inclusion

(11) If a trust that is, or was, at any time, an employee life and health trust pays an amount as a distribution from the trust to any person in a taxation year, the amount of the distribution shall be included in computing the person's income for the year, except to the extent that the amount is

(*a*) a payment of a designated employee benefit that is not included in the person's income because of section 6; or

(*b*) a distribution to another employee life and health trust that is a beneficiary of the employee life and health trust.

Deemed separate trusts

(12) Where contributions have been received by an employee life and health trust from more than one employer, the trust is deemed to be a separate trust established in respect of the property held for the benefit of beneficiaries described in subparagraph (2)(*d*)(i) or (ii) in respect of a particular employer, if

(*a*) the trustee designates the property to be held in a separate trust for the benefit of those beneficiaries in an election made on or before the filing-due date of the first taxation year of the separate trust described in this subsection; and

(*b*) under the terms of the trust, contributions from the employer and the income derived from those contributions accrues solely for the benefit of those beneficiaries.

Non-capital losses

(13) No non-capital loss is deductible by an employee life and health trust in computing its taxable income for a taxation year, except as provided by subsections 111(7.3) to (7.5).

(2) Subsection (1) applies to trusts established after 2009.

89. (1) The definition "contribution" in subsection 146.4(1) of the Act is amended by striking out "or" at the end of paragraph (*b*), by adding "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) other than for the purposes of paragraphs (4)(*f*) to (*h*) and (*n*), a specified RDSP payment as defined in subsection 60.02(1).

(2) Subsection (1) applies after June 2011.

90. (1) The definitions "capital gains pool", "enduring property" and "specified gift"in subsection 149.1(1) of the Act are repealed.

(2) The definition "disbursement quota" in subsection 149.1(1) of the Act is replaced by the following:

"disbursement quota" « *contingent des versements* »

"disbursement quota", for a taxation year of a registered charity, means the amount determined by the formula

$$A \times B \times 0.035/365$$

where

A is the number of days in the taxation year, and

B is

(*a*) the prescribed amount for the year, in respect of all or a portion of a property owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration, if that amount is greater than

(i) if the registered charity is a charitable organization, $100,000, and

(ii) in any other case, $25,000, and

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

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

"designated gift" « *don déterminé* »

"designated gift" means that portion of a gift of property made in a taxation year by a particular registered charity, to another registered charity with which it does not deal at arm's length, that is designated by the particular registered charity in its information return for the taxation year;

(4) Paragraph 149.1(1.1)(*a*) of the Act is replaced by the following:

(*a*) a designated gift;

(5) The portion of subsection 149.1(1.2) of the Act before paragraph (*a*) is replaced by the following:

Authority of Minister

(1.2) For the purposes of the determination of B in the definition "disbursement quota" in subsection 149.1(1), the Minister may

(6) Paragraph 149.1(4.1)(*a*) of the Act is replaced by the following:

(*a*) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(7) Subsection 149.1(4.1) of the Act is amended by striking out "and" at the end of paragraph (*b*), by adding "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.

(8) Subsections 149.1(8) and (9) of the Act are replaced by the following:

Accumulation of property

(8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions and over any period of time that the Minister specifies in the approval. Any property accumulated after receipt of and in accordance with the approval, including any income earned in respect of the accumulated property, is not to be included in calculating the prescribed amount in paragraph (*a*) of the description of B in the formula in the definition "disbursement quota" in subsection (1) for the portion of any taxation year in the period, except to the extent that the registered charity is not in compliance with the terms and conditions of the approval.

(9) Subparagraph 149.1(12)(*b*)(i) of the Act is replaced by the following:

(i) a designated gift,

(10) Subsections (1) to (9) apply for taxation years that end on or after March 4, 2010.

91. (1) Paragraphs 152(3.1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends four years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year; and

(*b*) in any other case, the period that ends three years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year.

(2) Subparagraph 152(4)(*d*)(ii) of the Act is replaced by the following:

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

92. (1) Paragraph 153(1)(*s*) of the Act is replaced by the following:

(*s*) an amount described in paragraph 56(1)(*r*) or (*z.2*), or

(2) Section 153 of the Act is amended by adding the following after subsection (1):

Withholding — stock option benefits

(1.01) An amount that is deemed to have been received by a taxpayer as a benefit under or because of any of paragraphs 7(1)(*a*) to (*d.1*) is remuneration paid as a bonus for the purposes of paragraph (1)(*a*), except the portion, if any, of the amount that is

(*a*) deductible by the taxpayer under paragraph 110(1)(*d*) in computing the taxpayer's taxable income for a taxation year;

(*b*) deemed to have been received in a taxation year as a benefit because of a disposition of securities to which subsection 7(1.1) applies; or

(*c*) determined under paragraph 110(2.1)(*b*) to be deductible by the taxpayer under paragraph 110(1)(*d.01*) in computing the taxpayer's taxable income for a taxation year.

(3) Section 153 of the Act is amended by adding the following after subsection (1.3):

Non-cash stock option benefit

(1.31) An amount deemed to have been received as a benefit under or because of any of paragraphs 7(1)(*a*) to (*d.1*) shall not be considered a basis on which the Minister may determine a lesser amount under subsection (1.1) solely because it is received as a non-cash benefit.

(4) Subsection (1) applies after 2009.

(5) Subsection (2) applies after 2010, except that it does not apply with respect to benefits arising from rights granted before 2011 to a taxpayer under an agreement to sell or issue securities that was entered into in writing before 4:00 p.m. Eastern Standard Time, March 4, 2010 and that included, at that time, a written condition prohibiting the taxpayer from disposing of the securities acquired under the agreement for a period of time after exercise.

(6) Subsection (3) applies after 2010.

93. (1) Paragraph 161(11)(*b.1*) of the Act is replaced by the following:

(*b.1*) in the case of a penalty under subsection 237.1(7.4) or 237.3(8), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(2) Paragraph 161(11)(*c*) of the Act is replaced by the following:

(*c*) in the case of a penalty payable by reason of any other provision of this Act, from the day of sending of the notice of original assessment of the penalty to the day of payment.

(3) Subsection (1) applies in respect of avoidance transactions that are entered into after 2010 or that are part of a series of transactions that began before 2011 and is completed after 2010.

94. Subparagraphs 161.1(3)(*c*)(i) to (v) of the Act are replaced by the following:

(i) the day of sending 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 sending 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 subparagraph (i) or (ii), the day of sending 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 subparagraph (i) or (ii) 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 sending of the first notice to the corporation indicating that the Minister 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 sent before that day.

95. (1) Subsection 163(2.9) of the Act is replaced by the following:

Where partnership liable to penalty

(2.9) Where a partnership is liable to a penalty under subsection (2.4) or section 163.2, 237.1 or 237.3, sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any changes that the circumstances require, in respect of the penalty as if the partnership were a corporation.

(2) Subsection (1) applies in respect of avoidance transactions that are entered into after 2010 or that are part of a series of transactions that began before 2011 and is completed after 2010.

96. (1) Paragraphs 164(1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may,

(i) before sending the notice of assessment for the year, where the taxpayer is, for any purpose of the definition "refundable investment tax credit" (as defined in subsection 127.1(2)), a qualifying corporation (as defined in that subsection) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (*f*) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (*g*) of that definition in respect of the taxpayer for the year,

(ii) before sending the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(iii) on or after sending 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); and

(*b*) shall, with all due dispatch, make the refund referred to in subparagraph (*a*)(iii) after sending the notice of assessment if application for it is made in writing by the taxpayer

within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(*a*).

(2) The portion of subsection 164(1.5) of the Act before paragraph (*a*) is replaced by the following:

Exception

(1.5) Notwithstanding subsection (1), the Minister may, on or after sending a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

(3) Subsection 164(2.3) of the Act is replaced by the following:

Form deemed to be a return of income

(2.3) For the purpose of subsection (1), where a taxpayer files the form referred to in paragraph (*b*) of the definition "return of income" in section 122.6 for a taxation year, 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 sent by the Minister.

97. (1) Subparagraph 165(1)(*a*)(ii) of the Act of the Act is replaced by the following:

(ii) the day that is 90 days after the day of sending of the notice of assessment; and

(2) Paragraph 165(1)(*b*) of the Act is replaced by the following:

(*b*) in any other case, on or before the day that is 90 days after the day of sending of the notice of assessment.

(3) The portion of subsection 165(1.1) of the Act after paragraph (*c*) and before paragraph (*d*) is replaced by the following:

the taxpayer may object to the assessment or determination within 90 days after the day of sending of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

98. Subsection 166.1(6) of the Act is replaced by the following:

Date of objection or request if application granted

(6) Where an application made under subsection (1) is granted, the notice of objection or the request, as the case may be, is deemed to have been served or made on the day the decision of the Minister is sent to the taxpayer.

99. The portion of subsection 169(1) of the Act after paragraph (*b*) is replaced by the following:

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

100. (1) The Act is amended by adding the following after section 180:

PART I.1

TAX IN RESPECT OF STOCK OPTION BENEFIT DEFERRAL

Election — special tax and relief for deferral of stock option benefits

180.1 (1) A taxpayer may make an election in prescribed form to have subsection (2) apply for a taxation year in respect of particular securities if

(*a*) the taxpayer elected to have subsection 7(8) apply, as that subsection applied before 4:00 p.m. Eastern Standard Time, March 4, 2010, in respect of the particular securities; and

(*b*) the taxpayer has, in the year and before 2015, disposed of the particular securities; and

(*c*) the election under this subsection is filed

(i) if the taxpayer has disposed of the particular securities before 2010, on or before the taxpayer's filing-due date for 2010, and

(ii) in any other case, on or before the taxpayer's filing-due date for the year of disposition of the particular securities.

Effect of election

(2) If a taxpayer makes an election under subsection (1) for a taxation year in respect of particular securities, the following rules apply:

(*a*) paragraph 110(1)(*d*) shall be read without reference to the phrase "1/2 of" in respect of the amount of the benefit deemed by subsection 7(1) to have been received by the taxpayer in the year in respect of the particular securities;

(*b*) the taxpayer is deemed to have realized a capital gain for the year equal to the lesser of

(i) the amount that is deductible by the taxpayer under paragraph 110(1)(*d*), as modified by paragraph (*a*), and

(ii) the taxpayer's capital loss in respect of the disposition of the particular securities;

(*c*) the taxpayer is liable to pay a tax equal to

(i) in the case of a taxpayer resident in the Province of Quebec at the end of the year, 2/3 of the taxpayer's proceeds of disposition (as defined in section 54, but determined without reference to subsection 73(1)) of the particular securities, and

(ii) in any other case, the taxpayer's proceeds of disposition (as defined in section 54, but determined without reference to subsection 73(1)) of the particular securities;

(*d*) to the extent that the taxation year is outside the normal reassessment period (as defined in subsection 152(3.1)), the election is deemed to be an application for reassessment under subsection 152(4.2); and

(*e*) notwithstanding subsection 152(4) and as the circumstances require, the Minister shall re-determine the taxpayer's "net capital loss" (as defined in subsection 111(8)) for the taxation year and reassess any taxation year in which an amount has been deducted under paragraph 111(1)(*b*).

Non-application for employment insurance purposes

(3) An amount included under subsection (2)(*b*) in computing a person's income under Part I of this Act for a taxation year shall not be included in determining the income of the person for the year under Part VII of the *Employment Insurance Act*.

Provisions applicable to this Part

(4) Subsection 150(3), sections 150.1, 151, 152, 155 to 156.1 and 158 to 167 and Division J of Part I apply to this Part with any modifications that the circumstances require.

(2) Subsection (1) is deemed to have come into force on March 4, 2010.

