Revised Explanatory Notes to a Ways and Means Motion Amending the Income Tax Act and Related Acts

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

November 1996

Department of Finance Canada   Ministère des Finances Canada

© Her Majesty the Queen in Right of Canada (1996)
All rights reserved

All requests for permission to produce this work or any part thereof shall be addressed to Public Works and Government Services Canada.

Price: $10

Available from the Finance Canada Distribution Centre
300 Laurier Avenue West, Ottawa K1A 0G5
Tel: (613) 995-2855
Fax: (613) 996-0518

Cette publication est également disponible en français.

Cat No.: F2-112/1996E

ISBN-0-660-16685-2

Table of Contents

Clause in Legis-lation	Section of the Income Tax Act	Topic	Page
7	13	Recaptured Depreciation	7
9	15	Shareholder Benefits	8
16	37	Scientific Research and Experimental Development	8
19	40	Capital Gains and Losses - General Rules	9
25	54	Capital Gains and Losses - Definitions	10
26	55	Avoidance	11
27	56	Amounts Included in Income	12
27.1	60	Other Deductions	13
35.1	79	Seizure of Debtor's Property	15
42	87	Amalgamations	15
43	88	Winding-up of a Corporation	17
48	96	Partnerships and Their Members	18
54	107	Dispositions Related to Trusts	18
55	108	Trusts - Definitions	20
57	112	Taxable Dividends Received by Corporations	21
58	115	Taxable Income Earned in Canada by Non-Residents	26
59	116	Dispositions of Property by Non-Residents	28

Clause in Legis- lation	Section of the Income Tax Act	Topic	Page
67	122.6	Child Tax Benefit - Definitions	29
72.1	127	Refundable Investment Tax Credits - Definitions	30
73	127.1	Refundable Investment Tax Credits	31
81	130	Investment Corporation	31
83	131	Mutual Fund Corporations	34
85	132.2	Mutual Fund Reorganizations	35
94	143.2	Cost of Tax Shelter Investments	35
101	149	Exemptions from Tax	36
102.1	150	Returns	38
103	152	Assessments	39
104	153	Withholding of Tax	41
105	154	Instalment Payments - "net tax owing"	41
106	157	Instalment Payments - Corporations	41
132	206	Foreign Property Tax	42
133.1	207.6	RCA Transfers	45
137	212	Tax on Income of Non-Residents	46
139	219	Branch Tax	46
140	219.1	Corporate Emigration	47
143.1	223	Amounts Payable	49
145	227	Withholding Taxes	49

Clause in Legis- lation	Section of the Income Tax Act	Topic	Page
147	237.1	Tax Shelters	50
148	239	Other Offences and Punishments	50
148.1	241	Taxpayer Information	51
150	248	Definitions	51
150.1	249.1	Definition of "fiscal period"	52
161	CPP 23	CPP Withholding	53
161.2	CPP 25	Copies as Evidence	53
171.01	EIA 86	Amounts Deducted and Not Remitted	54
171.02	EIA 87	Electronic Records	54
171.03	EIA 103	Appeal to the Tax Court of Canada	54
171.04	EIA 108	Delegation	56
171.05	EIA 126	Judicial Authorization	56
171.06	EIA 145	Time for repayment	57
171.07	EIA 146	Returns	57
185.1	UIA 58	Electronic Records	57
192 and 193		Conditional Amendments	58

Subclause 7(4)

ITA
13(21.1)

Subsection 13(21.1) of the Act sets out rules that in certain cases adjust the proceeds of disposition of land and a building. The subsection is amended to clarify that it operates before new subsection 13(21.2), which is another rule that may affect a taxpayer's proceeds of disposition of a building. Specifically, in measuring a taxpayer's proceeds of disposition of a building of a prescribed class in order to decide whether subsection 13(21.1) applies, those proceeds are to be determined without reference to subsection 13(21.2), as well as without reference to 13(21.1) itself. Similarly, subsection 13(21.2) is to be ignored in computing the proceeds of disposition of the building for the purposes of the adjustments in paragraphs 13(21.1)(*a*) and (*b*).