101. (1) The definition "adjusted income" in subsection 180.2(1) of the Act is replaced by the following:

"adjusted income" « *revenu modifié* »

"adjusted income" of an individual for a taxation year means the amount that would be the individual's income under Part I for the year if in computing that income no amount were

(*a*) included

(i) under paragraph 56(1)(*q.1*) or subsection 56(6),

(ii) in respect of a gain from a disposition of property to which section 79 applies, or

(iii) in respect of a gain described in subsection 40(3.21), or

(*b*) deductible under paragraph 60(*w*), (*y*) or (*z*);

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

102. The portion of subsection 184(3) of the Act before paragraph (*a*) is replaced by the following:

Election to treat excess as separate dividend

(3) Where, in respect of a dividend payable at a particular time after 1971, a corporation would, but for this subsection, be required to pay a tax under this Part equal to all or a portion of an excess referred to in subsection (2) of this section or subsection 184(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, it may elect in prescribed manner on or before a day that is not later than 90 days after the day of sending of the notice of assessment in respect of the tax that would otherwise be payable under this Part, and on such an election being made, subject to subsection (4), the following rules apply:

103. The portion of subsection 185.1(2) of the Act before paragraph (*a*) is replaced by the following:

Election to treat excessive eligible dividend designation as an ordinary dividend

(2) If, in respect of an excessive eligible dividend designation that is not described in paragraph (1)(*b*) and that is made by a corporation in respect of an eligible dividend (in this subsection and subsection (3) referred to as the "original dividend") paid by it at a particular time, the corporation would, if this Act were read without reference to this subsection, be required to pay a tax under subsection (1), and it elects in prescribed manner on or before

the day that is 90 days after the day of sending the notice of assessment in respect of that tax that would otherwise be payable under subsection (1), the following rules apply:

104. (1) Subsection 188.1(11) of the Act is replaced by the following:

Delay of expenditure

(11) If, in a taxation year, a registered charity has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities, the registered charity is liable to a penalty under this Act for its taxation year equal to 110% of the amount of expenditure avoided or delayed, and in the case of a gift to another registered charity, both charities are jointly and severally, or solidarily, liable to the penalty.

Gifts not at arm's length

(12) If a registered charity has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length, the registered charity is liable to a penalty under this Act for that subsequent taxation year equal to 110% of the difference between the fair market value of the property and the additional amount expended.

(2) Subsection (1) applies for taxation years that end on or after March 4, 2010.

105. Subparagraph 189(6.2)(*a*)(i) of the Act is replaced by the following:

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

106. (1) Subparagraphs 191.2(1)(*b*)(i) and (ii) of the Act are replaced by the following:

(i) the day of sending of any notice of assessment of tax payable under this Part or Part I by the corporation for that year,

(ii) where the corporation has served a notice of objection to an assessment described in subparagraph (i), the day of sending of a notice that the Minister has confirmed or varied the assessment,

107. Paragraph 191.3(2)(*b*) of the Act is replaced by the following:

(*b*) it is filed on or before the day on or before which the transferor corporation's return for the year in respect of which the agreement is filed is required to be filed under this Part or within the 90 day period commencing on the day of sending of a notice of assessment of tax payable under this Part or Part I 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 sending of a notification that no tax is payable under this Part or Part I for that taxation year;

108. Paragraphs 207(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may, on sending the notice of assessment for the year, refund without application any allowable refund of the person for the year, to the extent that it was not applied against the person's tax payable under paragraph (1)(*b*); and

(*b*) shall, with all due dispatch, make the refund referred to in paragraph (*a*) after sending the notice of assessment if an application for it has been made in writing by the person within three years after the sending of an original notice of assessment for the year.

109. Paragraphs 207.07(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may, on sending the notice of assessment for the year, refund without application any allowable refund of the person for the year, to the extent that it was not applied against the person's tax payable under paragraph (1)(*b*); and

(*b*) shall, with all due dispatch, make the refund referred to in paragraph (*a*) after sending the notice of assessment if an application for it has been made in writing by the person within three years after the sending of an original notice of assessment for the year.

110. Paragraphs 207.7(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may, on sending the notice of assessment for the year or a notification that no tax is payable for the year, refund without application an amount equal to the amount, if any, by which the refundable tax of the arrangement at the end of the immediately preceding year exceeds the refundable tax of the arrangement at the end of the year; and

(*b*) shall, with all due dispatch, make such a refund after sending the notice of assessment if application for it has been made in writing by the custodian within three years after the day of sending of a notice of an original assessment for the year or of a notification that no tax is payable for the year.

111. (1) Subsection 212(1) of the Act is amended by striking out "or" at the end of paragraph (*u*), by adding "or" at the end of paragraph (*v*) and by adding the following after paragraph (*v*):

(*w*) a payment out of a trust that is, or was, at any time, an employee life and health trust, except to the extent that it is a payment of a designated employee benefit (as defined by subsection 144.1(1)).

(2) Subsection (1) applies after 2009.

112. Subparagraph 222(4)(*a*)(i) of the Act is replaced by the following:

(i) if a notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is sent 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 sent or served, and

113. (1) Paragraphs 225.1(1.1)(*b*) and (*c*) of the Act are replaced by the following:

(*b*) in the case of an amount assessed under section 188.1, one year after the day on which the notice of assessment was sent; and

(*c*) in any other case, 90 days after the day on which the notice of assessment was sent.

(2) Subsection 225.1(2) of the Act is replaced by the following:

Idem

(2) Where a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(*a*) to (*g*) until after the day that is 90 days after the day on which notice is sent to the taxpayer that the Minister has confirmed or varied the assessment.

(3) Paragraph 225.1(7)(*a*) of the Act is replaced by the following:

(*a*) at any time on or before the particular day that is 90 days after the day of the sending of the notice of assessment, 1/2 of the amount so assessed; and

114. (1) Paragraph 227(10)(*b*) of the Act is replaced by the following:

(*b*) subsection 237.1(7.4) or 237.3(8) by a person or partnership,

(2) Subsection (1) applies in respect of avoidance transactions that are entered into after 2010 or that are part of a series of transactions that began before 2011 and is completed after 2010.

115. (1) The Act is amended by adding the following after section 237.2:

Definitions

237.3 (1) The following definitions apply in this section.

"advisor" « *conseiller* »

"advisor" in respect of a transaction or series of transactions means each person who provides, directly or indirectly in any manner whatever, any contractual protection in respect of the transaction or series, or any assistance or advice with respect to creating, developing, planning, organizing or implementing the transaction or series, to any person (including any person who enters into the transaction for the benefit of another person).

"avoidance transaction" « *opération d'évitement* »

"avoidance transaction" has the meaning assigned by subsection 245(3).

"confidential protection" « *droit à la confidentialité* »

"confidential protection" in respect of a transaction or series of transactions means anything that prohibits the disclosure to any person or to the Minister of the details or structure of the transaction or series under which a tax benefit results, or would result but for section 245, but for greater certainty, the disclaiming or restricting of an advisor's liability shall not be considered confidential protection if it does not prohibit the disclosure of the details or structure of the transaction of series.

"contractual protection" « *protection contractuelle* »

"contractual protection" in respect of a transaction or series of transactions means

(*a*) any form of insurance (other than standard professional liability insurance) or other protection, including, without limiting the generality of the foregoing, an indemnity, compensation or a guarantee that, either immediately or in the future and either absolutely or contingently,

(i) protects a person against a failure of the transaction or series to achieve any tax benefit from the transaction or series, or

(ii) pays for or reimburses any expense, fee, tax, interest, penalty or similar amount that may be incurred by a person in the course of a dispute in respect of a tax benefit from the transaction or series, and

(*b*) any form of undertaking provided by a promoter, or by any person who does not deal at arm's length with a promoter, that provides, either immediately or in the future and either absolutely or contingently, assistance, directly or indirectly in any manner whatever, to a person in the course of a dispute in respect of a tax benefit from the transaction or series.

"fee" « *honoraires* »

"fee" in respect of a transaction or series of transactions means any consideration that is, or could be, received or receivable, directly or indirectly in any manner whatever, by an advisor or a promoter, or any person who does not deal at arm's length with an advisor or promoter, for

(*a*) providing advice or an opinion with respect to the transaction or series,

(*b*) creating, developing, planning, organizing or implementing the transaction or series,

(*c*) promoting or selling an arrangement, plan or scheme that includes, or relates to, the transaction or series,

(*d*) preparing the documents supporting the transaction or series, including tax returns or any information returns to be filed under the Act, or

(*e*) providing contractual protection.

"person" « *personne* »

"person" includes a partnership.

"promoter" « *promoteur* »

"promoter" in respect of a transaction or series of transactions means each person who

(*a*) promotes or sells (whether as principal or agent and whether directly or indirectly) an arrangement, plan or scheme (referred to in this definition as an "arrangement"), if it may reasonably be considered that the arrangement includes or relates to the transaction or series,

(*b*) makes a statement or representation (whether as principal or agent and whether directly or indirectly) that a tax benefit could result from an arrangement, if it may reasonably be considered that

(i) the statement or representation was made in furtherance of the promoting or selling of an arrangement, and

(ii) the arrangement includes or relates to the transaction or series, or

(*c*) accepts (whether as principal or agent and whether directly or indirectly) consideration in respect of an arrangement referred to in paragraph (*a*) or (*b*).

"reportable transaction" « *opération à déclarer* »

"reportable transaction" at any time means an avoidance transaction that is entered into by or for the benefit of a person, and each transaction that is part of a series of transactions that includes the avoidance transaction, where at the time any two of the following paragraphs apply in respect of the avoidance transaction or series:

(*a*) an advisor or a promoter, or any person who does not deal at arm's length with the advisor or promoter, has or had an entitlement, either immediately or in the future and either absolutely or contingently, to a fee that to any extent

(i) is based on the amount of a tax benefit that results, or would result but for section 245, from the avoidance transaction or series,

(ii) is contingent upon the obtaining of a tax benefit that results, or would result but for section 245, from the avoidance transaction or series, or may be refunded, recovered or reduced, in any manner whatever based upon the failure of the person to obtain a tax benefit from the avoidance transaction or series, or

(iii) is attributable to the number of persons

(A) who participate in the avoidance transaction or series, or in a similar avoidance transaction or series, or

(B) who have been provided access to advice or an opinion given by the advisor or promoter regarding the tax consequences from the avoidance transaction or series, or in a similar avoidance transaction or series,

(*b*) an advisor or promoter in respect of the avoidance transaction or series, or any person who does not deal at arm's length with the advisor or promoter, has or had confidential protection in respect of the avoidance transaction or series, or

(*c*) either

(i) the person (in this subparagraph referred to as the "particular person"), another person who entered into the avoidance transaction for the benefit of the particular person or any other person who does not deal at arm's length with the particular person or with a person who entered into the avoidance transaction for the benefit of the particular person, has or had contractual protection in respect of the avoidance transaction or series, otherwise than as a result of a fee described in paragraph (*a*), or

(ii) the advisor or promoter, or any person who does not deal at arm's length with the advisor or promoter, has or had contractual protection in respect of the avoidance transaction or series, otherwise than as a result of a fee described in paragraph (*a*).

"tax benefit" « *avantage fiscal* »

"tax benefit" has the meaning assigned by subsection 245(1).

"transaction" « *opération* »

"transaction" has the meaning assigned by subsection 245(1).

Application

(2) An information return in prescribed form and containing prescribed information in respect of a reportable transaction must be filed with the Minister by

(*a*) every person for whom a tax benefit results, or would result but for section 245, from the reportable transaction;

(*b*) every person who has entered into, for the benefit of a person referred to in paragraph (*a*), an avoidance transaction that is a reportable transaction; and

(*c*) every advisor or promoter (and any person who is not dealing at arm's length with the advisor or promoter) who is or was entitled, either immediately or in the future and either absolutely or contingently, to a fee that is

(i) described in paragraph (*a*) of the definition "reportable transaction" in subsection (1), or

(ii) in respect of contractual protection provided in circumstances described in paragraph (*c*) of the definition "reportable transaction" in subsection (1).

Clarification of reporting transactions in series

(3) For greater certainty, and subject to subsection (11), if subsection (2) applies to a person in respect of each reportable transaction that is part of a series of transactions that includes an avoidance transaction, the filing of a prescribed form by the person that reports each transaction in the series is deemed to satisfy the obligation of the person under subsection (2) in respect of each transaction so reported.

Application

(4) For the purpose of subsection (2), if any person is required to file an information return in respect of a reportable transaction under that subsection, the filing by any such person of an information return with full and accurate disclosure in prescribed form in respect of the transaction is deemed to have been made by each person to whom subsection (2) applies in respect of the transaction.

Time for filing return

(5) An information return required by subsection (2) to be filed by a person for a reportable transaction is to be filed with the Minister on or before June 30th of the calendar year following the calendar year in which the transaction first became a reportable transaction in respect of the person.

Tax benefits disallowed

(6) Notwithstanding subsection 245(4), subsection 245(2) is deemed to apply at any time to any reportable transaction if, at that time,

(*a*) the obligation under subsection (2) of a person described in paragraph (2)(*a*) in respect of the reportable transaction has not been satisfied;

(*b*) a person is liable to a penalty under subsection (8); and

(*c*) the penalty under subsection (8) or interest on the penalty has not been paid, or has been paid but an amount on account of the penalty or interest has been repaid under subsection 164(1.1) or applied under subsection 164(2).

Assessments

(7) Notwithstanding subsections 152(4) to 152(5), such assessments, determinations and redeterminations may be made as are necessary to give effect to subsection (8).

Penalty

(8) Every person who fails to file an information return in respect of a reportable transaction as required under subsection (2) on or before the day required under subsection (5) is liable to a penalty equal to the total of each amount that is a fee to which an advisor or a promoter (or any person who does not deal at arm's length with the advisor or the promoter)

in respect of the reportable transaction is or was entitled, either immediately or in the future and either absolutely or contingently, to receive in respect of the reportable transaction, any transaction that is part of the series of transactions that includes the reportable transaction or the series of transactions that includes the reportable transaction, if the fee is

(*a*) described in paragraph (*a*) of the definition "reportable transaction" in subsection (1); or

(*b*) in respect of contractual protection provided in circumstances described in paragraph (*c*) of the definition "reportable transaction" in subsection (1).

Joint and several liability

(9) If more than one person is liable to a penalty under subsection (8) in respect of a reportable transaction, each of those persons are jointly and severally liable to pay the penalty.

Joint and several liability — special cases

(10) Notwithstanding subsections (8) and (9), the liability of an advisor or a promoter to a penalty under those subsections in respect of a reportable transaction shall not exceed the total of each amount that is a fee to which that advisor or promoter, or a person with whom the advisor or promoter does not deal at arm's length, is or was entitled, either immediately or in the future and either absolutely or contingently, to receive in respect of the reportable transaction.

Due diligence

(11) A person required to file an information return in respect of a reportable transaction is not liable for a penalty under subsection (8) if the person has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances.

Reporting not an admission

(12) The filing of an information return under this section by a person in respect of a reportable transaction is not an admission by the person that

(*a*) section 245 applies in respect of any transaction; or

(*b*) any transaction is part of a series of transactions.

Application of ss. 231 to 231.3

(13) Without restricting the generality of sections 231 to 231.3, notwithstanding that a return of income has not been filed by a taxpayer under section 150 for the taxation year of the taxpayer in which a tax benefit results, or would result but for section 245, from the reportable transaction, sections 231 to 231.3 apply, with such modifications as the circumstances require, for the purpose of permitting the Minister to verify or ascertain any information in respect of that transaction.

Tax shelters and flow-through shares

(14) For the purpose of this section, a reportable transaction does not include a transaction that is, or is part of a series of transactions that includes,

(*a*) the acquisition of a tax shelter for which an information return has been filed with the Minister under subsection 237.1(7); or

(*b*) the issuance of a flow-through share for which an information return has been filed with the Minister under subsection 66(12.68).

Tax shelters and flow-through shares — penalty

(15) Notwithstanding subsection (8), the amount of the penalty, if any, that applies on a person under that subsection in respect of a reportable transaction shall not exceed the amount determined by the formula

A – B

where

A is the amount of the penalty imposed on the person under subsection (8), determined without reference to this subsection; and

B is

(*a*) if the reportable transaction is the acquisition of a tax shelter, the amount of the penalty, if any, that applies on the person under subsection 237.1(7.4) in respect of the tax shelter,

(*b*) if the reportable transaction is the issuance of a flow-through share, the amount of the penalty, if any, that applies on the person under subsection 66(12.74) in respect of the issuance of the flow-through share, and

(*c*) in any other case, nil.

Anti-avoidance

(16) Subsection (14) does not apply to a reportable transaction if it is reasonable, having regard to all of the circumstances, to conclude that one of the main reasons for the acquisition of a tax shelter, or the issuance of a flow-through share, is to avoid the application of this section.

(2) Subsection (1) applies in respect of avoidance transactions that are entered into after 2010 or that are part of a series of transactions that began before 2011 and is completed after 2010. If the filing of an information return under section 237.3, as enacted by subsection (1), would be required before July 1, 2011, the information return is deemed to be filed before that day if it is filed before 2012.

116. (1) Subsection 244(14) of the Act is replaced by the following:

Mailing or sending date

(14) For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, or sent electronically, it shall be presumed to be mailed or sent, as the case may be, on the date of that notice or notification.

(2) Section 244 of the Act is amended by adding the following after subsection (14):

Date when electronic notice sent

(14.1) For the purposes of this Act, if a notice or other communication in respect of a person or partnership is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the person or partnership and received by the person or partnership on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person or partnership to the Minister for the purposes of this subsection, informing the person or partnership that a notice or other communication requiring the person or partnership's immediate attention is available in the person

or partnership's secure electronic account. A notice or other communication is considered to be made available 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 and has not before that date revoked that authorization in a manner specified by the Minister.

(3) Subsection 244(15) of the Act is replaced by the following:

Date when assessment made

(15) Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of sending of the notice of the assessment or determination.

117. The portion of subsection 245(6) of the Act after paragraph (*b*) is replaced by the following:

any person (other than a person referred to in paragraph (*a*) or (*b*)) shall be entitled, within 180 days after the day of sending of the notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2) or make a determination applying subsection 152(1.11) with respect to that transaction.

118. (1) The definition "employee benefit plan" in subsection 248(1) of the Act is replaced by the following:

"employee benefit plan" « *régime de prestations aux employés* »

"employee benefit plan" means an arrangement under which contributions are made by an employer or by any person with whom the employer does not deal at arm's length to another person (in this Act referred to as the "custodian" of an employee benefit plan) and under which one or more payments are to be made to or for the benefit of employees or former employees of the employer or persons who do not deal at arm's length with any such employee or former employee (other than a payment that, if section 6 were read without reference to subparagraph 6(1)(*a*)(ii) and paragraph 6(1)(*g*), would not be required to be included in computing the income of the recipient), but does not include any portion of the arrangement that is

(*a*) a fund, plan or trust referred to in subparagraph 6(1)(*a*)(i) or paragraph 6(1)(*d*) or (*f*),

(*b*) a trust described in paragraph 149(1)(*y*),

(*c*) an employee trust,

(*c.1*) a salary deferral arrangement, in respect of a taxpayer, under which deferred amounts are required to be included as benefits under paragraph 6(1)(*a*) in computing the taxpayer's income,

(*c.2*) a retirement compensation arrangement,

(*d*) an arrangement the sole purpose of which is to provide education or training for employees of the employer to improve their work or work-related skills and abilities, or

(*e*) a prescribed arrangement;

(2) The definition "retirement compensation arrangement" in subsection 248(1) of the Act is amended by adding the following after paragraph (*f*):

(*f.1*) an employee life and health trust,

(3) The definition "salary deferral arrangement" in subsection 248(1) of the Act is amended by adding the following after paragraph (*e*):

(*e.1*) an employee life and health trust,

(4) The portion of paragraph (*d*) of the definition "taxable Canadian property" in subsection 248(1) of the Act before subparagraph (i) is replaced by the following:

(*d*) a share of the capital stock of a corporation (other than a mutual fund corporation) that is not listed on a designated stock exchange, an interest in a partnership or an interest in a trust (other than a unit of a mutual fund trust or an income interest in a trust resident in Canada), if, at any particular time during the 60-month period that ends at that time, more than 50% of the fair market value of the share or interest, as the case may be, was derived directly or indirectly (otherwise than through a corporation, partnership or trust the shares or interests in which were not themselves taxable Canadian property at the particular time) from one or any combination of

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

"employee life and health trust" has the meaning assigned by subsection 144.1(2);

"employee life and health trust"
« *fiducie de soins de santé au bénéfice d'employés* »

(6) Subsections (1) to (3) and (5) apply after 2009.

(7) Subsection (4) applies in determining after March 4, 2010 whether a property is taxable Canadian property of taxpayer.

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

(*c.1*) subject to paragraph (*a*), where, at any particular time, as part of a series of transactions or events, two or more persons acquire shares of a corporation (in this paragraph referred to as the "acquiring corporation") in exchange for or upon a redemption or surrender of interests in, or as a consequence of a distribution from, a SIFT trust (determined without reference to subsection 122.1(2)), SIFT partnership (determined without reference to subsection 197(8)) or real estate investment trust (as defined in subsection 122.1(1)), control of the acquiring corporation and of each corporation controlled by it immediately before the particular time is deemed to have been acquired by a person or group of persons at the particular time unless

(i) in respect of each of the corporations, a person (in this subparagraph referred to as a "relevant person") affiliated (within the meaning assigned by section 251.1 read without reference to the definition "controlled" in subsection 251.1(3)) with the SIFT trust, SIFT partnership or real estate investment trust owned shares of the particular corporation having a total fair market value of more than 50% of the fair market value

of all the issued and outstanding shares of the particular corporation at all times during the period that

(A) begins on the latest of July 14, 2008, the date the particular corporation came into existence and the time of the last acquisition of control, if any, of the particular corporation by a relevant person, and

(B) ends immediately before the particular time,

(ii) if all the securities (in this subparagraph as defined in subsection 122.1(1)) of the acquiring corporation that were acquired as part of the series of transactions or events at or before the particular time were acquired by one person, the person would

(A) not at the particular time control the acquiring corporation, and

(B) have at the particular time acquired securities of the acquiring corporation having a fair market value of not more than 50% of the fair market value of all the issued and outstanding shares of the acquiring corporation, or

(iii) this paragraph previously applied to deem an acquisition of control of the acquiring corporation upon an acquisition of shares that was part of the same series of transactions or events.

(2) Subsection 256(7) of the Act is amended by striking out "and" at the end of paragraph (*e*) and by adding the following after paragraph (*f*):

(*g*) a corporation (in this paragraph referred to as the "acquiring corporation") that acquires shares of another corporation on a distribution that is a SIFT trust wind-up event of a SIFT wind-up entity is deemed not to acquire control of the other corporation because of that acquisition where the following conditions are met

(i) the SIFT wind-up entity is a trust whose only beneficiary immediately before the distribution is the acquiring corporation,

(ii) the SIFT wind-up entity controlled the other corporation immediately before the distribution,

(iii) as part of a series of transactions or events under which the acquiring corporation became the only beneficiary under the trust, two or more persons acquired shares in the acquiring corporation in exchange for their interests as beneficiaries under the trust, and

(iv) if all the shares described in subparagraph (iii) had been acquired by one person, the person would

(A) control the acquiring corporation, and

(B) have acquired shares of the acquiring corporation having a fair market value of more than 50% of the fair market value of all the issued and outstanding shares of the acquiring corporation.

(3) Subsections (1) and (2) apply to transactions undertaken after 4:00 p.m. Eastern Standard Time March 4, 2010, other than transactions the parties to which are obli-

gated to complete pursuant to the terms of an agreement in writing between the parties entered into before that time. However, the parties to a transaction shall be considered not to be obligated to complete the transaction if one or more of those parties may be excused from completing the transaction as a result of amendments to the Act.

(4) Subsections (1) and (2) also apply to transactions completed or agreed to in writing in the period that begins on July 14, 2008 and ends at 4:00 pm Eastern Standard Time March 4, 2010 if the parties to the transactions jointly elect in writing to the Minister of National Revenue on or before

(*a*) where a party to the transactions is a partnership, the day that is the later of

(i) the day that is the latest on which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the partnership's fiscal period that includes the day on which this Act receives Royal Assent, and

(ii) the day that is the latest filing-due date of any party for its taxation year that includes the day on which this Act receives Royal Assent, and

(*b*) if none of the parties to the transaction is a partnership, the day that is the latest filing-due date of any party for its taxation year that includes the day on which this Act receives Royal Assent.

For purposes of this subsection, the parties shall be considered to be the relevant SIFT trust, SIFT partnership, real estate investment trust and acquiring corporation described in paragraph 256(7)(*c.1*) or (*g*) of the Act, as the case may be.

Canada Pension Plan

120. Paragraphs 38(4)(*a*) and (*b*) of the *Canada Pension Plan* are replaced by the following:

(*a*) may refund that part of the amount so paid in excess of the contribution on sending the notice of assessment of the contribution, without any application having been made for the refund; and

(*b*) shall make such a refund after sending the notice of assessment, if application is made in writing by the contributor not later than four years – or, in the case of a contributor who is notified after the coming into force of this paragraph of a decision under subsection 60(7), 81(2), 82(11) or 83(11) in respect of a disability pension, ten years – after the end of the year.

Employment Insurance Act

121. (1) Subsection 85(4) of the *Employment Insurance Act* is replaced by the following:

Mailing or sending date

(4) The day of mailing or sending, as the case may be, of a notice of assessment described in subsection (2) is, in the absence of any evidence to the contrary, deemed to be the day appearing from the notice to be the date of the notice unless called into question by the Minister or by a person acting for the Minister or for Her Majesty.