It is important to note that these changes simply establish an ordering as between subsections 13(21.1) and (21.2); they do not bar 13(21.2) from applying at all. If, after subsection 13(21.1) has been applied to a disposition, there would otherwise remain a terminal loss, and the disposition is one to which subsection 13(21.2) applies, that provision may defer the disposing taxpayer's recognition of the remaining loss.

This amendment applies to dispositions after April 26, 1995, with certain exceptions. These exceptions are described in the notes to new subsection 13(21.2).

The note on new subsection 13(21.2) of the Act is set out in the June 1996 release.

Subclause 9(2)

Notes on subsections 15(2.2) to (2.6) of the Act are set out in the June 1996 release.

ITA
15(2.7)

New subsection 15(2.7) of the Act treats certain employees of partnerships as specified employees for the purpose of section 15. If an individual is an employee of a partnership and is also a specified shareholder of a corporation or a group of corporations that is entitled to a 10% or greater share of the income or loss of the partnership, the individual is deemed to be a specified employee of the partnership.

New subsections 15(2) to (2.7) of the Act generally apply to loans made or indebtedness arising in the 1990 and subsequent taxation years.

Subclause 16(2)

ITA
37(10)

Subsection 37(10) of the Act requires that an election made by a taxpayer under clause 37(8)(*a*)(ii)(B) in respect of SR&ED incurred in a taxation year be filed when the taxpayer first files a prescribed form under subsection 37(11) for that year. The coming-into-force of this requirement is amended to refer, instead, to the time at which the taxpayer first files a prescribed form for a taxation year under subsection 37(1) (rather than subsection 37(11)) for the period during which the filing requirement referred to under current subsection 37(11) was incorporated into subsection 37(1). That period commenced February 21, 1994 and ended with the last taxation year of a taxpayer beginning before 1995.

Subclause 16(3)

ITA
37(13)(*b*)

Subsection 37(13) of the Act deems certain work that would not otherwise be considered to be SR&ED to be SR&ED for the purposes of sections 37, 127 and 127.1 of the Act.

Subsection 37(13) is amended consequential on the introduction of the definition "scientific research and experimental development" in subsection 248(1) of the Act.

This amendment applies to taxation years that begin after 1995.

Subclause 19(6)

The note on subsections 40(3.3) and (3.4) of the Act is set out in the June 1996 release.

ITA
40(3.5)

New subsection 40(3.5) of the Act sets out four special rules that apply for the purposes of the loss deferral rule in new subsection 40(3.4) of the Act.

First, paragraph 40(3.5)(*a*) provides that a right to acquire a property (other than a right that is security for a debt or similar obligation) is treated as being identical to the property.

Second, paragraph 40(3.5)(*b*) treats a share that is acquired in exchange for another share under any of sections 51, 85.1, 86 or 87 of the Act as identical to that other share.

Third, paragraph 40(3.5)(*c*) clarifies the result where the property that gives rise to a deferred loss under new subsection 40(3.4) is a share of a corporation that is subsequently merged with one or more other corporations (except where the preceding paragraph already applies to the share) or is wound up into its parent corporation. In such a case, the surviving corporation -- that is, the corporation formed on the

merger or the parent corporation -- is treated as continuing to own the share as long as that surviving corporation is affiliated with the transferor.

Finally, paragraph 40(3.5)(*d*) applies where the property giving rise to the deferred loss is a share which is subsequently redeemed, acquired or cancelled by the issuing corporation. Except where either paragraph (*b*) or (*c*) applies to the share, the transferor is deemed to continue to own the share while the issuing corporation is affiliated with the transferor.

New subsection 40(3.5) comes into effect on the same basis as new subsections 40(3.3) and (3.4).

Clause 25

Capital Gains and Losses - Definitions

ITA
54
"superficial loss"

Section 54 of the Act contains various definitions that apply for the purposes of subdivision C -- Taxable Capital Gains and Allowable Capital Losses. One of the definitions found in section 54 is that of "superficial loss". Pursuant to paragraph 40(2)(*g*), a taxpayer's loss from the disposition of property, to the extent that it is a superficial loss, is considered to be nil.

The amendments to this definition delete the description, within the definition itself, of the group of persons and partnerships whose connection with a taxpayer would render any loss on the transfer of property by the taxpayer to a member of that group a superficial loss. As amended, the definition will apply where the taxpayer is "affiliated" with the transferee -- using the tests set out in new section 251.1 of the Act. (See the commentary on section 251.1 for further information.)

The amendments also add the following to the list of exclusions from the superficial loss definition:

- a disposition by a corporation whose control is acquired within the following 30 days;
- a disposition by a person who becomes or ceases to be exempt from tax under Part I of the Act within the following 30 days; and
- any disposition to which new subsection 40(3.4) of the Act applies (see the commentary on that subsection for further details), or to which subsection 69(5) applies.

The acquisition of a right to acquire property may give rise to a superficial loss. The amendments to the definition provide that a right to acquire a property (other than a right that is security for a debt or similar obligation) is treated for this purpose as a property that is identical to the property.

Finally, the reference to subsection 85(4) of the Act is removed from the definition to reflect the fact that the subsection is being repealed.

These amendments apply to dispositions of property that take place after April 26, 1995, subject to certain exemptions. These are found in clause 156, and generally exclude transactions in progress before April 27, 1995. Readers may refer to the notes to clause 156 for more detail.

Subclauses 26(5)

ITA
55(3.01)

The note on paragraph 55(3.01)(a) to (d) of the Act is set out in the June 1996 release.

New paragraph 55(3.01)(*e*) of the Act sets out, for the purpose of paragraph 55(3)(*a*) circumstances in which a non-resident will be treated as having disposed of property for proceeds that are less than its fair market value. This will be the case where the gain or loss

from the disposition (at fair market value) is recognized for purposes of taxation neither in Canada nor in the non-resident's home country.

Subclause 26(8)

ITA
55(3.2)

Subsection 55(3.2) of the Act sets out a number of interpretative rules for the purpose of paragraph 55(3.1)(*b*). New paragraph 55(3.2)(*h*) of the Act provides that each corporation that is a shareholder and specified shareholder of a distributing corporation at any time during the course of a series of transactions or events, a part of which includes a distribution, will be treated as a transferee corporation in relation to the distributing corporation. New paragraph 55(3.2)(*h*) of the Act applies to dividends received after June 20, 1996 other than dividends received in the course of a reorganization that was carried out pursuant to a series of transactions or events substantially advanced, as evidenced in writing, before June 21, 1996 or that was required on June 20, 1996 to be carried out pursuant to a written agreement made before June 21, 1996. For this purpose, a reorganization is considered not to be required to be carried out where the parties to the agreement can be relieved of the requirement if there is a change to the Act.

An example is set out in the June release.

Clause 27

Amounts Included in Income

ITA
56(1)

Section 56 of the Act lists certain types of income that are required to be included in computing the income of a taxpayer from sources other than property, business and employment.

Subparagraph 56(1)(*a*)(iv) is amended to add a reference to the *Unemployment Insurance Act*, to ensure that amounts received under that act remain taxable.

Subparagraph 56(1)(*l*)(ii) is amended to add a reference to the Canada Employment and Immigration Commission and the *Unemployment Insurance Act*, in recognition of the fact that a reimbursement of costs could be in relation to the procedure under that act.

New paragraph 56(1)(*r*) requires that certain amounts received as social assistance under projects sponsored by the federal government under which benefits are paid to supplement individuals' income from employment be included in computing the recipient's income.

Paragraph 56(1)(*u*) of the Act is also amended to clarify that it does not apply to employment earnings supplements included in income under new paragraph 56(1)(*r*).

The amendments to subparagraphs 56(1)(*a*)(iv) and 56(1)(*l*)(ii) are deemed to have come into force on June 30, 1996. The amendments respecting paragraphs 56(1)(*r*) and 56(1)(*u*) apply to the 1993 and subsequent taxation years.