(2) Section 85 of the *Act* is amended by adding the following after subsection (4):

Date when electronic notice sent

(5) For the purposes of this Act, if a notice or other communication in respect of a person or partnership is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the person or partnership and received by the person or partnership on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person or partnership to the Minister for the purposes of this subsection, informing the person or partnership that a notice or other communication requiring the person or partnership's immediate attention is available in the person or partnership's secure electronic account. A notice or other communication is considered to be made available 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 and has not before that date revoked that authorization in a manner specified by the Minister.

122. Subsection 102(14) of the Act is replaced by the following:

Date when assessment made

(14) If a notice of assessment has been sent by the Minister as required by this Part, the assessment is deemed to have been made on the day the notice is sent ~~mailed~~.

123. Paragraphs 152.3(1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) may refund that part of the amount so paid in excess of the premium on sending the notice of assessment of the premium, without any application having been made for the refund; and

(*b*) shall make the refund after sending the notice of assessment, if an application for the refund is made in writing by the self-employed person not later than three years after the end of the year.

Universal Child Care Benefit Act

124. (1) Section 2 of the *Universal Child Care Benefit Act* is amended by adding the following in alphabetical order:

"shared-custody parent" has the meaning assigned by section 122.6 of the *Income Tax Act*.

(2) Subsection (1) applies after June 2011.

125. (1) Subsection 4(1) of the Act is replaced by the following:

Amount of payment

4. (1) The Minister shall pay to an eligible individual, for each month at the beginning of which he or she is an eligible individual, for each child who is a qualified dependant of the eligible individual at the beginning of that month,

(a) a benefit of $50, if the eligible individual is a shared-custody parent of the qualified dependant; and

(b) a benefit of $100 in any other case.

(2) Subsection (1) applies for payments in respect of months after June 2011.

Specified leasing property

126. (1) Subsection 1100(1.13) of the *Income Tax Regulations* is amended by adding the following after paragraph (*a*):

(*a.1*) notwithstanding paragraph (*a*), "exempt property" does not include property that is the subject of a lease if that property had, at the time the lease was entered into, an aggregate fair market value in excess of $1,000,000 and the lessee of the property is

(i) a person who is exempt from tax by reason of section 149 of the Act,

(ii) a person who uses the property in the course of carrying on a business, the income from which is exempt from tax under Part I of the Act by reason of any provision of the Act,

(iii) a Canadian government, or

(iv) a person not resident in Canada, except where the person uses the property primarily in the course of carrying on a business in Canada that is not a treaty-protected business;

(*a.2*) for the purposes of paragraph (*a.1*), where it is reasonable, having regard to all the circumstances, to conclude that one of the main reasons for the existence of two or more leases was to avoid the application of paragraph (*a.1*) by reason of each such lease being a lease of property where the property that was the subject of the lease had an aggregate fair market value, at the time the lease was entered into, not in excess of $1,000,000, each such lease shall be deemed to be a lease of property that had, at the time the lease was entered into, an aggregate fair market value in excess of $1,000,000.

(2) Subsection (1) applies to property that is the subject of a lease entered into after 4:00 p.m. Eastern Standard Time March 4, 2010.

127. (1) The definition "food waste" in subsection 1104(13) of the Regulations is repealed.

(2) The definitions "biogas", "district energy system" and "eligible waste fuel" in subsection 1104(13) of the Regulations are replaced by the following:

"biogas" means the gas produced by the anaerobic digestion of organic waste that is sludge from an eligible sewage treatment facility, food and animal waste, manure, plant residue or wood waste. (*biogaz*)

"district energy system" means a system that is used primarily to provide heating or cooling by continuously circulating, from a central generation unit to one or more buildings through a system of interconnected pipes, an energy transfer medium that is heated or cooled using thermal energy. (*réseau énergétique de quartier*)

"eligible waste fuel" means biogas, bio-oil, digester gas, landfill gas, municipal waste, pulp and paper waste and wood waste. (*combustible résiduaire admissible*)

(3) Subsection 1104(13) of the Regulations is amended by adding the following in alphabetical order:

"food and animal waste" means organic waste that is disposed of in accordance with the laws of Canada or a province and that is

(*a*) generated during the preparation or processing of food for human or animal consumption;

(*b*) food that is no longer fit for human or animal consumption; or

(*c*) animal remains. (*déchets alimentaires et animaux*)

(4) Subsections (1) to (3) apply to property acquired after February 25, 2008, except that the definition "district energy system" in subsection 1104(13) of Regulations, as enacted by subsection (2), applies to property acquired after March 3, 2010.

128. (1) Paragraph 1219(1)(*f*) of the Regulations is replaced by the following:

(*f*) for the drilling or completion of a well for the project, other than 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 in Schedule II; or

(2) Subsection (1) applies to expenses incurred after May 2, 2010.

129. (1) Section 1402 of the Regulations is replaced by the following:

1402. Any amount determined under section 1400 or 1401 shall be determined

(*a*) net of relevant reinsurance recoverable amounts; and

(*b*) without reference to any amount in respect of a deposit accounting insurance policy.

(2) Subsection (1) applies to taxation years that begin after 2010.

130. (1) Section 1406 of the Regulations is replaced by the following:

1406. Any amount determined under section 1404 or 1405 shall be determined

(*a*) net of relevant reinsurance recoverable amounts;

(*b*) without reference to any liability in respect of a segregated fund (other than a liability in respect of a guarantee in respect of a segregated fund policy); and

(*c*) without reference to any amount in respect of a deposit accounting insurance policy.

(2) Subsection (1) applies to taxation years that begin after 2010.

131. (1) Subsection 1408(1) of the Regulations is amended by adding the following in alphabetical order:

"deposit accounting insurance policy" has the meaning assigned by subsection 138(12) of the Act. (*police d'assurance à comptabilité de dépôt*)

"reinsurance recoverable amount" of an insurer means an amount reported as a reinsurance asset of the insurer as at the end of a taxation year in respect of an amount recoverable from a reinsurer. (*somme à recouvrer au titre de la réassurance*)

(2) Section 1408 of the Regulations is amended by adding the following after subsection (7):

(8) A reference in this Part to an amount or item reported as an asset or a liability of an insurer as at the end of a taxation year means

(*a*) if reporting by the insurer to the insurer's relevant authority is required at the end of the year, an amount or item that is reported, as at the end of the year, as an asset or a liability in the insurer's non-consolidated balance sheet accepted by the insurer's relevant authority; and

(*b*) in any other case, an amount or item that is reported as an asset or a liability in a non-consolidated balance sheet that is prepared in a manner consistent with the requirements that would have applied had reporting to the insurer's relevant authority been required at the end of the year.

(3) Subsections (1) and (2) apply to taxation years that begin after 2010.

132. (1) The definitions "Canadian reserve liabilities" and "reinsurance recoverable" in subsection 2400(1) of the Regulations are replaced by the following:

"Canadian reserve liabilities" of an insurer as at the end of a taxation year means the amount determined by the formula

A – B

where

A is the total of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund) as at the end of the year in respect of

(*a*) life insurance policies in Canada;

(*b*) fire insurance policies issued or effected in respect of property situated in Canada; and

(*c*) insurance policies of any other class covering risks ordinarily within Canada at the time the policy was issued or effected; and

B is the total of the reinsurance recoverable reported as a reinsurance asset by the insurer as at the end of the year relating to its liabilities and reserves in A. (*passif de réserve canadienne*)

"reinsurance recoverable" of an insurer means the total of all amounts each of which is an amount reported as a reinsurance asset of the insurer as at the end of a taxation year in respect of an amount recoverable from a reinsurer. (*montant à recouvrer au titre de la réassurance*)

(2) The description of B of the formula in subparagraph (*a*)(i) of the definition "Canadian investment fund" in subsection 2400(1) of the Regulations is replaced by the following:

B is the amount of the insurer's Canadian outstanding premiums and policy loans as at the end of the year (to the extent that the amount of the premiums and loans are in respect of policies referred to in paragraphs (*a*) to (*c*) of A of the formula in the definition

"Canadian reserve liabilities" and were not otherwise deducted in computing the amount of the insurer's Canadian reserve liabilities as at the end of the year), and

(3) Clause (*b*)(i)(A) of the definition "Canadian investment fund" in subsection 2400(1) of the Regulations is replaced by the following:

(A) the amount of the insurer's Canadian outstanding premiums and policy loans (to the extent that the amount of the premiums or loans are in respect of policies referred to in paragraphs (*a*) to (*c*) of A of the formula in the definition "Canadian reserve liabilities" and were not otherwise deducted in computing the amount of the insurer's Canadian reserve liabilities as at the end of the year), and

(4) Subparagraph (*b*)(i) of the definition "equity limit" in subsection 2400(1) of the Regulations is replaced by the following:

(i) the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year exceeds 50% of the total of its premiums receivable and deferred acquisition expenses as at the end of the year and its premiums receivable and deferred acquisition expenses as at the end of its preceding taxation year to the extent that those amounts were included in the insurer's Canadian reserve liabilities for the year or the preceding taxation year, as the case may be, in respect of the insurer's business in Canada, and

(5) Subparagraph (*a*)(ii) of the definition "weighted Canadian liabilities" in subsection 2400(1) of the Regulations is replaced by the following:

(ii) the total of

(A) the insurer's policy loans (other than policy loans in respect of annuities) as at the end of the year, and

(B) the reinsurance recoverable reported by the insurer as at the end of the year relating to its liabilities described in subparagraph (i), and

(6) Subparagraph (*b*)(ii) of the definition "weighted Canadian liabilities" in subsection 2400(1) of the Regulations is replaced by the following:

(ii) the total of

(A) the insurer's policy loans in respect of annuities as at the end of the year, and

(B) the reinsurance recoverable reported by the insurer as at the end of the year relating to its liabilities described in subparagraph (i). (*passif canadien pondéré*)

(7) Subparagraph (*a*)(ii) of the definition "weighted total liabilities" in subsection 2400(1) of the Regulations is replaced by the following:

(ii) the total of

(A) the insurer's policy loans and foreign policy loans (other than policy loans and foreign policy loans in respect of annuities) as at the end of the year, and

(B) the reinsurance recoverable reported by the insurer as at the end of the year relating to its liabilities described in subparagraph (i), and

(8) Subparagraph (*b*)(ii) of the definition "weighted total liabilities" in subsection 2400(1) of the Regulations is replaced by the following:

(ii) the total of

(A) the insurer's policy loans and foreign policy loans in respect of annuities as at the end of the year, and

(B) the reinsurance recoverable reported by the insurer as at the end of the year relating to its liabilities described in subparagraph (i). (*passif total pondéré*)

(9) Section 2400 of the Regulations is amended by adding the following after subsection (8):

(9) A computation that is required to be made under this Part in respect of an insurer's taxation year that included December 31, 2010 and that is relevant to a computation (in this subsection referred to as the "transition year computation") that is required to be made under this Part in respect of the insurer's first taxation year that begins after that date shall, for the purposes only of the transition year computation, be made using the same definitions, rules and methodologies that are used in the transition year computation.

(10) Subsections (1) to (9) apply to taxation years that begin after 2010.

133. (1) Paragraphs 2401(2)(*b*) and (*c*) of the Regulations are replaced by the following:

(*b*) shall designate for a taxation year investment property of the insurer for the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of its accident and sickness insurance business in Canada exceeds the insurer's mean Canadian outstanding premiums for the year in respect of that business;

(*c*) shall designate for a taxation year in respect of the insurer's insurance business in Canada (other than a life insurance business or an accident and sickness insurance business) investment property of the insurer for the year with a total value for the year equal to the amount, if any, by which the insurer's mean Canadian reserve liabilities for the year in respect of that business exceeds 50% of the total of all amounts each of which is the amount, as at the end of the year or as at the end of its preceding taxation year, of a premium receivable or a deferred acquisition expense (to the extent that it is included in the insurer's Canadian reserve liabilities as at the end of the year or preceding taxation year, as the case may be) of the insurer in respect of that business;

(2) Subsections (1) applies to taxation years that begin after 2010.

134. (1) Section 3700 of the Regulations and the headings before it are replaced by the following:

PART XXXVII

REGISTERED CHARITIES

(2) Subsection (1) applies for taxation years that end on or after March 4, 2010.

135. (1) The portion of subsection 3701(1) of the Regulations before paragraph (*a*) is replaced by the following:

(1) For the purposes of the description of B in the formula in the definition "disbursement quota" in subsection 149.1(1) of the Act, the prescribed amount for a taxation year of a registered charity is determined as follows:

(2) Paragraph 3701(1)(*b*) of the Regulations is replaced by the following:

(*b*) aggregate for each period chosen under paragraph (*a*) all amounts, each of which is the value, determined in accordance with section 3702, of property or a portion thereof owned by the registered charity, and not used directly in charitable activities or administration, on the last day of the period;

(3) Subsections 3701(2) and (3) of the Regulations are replaced by the following:

(2) For the purposes of subsection (1) and subject to subsection (3),

(*a*) the number of periods chosen by a registered charity under paragraph (1)(*a*) shall, unless otherwise authorized by the Minister, be used for the taxation year and for all subsequent taxation years; and

(*b*) a registered charity is deemed to have existed on the last day of each of the periods chosen by it.

(3) The number of periods chosen under paragraph (1)(*a*) may be changed by the registered charity for its first taxation year commencing after 1986 and the new number shall, unless otherwise authorized by the Minister, be used for that taxation year and all subsequent taxation years.

(4) Subsections (1) to (3) apply for taxation years that end on or after March 4, 2010.

136. (1) Subsection 3702(1) of the Regulations is replaced by the following:

3702. (1) For the purposes of subsection 3701(1), the value of a property, or a portion of a property, owned by a registered charity, and not used directly in charitable activities or administration, on the last day of a period is determined as of that day to be

(*a*) in the case of a non-qualified investment of a private foundation, the greater of its fair market value on that day and its cost amount to the private foundation;

(*b*) subject to paragraph (*c*), in the case of property other than a non-qualified investment that is

(i) a share of a corporation that is listed on a designated stock exchange, the closing price or the average of the bid and asked prices of that share on that day or, if there is no closing price or bid and asked prices on that day, on the last preceding day for which there was a closing price or bid and asked prices,

(ii) a share of a corporation that is not listed on a designated stock exchange, the fair market value of that share on that day,

(iii) an interest in real property, the fair market value on that day of the interest less the amount of any debt of the registered charity incurred in respect of the acquisition

of the interest and secured by the real property or the interest therein, where the debt bears a reasonable rate of interest,

(iv) a contribution that is the subject of a pledge, nil,

(v) an interest in property where the registered charity does not have the present use or enjoyment of the interest, nil,

(vi) a life insurance policy, other than an annuity contract, that has not matured, nil, and

(vii) a property not described in any of subparagraphs (i) to (vi), the fair market value of the property on that day; and

(*c*) in the case of any property described in paragraph (*b*) that is owned in connection with the charitable activities of the registered charity and is a share of a limited-dividend housing company referred to in paragraph 149(1)(*n*) of the Act or a loan, that has ceased to be used for charitable purposes and is being held pending disposition or for use in charitable activities, or that has been acquired for use in charitable activities, the lesser of the fair market value of the property on that day and an amount determined by the formula:

$$(A / 0.035) \times (12 / B)$$

where

A is the income earned on the property in the period, and

B is the number of months in the period.

(2) Subsection (1) applies for taxation years that end on or after March 4, 2010.

137. (1) The portion of the description of A in the definition "underlying foreign tax" in subsection 5907(1) of the Regulations before subparagraph (i) is replaced by the following:

A is, subject to subsection (1.03), the total of all amounts, in respect of the period, each of which is

(2) Section 5907 of the Regulations is amended by adding the following in numerical order:

(1.03) For the purposes of the description of A in the definition "underlying foreign tax" in subsection (1), income or profits tax paid in respect of the taxable earnings of a particular foreign affiliate of a corporation or in respect of a dividend received by the particular affiliate from another foreign affiliate of the corporation, and amounts by which the underlying foreign tax of the particular affiliate or any other foreign affiliate of the corporation is required by subsection (1.1) or (1.2) to be increased, is not to include any income or profits tax paid, or amounts by which the underlying foreign tax is otherwise so required to be increased, as the case may be, in respect of income of the particular affiliate for a taxation year of the affiliate if, at any time in the year, a particular person or partnership that is, at any time in the year, a pertinent person or partnership in respect of the corporation is considered, under the income tax laws (referred to in subsections (1.04) and (1.05) as the

"relevant foreign tax law") of any country other than Canada under the laws of which any income of the particular affiliate is subject to income taxation,

(*a*) to own less than all of the shares of the capital stock of a corporation that is, at any time in the year, a pertinent person or partnership in respect of the corporation that are considered to be owned by the particular person or partnership for the purposes of the Act, or

(*b*) to have a lesser direct or indirect share of the income of a partnership that is, at any time in the year, a pertinent person or partnership in respect of the corporation than the particular person or partnership is considered to have for the purposes of the Act.

(1.04) For the purposes of paragraph (1.03)(*a*), a pertinent person or partnership in respect of the corporation is not to be considered to own less than all of the shares of the capital stock of a corporation under the relevant foreign tax law that are considered to be owned for the purposes of the Act solely because the pertinent person or partnership or the corporation is not treated as a corporation under the relevant foreign tax law.

(1.05) For the purposes of paragraph (1.03)(*b*), a member of a partnership is not to be considered to have a lesser direct or indirect share of the income of the partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*a*) a difference between the relevant foreign tax law and the Act in the manner of

(i) computing the income of the partnership, or

(ii) allocating the income of the partnership because of the admission to, or withdrawal from, the partnership of any of its members;

(*b*) the treatment of the partnership as a corporation under the relevant foreign tax law; or

(*c*) the fact that the member is not treated as a corporation under the relevant foreign tax law.

(1.06) For the purposes of this subsection and subsections (1.03) and (1.04), a "pertinent person or partnership" in respect of a corporation at any time means a person or a partnership that is, at that time,

(*a*) the corporation;

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

(*c*) a foreign affiliate of

(i) the corporation,

(ii) a person that is at that time a pertinent person or partnership in respect of the corporation under this subsection because of paragraph (*b*), or

(iii) a partnership that is at that time a pertinent person or partnership in respect of the corporation under this subsection because of paragraph (*d*); or

(*d*) a partnership a member of which is at that time a pertinent person or partnership in respect of the corporation under this subsection.

(3) Subsections (1) and (2) apply to income or profits tax paid, and amounts referred to in subsections 5907(1.1) and (1.2) of the Regulations, in respect of the income of a foreign affiliate of a corporation for taxation years of the foreign affiliate that end in taxation years of the corporation that end after March 4, 2010, except that, for taxation years of the corporation that end on or before Announcement Date,

(*a*) subsections 5907(1.03) and (1.04) of the Regulations, as enacted by subsection (2), are to be read as follows:

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

(*a*) the corporation is considered, under the income tax laws (referred to in subsection (1.04) as the "relevant foreign tax law") of any country, other than Canada, under the laws of which the income of the particular affiliate is subject to income taxation, to own less than all of the shares of the capital stock of the particular affiliate, of another foreign affiliate of the corporation in which the particular affiliate has an equity percentage, or of another foreign affiliate of the corporation that has an equity percentage in the particular affiliate, that are considered to be owned by the corporation for the purposes of the Act, or

(*b*) the corporation's share of the income of a partnership that owns, based on the assumptions contained in paragraph 96(1)(*c*) of the Act, shares of the capital stock of the particular affiliate is, under the income tax laws (referred to in subsection (1.05) as the "relevant foreign tax law") of any country, other than Canada, under the laws of which the income of the partnership is subject to income taxation, less than its share of the income for the purposes of the Act.

(1.04) For the purposes of paragraph (1.03)(*a*), a corporation is not to be considered to own less than all of the shares of the capital stock of a foreign affiliate of the corporation under the relevant foreign tax law that are considered to be owned for the purposes of the Act solely because the corporation or the foreign affiliate is not treated as a corporation under the relevant foreign tax law.

(*b*) the portion of subsection 5907(1.05) of the Regulations before paragraph (*a*), as enacted by subsection (2), is to be read as follows:

(1.05) For the purposes of paragraph (1.03)(*b*), a member of a partnership is not to be considered to have a lesser share of the income of the partnership under the relevant foreign tax law than for the purposes of the Act solely because of one or more of the following:

(*c*) section 5907 of the Regulations is to be read without reference to its subsection (1.06), as enacted by subsection (2).

138. (1) The definition "total reserve liabilities" in section 8600 of the Regulations is replaced by the following:

"total reserve liabilities" of an insurer as at the end of a taxation year means the amount determined by the formula

A - B

where

A is the total amount as at the end of the year of the insurer's liabilities and reserves (other than liabilities and reserves in respect of a segregated fund within the meaning assigned by subsection 138(12) of the Act) in respect of all its insurance policies, as determined for the purposes of the Superintendent of Financial Institutions, if the insurer is required by law to report to the Superintendent of Financial Institutions, or, in any other case, the superintendent of insurance or other similar officer or authority of the province under the laws of which the insurer is incorporated, and

B is the total of the reinsurance recoverable (within the meaning assigned by subsection 2400(1)) reported as a reinsurance asset by the insurer as at the end of the year relating to its liabilities and reserves in A. (*passif total de réserve*)

(2) Subsection (1) applies to taxation years that begin after 2010.

139. (1) The Regulations are amended by adding the following after section 9400:

PART XCV

EMPLOYEE LIFE AND HEALTH TRUSTS

Prescribed rights

9500. For the purpose of subparagraph 144.1(2)(*g*)(iii) of the Act, prescribed payments are payments to General Motors of Canada Limited or Chrysler Canada Incorporated by the employee life and health trust established for the benefit of retired automobile industry workers and managed by the Canadian Auto Workers' Union that

(*a*) are reasonable in the circumstances;

(*b*) are made as consideration for administrative services provided to or on behalf of the trust or its beneficiaries, or as reimbursement for employee benefit payments made on behalf of, or in contemplation of the establishment of, the trust; and

(*c*) the recipient acknowledges in writing shall be included in computing the recipient's income in the year that they are receivable.

(2) Subsection (1) applies after 2009.

140. (1) The portion of paragraph (*v*) of Class 10 in Schedule II to the Regulations before subparagraph (i) is replaced by the following:

(*v*) property acquired after August 31, 1984 (other than property that is included in Class 30) that is equipment used for the purpose of effecting an interface between a cable distribution system and electronic products used by consumers of that system and that is designed primarily

(2) Subsection (1) applies in respect of taxation years that end after March 4, 2010.

141. (1) Class 30 in Schedule II to the Regulations is replaced by the following:

Class 30

Property of a taxpayer that is

(*a*) an unmanned telecommunication spacecraft that was designed to orbit above the earth and that was acquired by the taxpayer

(i) before 1988, or

(ii) before 1990

(A) pursuant to an obligation in writing entered into by the taxpayer before June 18, 1987, or

(B) that was under construction by or on behalf of the taxpayer on June 18, 1987; or

(*b*) equipment used for the purpose of effecting an interface between a cable or satellite distribution system (other than a satellite radio distribution system) and electronic products used by consumers of that system if the equipment

(i) is designed primarily

(A) to augment the channel capacity of a television receiver, or

(B) to decode pay television or other signals provided on a discretionary basis,

(ii) is acquired by the taxpayer after March 4, 2010, and

(iii) has not been used or acquired for use for any purpose by any taxpayer before March 5, 2010.

(2) Subsection (1) applies in respect of taxation years that end after March 4, 2010.

142. (1) Subparagraphs (*a*)(iii) and (iii.1) of Class 43.1 in Schedule II to the Regulations are replaced by the following:

(iii) heat recovery equipment used primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by extracting for reuse thermal waste that is generated by equipment referred to in subparagraph (i) or (ii),

(iii.1) district energy equipment that is part of a district energy system that uses thermal energy that is primarily supplied by electrical cogeneration equipment that would be property described in paragraphs (*a*) to (*c*) if read without reference to this subparagraph,

(2) Subclause (*d*)(i)(A)(II) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(II) equipment that is part of a ground source heat pump system that transfers heat to or from the ground or groundwater (but not to or from surface water such as a river, a lake or an ocean) and that, at the time of installation, meets the standards set by the Canadian Standards Association for the design and installation of earth energy systems, including such 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), energy conversion equipment, energy storage equipment, control equipment and equipment designed to enable the system to interface with other heating or cooling equipment, and

(3) Clause (*d*)(i)(B) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(B) it is not a building, part of a building (other than a solar collector that is not a window and that is integrated into a building), equipment used to heat water for use in a swimming pool, energy equipment that backs up equipment described in subclause (A)(I) or (II) nor equipment that distributes heated or cooled air or water in a building,

(4) Subparagraph (*d*)(iv) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(iv) heat recovery equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of conserving energy, or reducing the requirement to acquire energy, by extracting for reuse thermal waste that is generated directly in an industrial process (other than an industrial process that generates or processes electrical energy), including such equipment that consists of heat exchange equipment, compressors used to upgrade low pressure steam, vapour or gas, waste heat boilers and other ancillary equipment such as control panels, fans, instruments or pumps, but not including property that is employed in re-using the 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.