Clause 27.1

Other deductions

ITA
60

Section 60 provides for a variety of deductions in computing income, many of which relate to certain income inclusions required under section 56.

Subparagraphs (*n*)(iii) and (*o*)(ii), as well as paragraph (*v*.1), are amended to add a reference to the *Unemployment Insurance Act*, to ensure the various amounts paid under that former act continue to be deductible. This amendment is deemed to have come into force on June 30, 1996.

Subclause 27.1(3)

RCA distributions and dispositions

ITA
60(*t*) and (*u*)

Paragraph 60(*t*) of the Act provides a deduction to offset amounts that a taxpayer is required to include in income under paragraph 56(1)(*x*) or (*z*) or subsection 70(2) in respect of payments from a retirement compensation arrangement (RCA). In general, the deduction is limited to the amount of the taxpayer's undeducted contributions to the RCA plus any amounts paid or received by the taxpayer to acquire or dispose of an interest in the RCA.

Paragraph 60(*t*) is amended to deal with the transfer of an amount in respect of a taxpayer from one RCA (the "transferor plan") to another RCA (the "transferee plan") under subsection 207.6(7). That subsection eliminates any requirement for the taxpayer to include the transferred amount in income under paragraph 56(1)(*x*) or (*z*). It also denies the taxpayer any deduction that might otherwise be available under paragraph 8(1)(*m*.2) in connection with the payment to the transferee plan or under paragraph 60(*t*) or (*u*) in connection with the payment from the transferor plan. (See the commentary under subsection 207.6(7) for further details.)

Paragraph 60(*t*) is amended so that, when there is a transfer in respect of a taxpayer under subsection 207.6(7), the amount that can be deducted under that paragraph in connection with payments ultimately received from the transferee plan is increased by the portion of the transfer that would have been deductible if the transferred amount had been paid to the taxpayer. Similarly, the amount that the taxpayer can deduct in connection with payments subsequently received from the transferor plan (in the event the taxpayer retains an interest in the plan) is reduced by the same amount. This allows the relief provided under that paragraph to be carried forward to the transferee plan. Paragraph 60(*t*) is also amended to disregard any other RCA contributions made by way of a transfer under subsection 207.6(7) in determining the amount that can be deducted under that paragraph in connection with the plan.

Paragraph 60(*u*) provides a deduction to offset amounts that a taxpayer is required to include in income under paragraph 56(1)(*y*) on disposing of an interest in an RCA. In general, the deduction is limited to the amount of the taxpayer's undeducted contributions plus amounts paid to acquire the interest in the RCA less amounts deducted under paragraph 60(*t*) in connection with the RCA. The amendments to paragraph 60(*u*) are identical to the amendments to paragraph 60(*t*).

These amendments apply to the 1996 and subsequent taxation years.

Clause 35.1

Seizure of debtor's property

ITA
79(1) "creditor"

Subsection 79(1) of the Act defines a number of words for the application of the rules applicable to situations where a creditor seizes the property of a debtor. The amendment to the French version of the definition "creditor" corrects a discrepancy between the two versions of that definition the purpose of which is not to narrow the common meaning of the word "creditor" but rather to enlarge it. Therefore, the word "*comprend*" is added to the French version of that definition. The coming-into-force of the amendment is similar to the one that applies to the introduction of this definition.

Subclause 42(9)

Vertical Amalgamations

ITA
87(2.11)

Subsection 87(2.11) of the Act treats the corporation formed on what is commonly known as a "vertical amalgamation" (the amalgamation of a corporation and one or more of its subsidiary wholly-owned corporations) as the same corporation as, and a continuation of, the former parent corporation, for the purposes of section 111 and

Part IV of the Act. By allowing losses incurred by the amalgamated corporation to be carried back to the former parent, subject to the rules in section 111, the provision conforms the effect of a vertical amalgamation to what would have resulted if the predecessor subsidiary had instead been wound up into its parent under subsection 88(1) of the Act.