(5) Subparagraphs (*d*)(vii) to (ix) of Class 43.1 in Schedule II to the Regulations are replaced by the following:

(vii) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy solely from geothermal energy, including such 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), pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal heat, but not including buildings, transmission equipment, distribution equipment, equipment designed to store electrical energy, property otherwise included in Class 10 and property that would be included in Class 17 if that Class were read without reference to its subparagraph (*a.1*)(i),

(viii) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of collecting landfill gas or digester gas, including such 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), fans, compressors, storage tanks, heat exchangers and other ancillary equipment used to collect gas, to remove non-combustibles and contaminants from the gas or to store the gas, but not including property otherwise included in Class 10 or 17,

(ix) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating heat energy from the consumption of eligible waste fuel, and not using any fuel other than eligible waste fuel or fossil fuel, if the heat energy is used directly in an industrial process, or in a greenhouse, including such equipment that consists of fuel handling equipment used to upgrade the combustible portion of the fuel and control, feedwater and condensate systems, and other ancillary equipment, but not including buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), fuel storage facilities, other fuel handling equipment and electrical generating equipment, and property otherwise included in Class 10 or 17,

(6) Subparagraph (*d*)(xi) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(xi) equipment used by the taxpayer, or by a lessee of the taxpayer, in a system that converts wood waste or plant residue into bio-oil, if that 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, other than equipment used for the collection, storage or transportation of wood waste or plant residue, buildings or other structures and property otherwise included in Class 10 or 17,

(7) Subparagraph (*d*)(xiii) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(xiii) property that is part of a system that is used by the taxpayer, or by a lessee of the taxpayer, primarily to produce and store biogas, which property includes equipment that is an anaerobic digester reactor, a buffer tank, a pre-treatment tank, biogas piping, a biogas storage tank and a biogas scrubbing equipment, but not including

(A) property (other than a buffer tank) that is used to collect, move or store organic waste,

(B) equipment used to process the residue after digestion or to treat recovered liquids,

(C) buildings or other structures, and

(D) property otherwise included in Class 10 or 17, or

(8) Paragraph (*d*) of Class 43.1 in Schedule II to the Regulations is amended by deleting "or" at the end of subparagraph (xiii), by replacing "and" at the end of subparagraph (xiv) with "or", and by adding the following after subparagraph (xiv):

(xv) district energy equipment that

(A) is used by the taxpayer or by a lessee of the taxpayer,

(B) is part of a district energy system that uses thermal energy that is primarily supplied by equipment that is described in subparagraph (i) or (iv) or would be described in subparagraph (i) or (iv) if owned by the taxpayer, and

(C) is not a building, and

(9) Subsections (1), (4) and (8) apply to property acquired after March 3, 2010.

(10) Subsections (2), (3) and (5) to (7) apply to property acquired after February 25, 2008, except that in its application to property acquired before May 3, 2010,

(*a*) subclause (*d*)(i)(A)(II) of Class 43.1 in Schedule II to the Regulations, as enacted by subsection (2), shall be read as follows:

(II) equipment that is part of a ground source heat pump system that transfers heat to or from the ground or groundwater (but not to or from surface water such as a river, a lake or an ocean) and that, at the time of installation, meets the standards set by the Canadian Standards Association for the design and installation of earth energy systems, including such equipment that consists of underground piping, energy conversion equipment, energy storage equipment, control equipment and equipment designed to enable the system to interface with other heating or cooling equipment, and

(*b*) subparagraphs (*d*)(vii) and (viii) of Class 43.1 in Schedule II to the Regulations, as enacted by subsection (5), shall be read as follows:

(vii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy solely from geothermal energy, including such equipment that consists of pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal heat, but not including buildings, transmission equipment, distribution equipment, equipment designed to store electrical energy, property otherwise included in Class 10 and property that would be included in Class 17 if that Class were read without reference to its subparagraph (*a.1*)(i),

(viii) above-ground equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of collecting landfill gas or digester gas, including such equipment that consists of fans, compressors, storage tanks, heat exchangers and other ancillary equipment used to collect gas, to remove non-combustibles and contaminants from the gas or to store the gas, but not including property otherwise included in Class 10 or 17,

PART 4

AMENDMENTS IN RESPECT OF EXCISE DUTIES AND SALES AND EXCISE TAXES

AIR TRAVELLERS SECURITY CHARGE ACT

143. (1) The definition "fiscal month" in section 2 of the *Air Travellers Security Charge Act* is replaced by the following:

"fiscal month" « *mois d'exercice* »

"fiscal month" means a fiscal month as determined under subsection 16(1).

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

"fiscal half-year" « *semestre d'exercice* »

"fiscal half-year" means a fiscal half-year as determined under subsection 16(2).

"fiscal year" « *exercice* »

"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" « *période de déclaration* »

"reporting period" means a reporting period as determined under section 16.1.

144. The Act is amended by adding the following after section 5:

Associated persons

5.1 (1) For the purposes of this Act, a particular corporation is associated with another corporation if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.

Corporations controlled by same person or group

(2) For the purposes of this Act, a person other than a corporation is associated with a particular corporation if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.

Partnership or trust

(3) For the purposes of this Act, a person is associated with

(*a*) a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and

(*b*) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

Association with third person

(4) For the purposes of this Act, a person is associated with another person if each of them is associated with the same third person.

145. The heading "FISCAL MONTH" before section 16 and section 16 of the Act are replaced by the following:

FISCAL PERIODS

Determination of fiscal months

16. (1) The fiscal months of a designated air carrier shall be determined in accordance with the following rules:

(*a*) if fiscal months of the carrier have been determined under subsection 243(2) or (4) of the *Excise Tax Act* for the purposes of Part IX of that Act, each of those fiscal months is a fiscal month of the carrier for the purposes of this Act;

(*b*) if fiscal months of the carrier have not been determined under subsection 243(2) or (4) of the *Excise Tax Act* for the purposes of Part IX of that Act, the carrier may choose, at the time of registration under section 17, as their fiscal months for the purposes of this Act, fiscal months that meet the requirements set out in subsection 243(2) of the *Excise Tax Act*; and

(*c*) if paragraph (*a*) does not apply and the carrier has not chosen their fiscal months under paragraph (*b*), each calendar month is a fiscal month of the carrier for the purposes of this Act.

Determination of fiscal half-years

(2) The fiscal half-years of a designated air carrier shall be determined in accordance with the following rules:

(*a*) the period beginning on the first day of the first fiscal month 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 is a fiscal half-year of the carrier; and

(*b*) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year of the carrier is a fiscal half-year of the carrier.

REPORTING PERIODS

Reporting period — general

16.1 (1) Subject to this section, the reporting period of a designated air carrier is a fiscal month.

Reporting period — semi-annual

(2) On application in the prescribed form and manner by a designated air carrier, the Minister may, in writing, authorize the reporting period of that carrier to be a fiscal half-year in a particular fiscal year if

(*a*) the carrier has been registered for a period exceeding twelve consecutive fiscal months;

(*b*) the total of all charges and amounts collected or required to be collected under this Act by the carrier and any person associated with the carrier in the fiscal year ending immediately before the particular fiscal year did not exceed $120,000;

(*c*) the total of all charges and amounts collected or required to be collected under this Act by the carrier and any person associated with the carrier in the particular fiscal year does not exceed $120,000; and

(*d*) the carrier is in compliance with the Act.

Deemed revocation

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

Revocation — other

(4) The Minister may revoke an authorization if

(*a*) the carrier requests in writing the Minister to do so;

(*b*) the carrier fails to comply with the Act; or

(*c*) the Minister considers that the authorization is no longer required.

Notice of revocation

(5) If the Minister revokes an authorization under subsection (4), the Minister shall send a notice in writing of the revocation to the carrier and shall specify in the notice the fiscal month for which the revocation becomes effective.

Deemed reporting period on revocation

(6) If a revocation made under subsection (4) becomes effective before the last day of a fiscal half-year of a carrier that is authorized under 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.

146. Subsection 17(2) of the Act is replaced by the following:

Returns and payments

(2) Every designated air carrier that is registered or is required to register shall, not later than the last day of the first month after each reporting period of the carrier,

(*a*) file a return with the Minister, in the prescribed form and manner containing all prescribed information, for that reporting period;

(*b*) calculate, in the return, the total of

(i) all charges required to be collected by the carrier during that reporting period other than such a charge that was collected by the carrier before that reporting period,

(ii) all amounts each of which is a charge collected by the carrier during that reporting period at a time before the charge became payable under subsection 11(2) if the time at which the charge becomes so payable is after the end of that reporting period, and

(iii) all other amounts collected as or on account of charges by the carrier during that reporting period that were not included in a calculation under subparagraph (i) or (ii) for a previous reporting period; and

(*c*) pay an amount equal to that total to the Receiver General.

147. Subsection 30(1) of the Act is replaced by the following:

Waiving or reducing interest

30. (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or reduce any interest payable by the person under this Act on an amount that is required to be paid by the person under this Act in respect of the reporting period.

148. Subsection 32(4) of the Act is replaced by the following:

Deduction of refund

(4) A designated air carrier that has refunded or credited an amount under subsection (1) or (2) within two years after the day the amount was collected and that has issued to a person a document in accordance with subsection (3) may deduct the amount of the refund or credit from the amount payable by the carrier under subsection 17(2) for the reporting period of

the carrier in which the document is issued to the person, to the extent that the amount of the charge has been included by the carrier in determining the amount payable by the carrier under subsection 17(2) for the reporting period or a preceding reporting period of the carrier.

149. Paragraph 33(3)(*a*) of the Act is replaced by the following:

(*a*) the amount was taken into account as an amount required to be paid by the person in respect of one of their reporting periods and the Minister has assessed the person for the period under section 39; or

150. Section 35 of the Act is replaced by the following:

Restriction re trustees

35. If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund under this Act that the bankrupt was entitled to claim before the appointment shall not be paid after the appointment unless all returns required under this Act to be filed for reporting periods of the bankrupt ending before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt in respect of those reporting periods have been paid.

151. Subsection 39(4) of the Act is replaced by the following:

Refund on reassessment

(4) If a person has paid an amount assessed under this section in respect of a reporting period and the amount paid exceeds the amount determined on reassessment to have been payable by the person in respect of that reporting period, the Minister shall refund to the person the amount of the excess and, for the purpose of section 28, the refund is deemed to have been required to be paid on the day on which the amount was paid to the Minister.

152. The portion of section 53 of the Act before paragraph (*b*) is replaced by the following:

Failure to file a return when required

53. Every person who fails to file a return for a reporting period as and when required under this Act shall pay a penalty equal to the sum of

(*a*) an amount equal to 1% of the total of all amounts each of which is an amount that is required to be paid for the reporting period and was not paid on the day on which the return was required to be filed, and

153. Subsection 55(1) of the Act is replaced by the following:

Waiving or cancelling penalties

55. (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel any penalty payable by the person under section 53 in respect of the reporting period.

154. Subparagraphs 72(2.2)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) if a notice of assessment in respect of the charge debt, or a notice referred to in subsection 80(1) in respect of the charge debt, is sent to or served on the person, after March 3, 2004, on the last day on which one of those notices is sent or served,

(ii) if no notice referred to in subparagraph (i) in respect of the charge debt was sent or served and the earliest day on which the Minister can commence an action to collect that charge debt is after March 3, 2004, on that earliest day, and

155. Subsections 83(9) and (10) of the Act are replaced by the following:

Mailing or sending date

(9) If a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is deemed to be the date of the notice or demand.

Date when electronic notice sent

(9.1) For the purposes of this Act, if a notice or other communication in respect of a person is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is deemed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. 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 and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

Date when assessment made

(10) If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of sending of the notice of assessment.

EXCISE ACT

156. The *Excise Act* is amended by adding the following after section 36:

Determination of periods for semi-annual returns

36.1 (1) The following are six-month periods of a licensed brewer:

(*a*) the period beginning on January 1 and ending on June 30, or the portion of that period, if any, that ends before the month on which a revocation under subsection (3) or (4) becomes effective; and

(*b*) 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 under subsection (3) or (4) becomes effective.