This amendment adds to the list of purposes for which the new corporation will be treated as the same corporation as, and a continuation of, the former parent company. In addition to section 111 and Part IV of the Act, these include: section 126 (foreign tax credits), subsections 127(5) to (26) (investment tax credits), subsections 181.1(4) to (7) (deductions of unused surtax against Part I.3 tax) and subsections 190.1(3) to (6) (deduction of unused Part I tax against Part VI tax). The amendment thus allows various tax attributes to move from the surviving corporation - the one formed on the amalgamation - back to the predecessor parent, much as they could if the companies had reorganized through a winding-up.

This amendment applies to amalgamations occurring after April 26, 1995.

Subclause 42(11)

The note on subsection 87(10) is set out in the June release.

Vertical Amalgamations

ITA
87(11)

Subsection 87(11) of the Act is a new provision generally effective in respect of a vertical amalgamation occurring after 1994 to which subsection 87(1) applies. These provisions provide a new corporation formed on the amalgamation of a parent and one or more of its subsidiary wholly-owned corporations with the option of increasing its cost of certain capital property acquired by it on the amalgamation. This increase in the new corporation's cost is the same as the increase that would be available to the parent if the subsidiary

had been wound up into the parent and subsection 88(1) of the Act had applied to the winding-up .

New subsection 87(11) of the Act relies upon subsection 88(1) and new subsection 88(1.7) of the Act to determine the type of property that qualifies for the increase and the amount of the increase in respect of each such property. As well, new subsection 87(11) relies upon subsection 88(1) to determine the parent's proceeds of disposition arising from the parent's disposition of the subsidiary's shares on the amalgamation. New subsection 87(11) of the Act applies to amalgamations that occur after 1994 unless the amalgamation occurs before June 20, 1996 and the new corporation elects not to have it apply to the amalgamation in the tax return for the year of the parent that ended immediately before the amalgamation or within 90 days after any assessment or reassessment of tax payable for that year. Any paragraph 88(1)(*d*) designation filed by the new corporation by the end of the third month after the month in which subsection 87(11) becomes law will be considered to have been filed with the new corporation's return of income for its first taxation year.

Subclauses 43(1)

ITA
88(1)(*c*)(vi)

The note on new subparagraph 88(1)(c)(vi) of the Act is set out in the June 1996 release.

The proposed coming-into force for this amendment has been revised so that it applies to windings-up that begin after June 20, 1996 other than those that are part of an arrangement that was substantially advanced, as evidenced in writing, by that date.

Subclause 43(4)

ITA
88(1)(*c*.3)

The note on new paragraph 88(1)(c.3) of the Act is set out in the June 1996 release.

The proposed coming-into-force for this amendment has been revised to add a transitional rule for windings-up that began before June 21, 1996 and for windings-up that begin after June 20, 1996 that were part of an arrangement that was substantially advanced, as evidenced in writing, by that date.

Subclause 48(6)

ITA
96(3)

Subsection 96(3) of the Act provides rules that apply if a member of a partnership makes an election under certain provisions of the Act for a purpose that is relevant to the computation of the member's income from the partnership. In such case, the election will be valid only if it is made on behalf of all the members of the partnership and the member had authority to act for the partnership.

Subsection 96(3) is amended to treat an election filed by a member under section 15.2 and new subsections 249.1(4) and (6) in the same way as other elections referred to in subsection 96(3). This amendment generally applies to fiscal periods that end after December 2, 1992.

Subclause 54(1)

ITA
107(1)(*c*) and (*d*)

Subsection 107(1) of the Act contains special rules that are applicable to the disposition of an interest in a trust. Paragraph 107(1)(*c*) is a "stop-loss" rule which reduces a corporate beneficiary's capital loss

from the disposition of an interest in a trust. The loss otherwise realized by the beneficiary is reduced by all dividends designated under subsection 104(19) or (20) of the Act by the trust in respect of the beneficiary. In computing the amount of loss reduction, dividends that reduced a capital loss of the beneficiary from a previous disposition of an interest in the same trust are excluded.

Where a trust realizes a loss on the disposition of a share, the stop-loss rules in section 112 of the Act may apply to reduce the loss otherwise determined by the amount of certain dividends received by the trust on the share. However, these stop-loss rules would not apply where a beneficiary which holds a capital interest in the trust disposes of the interest and realizes a loss that can be attributed to the reduced value of shares held by the trust. Paragraph 107(1)(*c*) ensures that the appropriate loss reduction is made in such circumstances.

Paragraph 107(1)(*c*) is amended in its application to corporate beneficiaries so that only taxable dividends that are deductible by the beneficiary will be applied to reduce the capital loss from the disposition. This paragraph is also amended to expand its application to other taxpayers (except for members of partnerships who are dealt with under new paragraph 107(1)(*d*) of the Act). Where the beneficiary is another trust, all amounts designated under subsection 104(19) or (20) in respect of the beneficiary will reduce the beneficiary's capital loss from the disposition of an interest in the trust which designated the dividends. Consistent with the exclusion for mutual fund trusts from the stop-loss rules in amended subsection 112(3.2), this rule does not apply to a beneficiary trust which is a mutual fund trust. Where the beneficiary is a natural person, only amounts designated under subsection 104(20) in respect of the beneficiary will reduce a capital loss from the disposition of an interest in the trust.

New paragraph 107(1)(*d*) provides similar rules where a partnership realizes a capital loss from a disposition of an interest in a trust. However, since the partnership which disposes of the share is treated as a flow-through entity, the loss reduction is performed at the partner level. The new provision does not apply to reduce the loss of a partnership that is a member of another partnership and applies only where the partner is a corporation or individual (other than a mutual fund trust). Accordingly, where a partnership is a member of another partnership which realizes a capital loss from the disposition of a trust

interest, the loss of the partners of the first partnership may be reduced under paragraph 107(1)(*d*).

This amendment to subsection 107(1) applies to dispositions that occur after April 26, 1995.

Subclauses 55(3), (4) and (5)

ITA
108(2)

Subsection 108(2) of the Act defines the expression "unit trust". A trust must qualify as a "unit trust" in order to meet the conditions for qualifying as a "mutual fund trust" under subsection 132(6) of the Act.

Paragraph 108(2)(*b*) is amended so "interests" in real property, as defined by subsection 248(4), are treated in the same manner as real property for the purposes of determining whether a trust is a unit trust. Under subsection 248(4), an "interest" in real property includes a leasehold interest in real property.

Paragraph 108(2)(*b*) is also amended so that notes and other similar obligations are treated in the same manner as bonds, mortgages and marketable securities for the purposes of determining whether a trust is a unit trust.

New paragraph 108(2)(*c*) allows certain trusts established before 1994 to qualify as "unit trusts". This provision applies to a trust where the following conditions are satisfied:

- the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property (or an interest in real property, as defined by subsection 248(4));

- the trust was a "unit trust" under subsection 108(2) throughout any calendar year that ended before 1994; and

- the current fair market value of the property of the trust is primarily attributable to cash or investments described in paragraph (*a*) or (*b*) of the definition "qualified investment" in

section 204 of the Act, real property (or an interest in real property) or any combination of such property.

These amendments apply to the 1994 and subsequent taxation years.

Subclause 57(1)

ITA
112(3) to (3.32)

Subsection 112(3) of the Act contains a "stop-loss" rule which reduces the loss of a corporation from the disposition of a share held as capital property by the amount of tax-free dividends received by the corporation on the share. The provision applies unless the corporation establishes that it held the share for at least 365 days before the disposition and that the corporation and non-arm's length persons did not own more than 5% of the shares of any class of the dividend-paying corporation when the dividends were received by the corporation. Subsections 112(3.1) and (3.2) of the Act provide similar treatment where the share is held by a partnership or trust. These subsections are amended in several respects.