Semi-annual returns

(2) On application by a licensed brewer in the form and manner specified by the Minister, the Minister may, in writing, authorize the brewer to make a return for each six-month period in a particular year if

(*a*) the brewer has been licensed for a period exceeding one year;

(*b*) the total of all duty imposed, levied and collected on beer and malt liquor brewed by the brewer and any person associated with the brewer in the year ending immediately before the particular year did not exceed $120,000;

(*c*) the total of all duty imposed, levied and collected on beer and malt liquor brewed by the brewer and any person associated with the brewer in the particular year does not exceed $120,000; and

(*d*) the brewer is in compliance with the Act.

Deemed revocation

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

Revocation — other

(4) The Minister may revoke an authorization if

(*a*) the brewer requests in writing the Minister to do so;

(*b*) the brewer fails to comply with the Act; or

(*c*) the Minister considers that the authorization is no longer required.

Notice of revocation

(5) If the Minister revokes an authorization under subsection (4), the Minister shall send a notice in writing of the revocation to the brewer and shall specify in the notice the month for which the revocation becomes effective.

157. Section 37 of the Act is replaced by the following:

Time for making return — general

37. (1) Every return with respect to quantities, required to be made by this Act, shall be made to the collector on or before the tenth working day of each month for the month last preceding that day.

Time for making return — semi-annual

(2) Despite subsection (1), if a licensed brewer is authorized by the Minister to make a return for a six-month period under subsection 36.1(2), the return shall be made to the collector on or before the tenth working day of the month following the end of the six-month period.

EXCISE ACT, 2001

158. Section 2 of the *Excise Act, 2001* is amended by adding the following in alphabetical order:

"fiscal half-year" « *semestre d'exercice* »

"fiscal half-year" means a fiscal half-year as determined under subsection 159(1.1).

"fiscal year" « *exercice* »

"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" « *période de déclaration* »

"reporting period" means a reporting period as determined under section 159.1.

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

Associated persons

(3) For the purposes of this Act, a particular corporation is associated with another corporation if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.

Corporations controlled by same person or group

(4) For the purposes of this Act, a person other than a corporation is associated with a particular corporation if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.

Partnership or trust

(5) For the purposes of this Act, a person is associated with

(*a*) a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and

(*b*) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

Association with third person

(6) For the purposes of this Act, a person is associated with another person if each of them is associated with the same third person.

160. The heading "FISCAL MONTH" before section 159 is replaced by the following:

FISCAL PERIODS

161. Section 159 of the Act is amended by adding the following after subsection (1):

Determination of fiscal half-years

(1.1) The fiscal half-years of a person shall be determined in accordance with the following rules:

(*a*) the period beginning on the first day of the first fiscal month 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 is a fiscal half-year of the person; and

(*b*) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year of the person is a fiscal half-year of the person.

162. The Act is amended by adding the following after section 159:

REPORTING PERIODS

Reporting period — general

159.1 (1) Subject to this section, the reporting period of a person is a fiscal month.

Reporting period — semi-annual

(2) On application in the prescribed form and manner by a person, the Minister may, in writing, authorize the reporting period of that person to be a fiscal half-year in a particular fiscal year if

(*a*) the person is a licensee in one or more of the following categories:

(i) an excise warehouse licensee who does not hold tobacco products,

(ii) a spirit licensee,

(iii) a wine licensee, or

(iv) a licensed user;

(*b*) the person has been licensed for a period exceeding twelve consecutive fiscal months;

(*c*) in respect of a category, the total of all duties payable under Part 4 by the person and any person associated with the person in the fiscal year ending immediately before the particular fiscal year did not exceed $120,000;

(*d*) in respect of a category, the total of all duties payable under Part 4 by the person and any person associated with the person in the particular fiscal year does not exceed $120,000;

(*e*) in the case where the person is an excise warehouse licensee, the liability of the person and any excise warehouse licensee associated with the person with respect to duty on alcohol entered into an excise warehouse

(i) did not exceed $120,000 in the fiscal year ending immediately before the particular fiscal year, and

(ii) does not exceed $120,000 in the particular fiscal year;

(*f*) in the case where the person is a licensed user, the liability of the person and any licensed user associated with the person with respect to duty on alcohol entered into their specified premises

(i) did not exceed $120,000 in the fiscal year ending immediately before the particular fiscal year, and

(ii) does not exceed $120,000 in the particular fiscal year;

(*g*) the volume of absolute ethyl alcohol added to the bulk spirits inventory of the person that is a spirit licensee and any spirit licensee associated with the person did not exceed in the fiscal year ending immediately before the particular fiscal year, and does not exceed in the particular fiscal year, the amount determined by the formula

A/B

where

A is $120,000, and

B is the rate of duty on spirits set out in section 1 of Schedule 4;

(*h*) the volume of wine added to the bulk wine inventory of the person that is a wine licensee and any wine licensee associated with the person did not exceed in the fiscal year ending immediately before the particular fiscal year, and does not exceed in the particular fiscal year, the amount determined by the formula

A/B

where

A is $120,000, and

B is the rate of duty on wine set out in paragraph (*c*) of Schedule 6; and

(*i*) the person is in compliance with the Act.

Deemed revocation

(3) An authorization under subsection (2) is deemed to be revoked if

(*a*) any of the conditions described in paragraphs (2)(*d*) to (*h*) is no longer met in respect of the person, which revocation is effective as of the first day after the end of the fiscal half-year in which the condition is no longer met; or

(*b*) an excise warehouse licensee holds in their warehouse manufactured tobacco or cigars that are not stamped, as of the first day of the fiscal month in which the licensee begins to hold the tobacco or cigars.

Revocation — other

(4) The Minister may revoke an authorization if

(*a*) the person requests in writing the Minister to do so;

(*b*) the person fails to comply with the Act; or

(*c*) the Minister considers that the authorization is no longer required.

Notice of revocation

(5) If the Minister revokes an authorization under subsection (4), the Minister shall send a notice in writing of the revocation to the person and shall specify in the notice the fiscal month for which the revocation becomes effective.

Deemed reporting period on revocation

(6) 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 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.

163. Section 160 of the Act is replaced by the following:

Filing by licensee

160. Every person who is licensed under this Act shall, not later than the last day of the first month after each reporting period of the person,

(*a*) file a return with the Minister, in the prescribed form and manner, for that reporting period;

(*b*) calculate, in the return, the total amount of the duty payable, if any, by the person for that reporting period; and

(*c*) pay that amount to the Receiver General.

164. Subsection 170(4) of the Act is replaced by the following:

Minimum interest and penalty

(4) If, at any time, a person pays an amount not less than the total of all amounts, other than interest and penalty payable under section 251.1, owing at that time to Her Majesty under this Act for a reporting period of the person and the total amount of interest and the

penalty payable by the person under this Act for that period is not more than $25.00, the Minister may waive the total amount.

165. Paragraph 176(2)(*a*) of the Act is replaced by the following:

(*a*) the amount was taken into account as duty for a reporting period of the person and the Minister has assessed the person for the period under section 188; or

166. Section 178 of the Act is replaced by the following:

Restriction re trustees

178. If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund or any other payment under this Act that the bankrupt was entitled to claim before the appointment shall not be paid after the appointment unless all returns required under this Act to be filed for reporting periods of the bankrupt ending before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt in respect of those reporting periods have been paid.

167. (1) Paragraph 188(1)(*a*) of the Act is replaced by the following:

(*a*) the duty payable by a person for a reporting period of the person; and

(2) The portion of subsection 188(3) of the Act before subparagraph (*a*)(ii) is replaced by the following:

Allowance of unclaimed amounts

(3) If, in assessing the duty, interest or other amount payable by a person for a reporting period of the person or other amount payable by a person under this Act, the Minister determines that

(*a*) a refund would have been payable to the person if it had been claimed in an application under this Act filed on the particular day that is

(i) if the assessment is in respect of duty payable for the reporting period, the day on which the return for the period was required to be filed, or

(3) The portion of subsection 188(4) of the Act before clause (*b*)(i)(C) is replaced by the following:

Application of overpayment

(4) If, in assessing the duty payable by a person for a reporting period of the person, the Minister determines that there is an overpayment of duty payable for the period, unless the assessment is made in the circumstances described in paragraph 191(4)(*a*) or (*b*) after the time otherwise limited for the assessment under paragraph 191(1)(*a*), the Minister shall

(*a*) apply

(i) all or part of the overpayment

against

(ii) any amount (in this paragraph referred to as the "outstanding amount") that, on the particular day on which the person was required to file a return for the period, the person defaulted in paying under this Act and that remains unpaid on the day on which notice of the assessment is sent to the person,

as if the person had, on the particular day, paid the amount so applied on account of the outstanding amount;

(*b*) apply

(i) all or part of the overpayment that was not applied under paragraph (*a*) together with interest on the overpayment at the prescribed rate, computed for the period beginning on the day that is 30 days after the latest of

(A) the particular day,

(B) the day on which the return for the reporting period was filed, and

(4) Subparagraph 188(4)(*c*)(ii) of the Act is replaced by the following:

(ii) the day on which the return for the reporting period was filed, and

(5) The portion of subsection 188(5) before clause (*a*)(ii)(B) of the Act is replaced by the following:

Application of payment

(5) If, in assessing the duty payable by a person for a reporting period of the person or an amount (in this subsection referred to as the "overdue amount") payable by a person under this Act, all or part of a refund is not applied under subsection (3) against that duty payable or overdue amount, except if the assessment is made in the circumstances described in paragraph 191(4)(*a*) or (*b*) after the time otherwise limited for the assessment under paragraph 191(1)(*a*), the Minister shall

(*a*) apply

(i) all or part of the refund that was not applied under subsection (3)

against

(ii) any other amount (in this paragraph referred to as the "outstanding amount") that, on the particular day that is

(A) if the assessment is in respect of duty payable for the reporting period, the day on which the return for the period was required to be filed, or

(6) Clause 188(5)(*b*)(i)(B) of the Act is replaced by the following:

(B) if the assessment is in respect of duty payable for the reporting period, the day on which the return for the period was filed,

(7) Subparagraph 188(5)(*c*)(ii) of the Act is replaced by the following:

(ii) if the assessment is in respect of duty payable for the reporting period, the day on which the return for the period was filed,

(8) The portion of subsection 188(6) before paragraph (*a*) of the Act is replaced by the following:

Limitation on refunding overpayments

(6) An overpayment of duty payable for a reporting period of a person and interest on the overpayment shall not be applied under paragraph (4)(*b*) or refunded under paragraph (4)(*c*) unless the person has, before the day on which notice of the assessment is sent to the

person, filed all returns and other records of which the Minister has knowledge and that the person was required to file with

(9) The portion of subsection 188(9) before subparagraph (*a*)(iii) of the Act is replaced by the following:

Refund on reassessment

(9) If a person has paid an amount on account of any duty, interest or other amount assessed under this section in respect of a reporting period and the amount paid exceeds the amount determined on reassessment to have been payable by the person, the Minister may refund to the person the amount of the excess, together with interest on the excess amount at the prescribed rate for the period that

(*a*) begins on the day that is 30 days after the latest of

(i) the day on which the person was required to file a return for the reporting period,

(ii) the day on which the person filed a return for the reporting period, and

(10) Subsection 188(10) of the Act is replaced by the following:

Meaning of "overpayment of duty payable"

(10) In this section, "overpayment of duty payable" of a person for a reporting period of the person means the amount, if any, by which the total of all amounts paid by the person on account of duty payable for the period exceeds the total of

(*a*) the duty payable for the period, and

(*b*) all amounts paid to the person under this Act as a refund for the period.

168. (1) Paragraph 191(1)(*a*) of the Act is replaced by the following:

(*a*) in the case of an assessment of the duty payable for a reporting period, more than four years after the later of the day on which the return for the period was required to be filed and the day on which the return was filed;

(2) Subsection 191(5) of the Act is replaced by the following:

No limitation if payment for another reporting period

(5) If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount as or on account of duty payable for a reporting period of the person that was payable for another reporting period of the person, the Minister may at any time make an assessment for that other period in respect of that matter.

(3) Subsection 191(6) of the Act is replaced by the following:

Reduction of duty — reporting period

(6) If the result of a reassessment on an objection to, or a decision on an appeal from, an assessment is to reduce the amount of duty payable by a person and, by reason of the reduction, any refund or other payment claimed by the person for a reporting period, or in an application for a refund or other payment, should be decreased, the Minister may at any time assess or reassess that reporting period or that application only for the purpose of taking the reduction of duty into account in respect of the refund or other payment.