First, the reference to a "capital dividend" is changed to a reference to a dividend in respect of which an election was made under subsection 83(2) of the Act where the dividend is not a taxable dividend because of subsection 83(2.1) of the Act. Subsection 83(2) permits a private corporation to elect to treat a dividend it pays as a capital dividend. Where the election is made, no part of the dividend is included in the shareholder's income even where the dividend exceeds the corporation's capital dividend account. However, where the conditions in subsection 83(2.1) are satisfied, a capital dividend will be treated as a taxable dividend received by the shareholder and paid by the corporation. Subsection 83(2.1) is an anti-avoidance rule which applies where one of the main purposes of an acquisition of a share is to acquire a right to a capital dividend. Accordingly, under the amended provisions, a dividend subject to subsection 83(2.1) is not treated as a dividend in respect of which an election under subsection 83(2) was made. (For the sake of simplicity in the presentation of these notes describing the amendments to section 112 of the Act, reference to the term "capital dividends" will be maintained.)

Second, the rules are restructured so that the dividends which are excluded from the loss reduction are set out in separate subsections from those which require the loss reduction. The dividends which are excluded are those which meet the 365-day and 5% ownership test and are contained in new subsections 112(3.01), (3.11), (3.31) and (3.32).

Third, the provisions are amended to ensure that only dividends received while the taxpayer and non-arm's length persons held more than 5% of the shares of any class of the dividend-paying corporation are taken into account in reducing a loss from the disposition of a share. Under the existing provisions, a dividend that was received while the taxpayer did not exceed the 5% threshold may have, nevertheless, been taken into account in reducing a loss if another dividend was received at a time when the taxpayer exceeded the 5% threshold.

Fourth, the subsections are amended to ensure that the 365-day holding period can only be met where the taxpayer held the share throughout the 365-day period that ends immediately before its disposition.

Fifth, as a consequence of the amendment to paragraph 112(6)(*a*) the provisions are amended to remove the reference to an amount on which a corporation was required to pay tax under Part VII of the Income Tax Act chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977.

Subsection 112(3) is also amended to expand its application to shares held by a natural person with respect to capital dividends. However, under amended subsection 112(3) a loss will be reduced only by the lesser of:

- the capital dividends received by the person on the share, and

- the amount by which the loss exceeds the taxable dividends received by the person on the share.

This change will ensure that a loss is not reduced to the extent that the loss is attributable to the corporation's payment of taxable dividends to the shareholder.

Subsection 112(3.1) is also amended to expand its application to an individual member of a partnership which receives capital dividends. In a manner akin to the amendment to subsection 112(3), these capital dividends will reduce an individual's share of a partnership loss only where they exceed the individual's share of the loss minus the taxable dividends received by the individual on the share. With respect to members of a partnership that are trusts, the amended provision also applies to taxable dividends and life insurance capital dividends received on a share and designated under subsection 104(19) or (20) of the Act by the trust in respect of a beneficiary that is a corporation, partnership or another trust.

Subsection 112(3.1) is further amended to ensure that a taxpayer's share of a partnership loss is subject to reduction in situations involving multi-tier partnerships. Amended subsection 112(3.1) is intended to reduce an individual or corporate partner's share of a loss from one partnership where the share of a corporation was held by another partnership of which the first partnership has a direct or indirect (that is, through one or more other partnership) interest. Since the partnerships are flow-through entities with respect to any loss arising from the disposition of a share held by one of the partnerships, the stop-loss rule applies only at the individual or corporate partner level: the loss of a partnership that is a member of another partnership is not reduced under the amended provision.

Subsection 112(3.2), which deals with trust losses other than those addressed under new subsection 112(3.3), is amended to expand its application, subject to subsection 112(3.32), to taxable dividends and life insurance capital dividends received on a share and designated by a trust to beneficiaries that are corporations, partnerships or other trusts. Under new subsection 112(3.32) taxable dividends which the trust establishes were received by an individual that is not a trust are not included in the loss reduction under subsection 112(3.2) or (3.3).