169. Subsection 193(2) of the Act is replaced by the following:

Scope of notice

(2) A notice of assessment may include assessments in respect of any number or combination of reporting periods, refunds or amounts payable under this Act.

170. (1) Subparagraph 212(2)(*a*)(i) of the Act is replaced by the following:

(i) the trustee is liable for the payment of any duty, interest or other amount that became payable by the person after the particular day in respect of reporting periods that ended on or before the particular day, or of any duty, interest or other amount that became payable by the person after the particular day, only to the extent of the property of the person in possession of the trustee available to satisfy the liability,

(2) Paragraphs 212(2)(*c*) to (*e*) of the Act are replaced by the following:

(*c*) the reporting period of the person begins and ends on the day on which it would have begun and ended if the bankruptcy had not occurred, except that

(i) the reporting period of the person during which the person becomes a bankrupt shall end on the particular day and a new reporting period of the person in relation to the activities of the person to which the bankruptcy relates shall begin on the day immediately after the particular day, and

(ii) the reporting period of the person, in relation to the activities of the person to which the bankruptcy relates, during which the trustee in bankruptcy is discharged under the *Bankruptcy and Insolvency Act* shall end on the day on which the discharge is granted;

(*d*) subject to paragraph (*f*), the trustee in bankruptcy shall file with the Minister in the prescribed form and manner all returns in respect of the activities of the person to which the bankruptcy relates for the reporting periods of the person ending in the period beginning on the day immediately after the particular day and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and that are required under this Act to be filed by the person, as if those activities were the only activities of the person;

(*e*) subject to paragraph (*f*), if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a reporting period of the person ending on or before the particular day, the trustee in bankruptcy shall, unless the Minister waives in writing the requirement for the trustee to file the return, file with the Minister in the prescribed form and manner a return for that reporting period of the person; and

(3) Paragraphs 212(3)(*c*) to (*e*) of the Act are replaced by the following:

(*c*) the reporting period of the person begins and ends on the day on which it would have begun and ended if the vesting had not occurred, except that

(i) the reporting period of the person, in relation to the relevant assets of the receiver, during which the receiver begins to act as receiver of the person, shall end on the particular day and a new reporting period of the person in relation to the relevant assets shall begin on the day immediately after the particular day, and

(ii) the reporting period of the person, in relation to the relevant assets, during which the receiver ceases to act as receiver of the person, shall end on the day on which the receiver ceases to act as receiver of the person;

(*d*) the receiver shall file with the Minister in the prescribed form and manner all returns in respect of the relevant assets of the receiver for reporting periods ending in the period during which the receiver is acting as receiver and that are required under this Act to be made by the person, as if the relevant assets were the only businesses, properties, affairs and assets of the person; and

(*e*) if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a reporting period of the person ending on or before the particular day, the receiver shall, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in the prescribed form and manner a return for that reporting period that relates to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that reporting period.

(4) Paragraphs 212(4)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) all duty, interest and other amounts that are payable by the other person under this Act in respect of the reporting period during which the distribution is made, or any previous reporting period; and

(*b*) all duty, interest and other amounts that are, or can reasonably be expected to become, payable under this Act by the representative or receiver in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period.

171. The portion of section 251.1 of the Act before paragraph (*b*) is replaced by the following:

Failure to file return

251.1 Every person who fails to file a return for a reporting period as and when required under this Act shall pay a penalty equal to the sum of

(*a*) an amount equal to 1% of the total of all amounts each of which is an amount that is required to be paid for the reporting period and was not paid before the end of the day on which the return was required to be filed, and

172. The portion of section 253 of the Act before paragraph (*a*) is replaced by the following:

False statements or omissions

253. Every person who knowingly, or under circumstances amounting to gross negligence, makes, or participates in, assents to or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or activity is liable to a penalty equal to the greater of $250 and 25% of the total of

173. Section 255.1 of the Act is replaced by the following:

Waiving or reducing failure to file penalty

255.1 The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or reduce any penalty payable by the person under section 251.1 in respect of a return for the reporting period.

174. Subparagraphs 284(2.2)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) if a notice of assessment in respect of the tax debt, or a notice referred to in subsection 254(1) or 294(1) in respect of the tax debt, is sent to or served on the person, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is sent or served,

(ii) if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served and the earliest day on which the Minister can commence an action to collect that tax debt is after March 3, 2004, on that earliest day, and

175. Subparagraph 297(1)(*e*)(i) of the Act is replaced by the following:

(i) an amount that the transferor is liable to pay under this Act in respect of the reporting period in which the property was transferred or any preceding reporting period, or

176. Subsections 301(9) and (10) of the Act are replaced by the following:

Mailing or sending date

(9) If a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is deemed to be the date of the notice or demand.

Date when electronic notice sent

(9.1) For the purposes of this Act, if a notice or other communication in respect of a person is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is deemed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. 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 and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

Date when assessment made

(10) If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of sending of the notice of assessment.

EXCISE TAX ACT

177. Section 2 of the *Excise Tax Act* is amended by adding the following after subsection (2.2):

Associated persons

(2.3) For the purposes of this Act, a particular corporation is associated with another corporation if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.

Corporations controlled by same person or group

(2.4) For the purposes of this Act, a person other than a corporation is associated with a particular corporation if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.

Partnership or trust

(2.5) For the purposes of this Act, a person is associated with

(*a*) a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and

(*b*) a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

Association with third person

(2.6) For the purposes of this Act, a person is associated with another person if each of them is associated with the same third person.

178. Subsection 58.1(1) of the Act is amended by adding the following in alphabetical order:

"fiscal half-year" « *semestre d'exercice* »

"fiscal half-year" means a fiscal half-year as determined under subsection 78(1.1).

"fiscal year" « *exercice* »

"fiscal year"of a person means the same period that is the person's fiscal year under Part IX of the Act.

"reporting period" « *période de déclaration* »

"reporting period" means a reporting period as determined under section 78.1.

179. Section 78 of the Act is amended by adding the following after subsection (1):

Determination of fiscal half-years

(1.1) The fiscal half-years of a person shall be determined in accordance with the following rules:

(*a*) the period beginning on the first day of the first fiscal month 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 is a fiscal half-year of the person; and

(*b*) the period, if any, beginning on the first day of the seventh fiscal month and ending on the last day in the fiscal year of the person is a fiscal half-year of the person.

180. The Act is amended by adding the following after section 78:

Reporting period — general

78.1 (1) Subject to this section, the reporting period of a person is a fiscal month.

Reporting period — semi-annual

(2) On application in the prescribed form and manner by a person, the Minister may, in writing, authorize the reporting period of that person to be a fiscal half-year in a particular fiscal year if

(*a*) the person has been required to pay tax under Part III, or has been holding a licence granted under or in respect of that part, for a period exceeding twelve consecutive fiscal months;

(*b*) the total of all taxes payable under Part III by the person and any person associated with the person in the fiscal year ending immediately before the particular fiscal year did not exceed $120,000;

(*c*) the total of all taxes payable under Part III by the person and any person associated with the person in the particular fiscal year does not exceed $120,000; and

(*d*) the person is in compliance with this Act.

Deemed revocation

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

Revocation — other

(4) The Minister may revoke an authorization if

(*a*) the person requests in writing the Minister to do so;

(*b*) the person fails to comply with this Act; or

(*c*) the Minister considers that the authorization is no longer required.

Notice of revocation

(5) If the Minister revokes an authorization under subsection (4), the Minister shall send a notice in writing of the revocation to the person and shall specify in the notice the fiscal month for which the revocation becomes effective.

Deemed reporting period on revocation

(6) If a revocation made under subsection (4) becomes effective before the last day of a fiscal half-year of a person that is authorized under 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.

181. Subsections 79(1) to (3) of the Act are replaced by the following:

Returns and payments

79. (1) Every person who is required to pay tax under Part III and every person who holds a licence granted under or in respect of that Part shall, not later than the last day of the first month after each reporting period of the person,

(*a*) file a return with the Minister, in the prescribed form and manner, for that period;

(*b*) calculate, in the return, the total amount of the tax payable, if any, by the person for that period, and

(*c*) pay that amount to the Receiver General.

182. Subparagraphs 82(2.2)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) if a notice of assessment in respect of the tax debt is sent to or served on the person after March 3, 2004, on the day that is 90 days after the day on which the notice is sent or served,

(ii) if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served and the earliest day on which the Minister can commence an action to collect that tax debt is after March 3, 2004, on that earliest day, and

183. Section 95.1 of the Act before paragraph (*b*) is replaced by the following:

Failure to file a return when required

95.1 Every person who fails to file a return for a reporting period as and when required under subsection 79(1) shall pay a penalty equal to the sum of

(*a*) an amount equal to 1% of the total of all amounts each of which is an amount that is required to be paid for the reporting period and was not paid on the day on which the return was required to be filed, and

184. (1) Subsection 106.1(2) of the Act is replaced by the following:

Mailing or sending date

(2) For the purposes of this Act, a notice referred to in subsection 72(6), 81.13(1), 81.15(5) or 81.17(5) that is sent to a person is, in the absence of any evidence to the contrary, deemed to have been sent on the day appearing from the notice to be the date thereof, unless called into question by the Minister or by some person acting for him or Her Majesty.

(2) Section 106.1 of the Act is amended by adding the following after subsection (3):

Date when electronic notice sent

(3.1) For the purposes of this Act, if a notice or other communication in respect of a person is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is deemed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. 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 and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

185. Subsection 274(6) of the Act is replaced by the following:

Request for adjustments

(6) If, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person (other than a person to whom such a notice has been sent) is entitled, within 180 days after the day of sending of the notice, to request in writing that the Minister make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.

186. Subsection 274.2(4) of the Act is replaced by the following:

Request for adjustments

(4) If, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person (other than a person to whom such a notice has been sent) is entitled, within 180 days after the day on which the notice was sent, to request in writing that the Minister make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.

187. Subparagraphs 313(2.2)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) if a notice of assessment, or a notice referred to in subsection 322(1), in respect of the tax debt, is sent to or served on the person after March 3, 2004, on the last day on which one of those notices is sent or served,

(ii) if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served and the earliest day on which the Minister can commence an action to collect that tax debt is after March 3, 2004, on that earliest day, and

188. Subsection 315(2) of the English version of the Act is replaced by the following:

Payment of remainder

(2) If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.

189. Subsections 335(10) and (11) of the Act are replaced by the following:

Mailing or sending date

(10) If any notice or demand that the Minister is required or authorized under this Part to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, shall be presumed to be the date of the notice or demand.

Date when electronic notice sent

(10.1) For the purposes of this Part, if a notice or other communication in respect of a person is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. 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 and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

Date when assessment made

(11) If a notice of assessment has been sent by the Minister as required under this Part, the assessment is deemed to have been made on the day of sending of the notice of assessment.

BREWERY DEPARTMENTAL REGULATIONS

190. Section 7 of the *Brewery Departmental Regulations* is replaced by the following:

7. (1) The return required by section 175 of the Act shall be made

(*a*) in the case of a licensed brewer authorized by the Minister to make returns for six-month periods under subsection 36.1(2) of the Act, for each six-month period; or

(*b*) in any other case, for each month.

(2) The return shall set out the following particulars:

(*a*) the quantity of beer produced;

(*b*) the quantity of beer exported;

(*c*) the quantity of beer on which excise duty was paid that has been destroyed or returned to process stock; and

(*d*) the amount of excise duty paid on beer.

BREWERY REGULATIONS

191. Section 5 of the *Brewery Regulations* is replaced by the following:

5. (1) Except if subsection (2) applies, the duty imposed under the Act in respect of beer produced during a particular month shall be paid not later than the last day of the month following the particular month during which the beer was produced.

(2) If a licensed brewer is authorized by the Minister to make returns for six-month periods under subsection 36.1(2) of the Act, 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 the period during which the beer was produced.

NEW HARMONIZED VALUE-ADDED TAX SYSTEM REGULATIONS

192. Subsection 37(4) of the *New Harmonized Value-added Tax System Regulations* is replaced by the following:

Request for adjustments

(4) If, with respect to a transaction, a notice of assessment, reassessment or additional assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, any person (other than a person to whom such a notice has been sent) is entitled, within 180 days after the day on which the notice was sent, to request in writing that the Minister make an assessment, a reassessment or an additional assessment, applying subsection (2) with respect to that transaction.