Under amended paragraph 112(3.2)(*a*) a trust's loss will also be reduced by the lesser of the following two amounts:

- capital dividends received by the trust, and

- the trust's loss minus certain taxable dividends paid on the share disposed of. (The taxable dividends which count for this purpose are those received and taxed in the trust's hands, designated by the

trust in respect of a beneficiary who is a natural person, or designated to other beneficiaries where the trust establishes that the dividends were received on a share that was held for 365 days or more and received when the trust, the beneficiary and persons non-arm's length with the beneficiary owned less than 5% of any class of the capital stock of the corporation.)

Where the trust is an individual's estate and the share was acquired as a consequence of the individual's death, the amount of the loss reduction otherwise determined above will be reduced under subparagraph 112(3.2)(*a*)(iii) by 1/4 of the lesser of the loss otherwise determined and the capital gain arising from the deemed disposition of the share on the individual's death. In conjunction with subsection 164(6) of the Act, subparagraph 112(3.2)(*a*)(iii) is intended to enable an individual's estate to ignore, in computing its capital loss in respect of shares of a private corporation, capital dividends up to 1/4 of the deceased's capital gain on the shares, thus promoting integration between the deceased individual and the estate where the deceased's capital gain on the shares is attributable to the appreciation of capital property held by the corporation.

The exclusion for prescribed trusts has been removed in the amended provision, reflecting the fact that no trusts have been prescribed for the purposes of subsection 112(3.2). In addition, capital losses of mutual fund trusts are not subject to amended subsection 112(3.2).

New subsection 112(3.3) of the Act is a special rule which applies to reduce a trust's loss from the disposition of a share that is considered to have been acquired by the trust because of the application of subsection 104(4) of the Act. At certain times, subsection 104(4) treats property of a trust as having been disposed of and reacquired at its fair market value. Those times are, generally, when the spouse beneficiary of a spousal trust dies and every 21 years thereafter and, in the case of any other trust, every 21 years following the trust's creation. When there is a deemed disposition and reacquisition of shares owned by a trust because of the application of subsection 104(4), the trust is in a position similar to that of an individual's estate: in both cases the capital gain to the trust in respect of a corporation's share may be attributable to the appreciation of capital property held by the corporation, and allowing capital dividends received by the trust after the deemed disposition, of up to 1/4 of the gain triggered by the disposition, to be ignored in

computing its loss on a subsequent disposition promotes integration between the corporation and the trust. Therefore, the same provision found in the estate rule in subparagraph 112(3.2)(*a*)(iii) is set out in subparagraph 112(3.3)(*a*)(iii).

The new stop-loss rules in subsections 112(3) to (3.32) generally apply to share dispositions that occur after April 26, 1995. They do not apply, however, to share dispositions taking place after that date where:

1. The shares are owned by a taxpayer on April 26, 1995 and are disposed of pursuant to an agreement in writing made before April 27, 1995.

2. A corporation or a partnership of which a corporation was a member was a beneficiary of a life insurance policy on the life of a taxpayer on April 26, 1995, the proceeds of the policy were intended primarily to be used to redeem the shares owned by the taxpayer on April 26, 1995, and the redemption occurs pursuant to an agreement in writing made before April 1997. This rule has the following important features:

- The shares owned by the taxpayer on April 26, 1995 need not be shares of the corporation which is the beneficiary of the life insurance policy; it is necessary only to demonstrate that the proceeds of the policy were intended to be used to acquire the taxpayer's shares. For example, the taxpayer may hold an interest in the corporate beneficiary through one or more holding corporations.

- The shares need not be acquired with the proceeds of the life insurance policy that was in place on April 26, 1995. Therefore, policies may be renewed, converted, replaced or entered into after April 26, 1995 without necessarily eliminating the application of these grandfathering rules.

- The life insurance policy may insure the life of the taxpayer or the taxpayer's spouse or both lives. This is intended to accommodate joint life insurance policies and other estate planning arrangements.

Similar rules apply where the taxpayer is a spouse trust and the life insured is the beneficiary spouse.

3. The shares are held by a taxpayer on April 26, 1995, the taxpayer dies on or after that date and the taxpayer's estate disposes of the shares before 1997.

4. On April 26, 1995 a taxpayer's estate owns the shares, the estate's first taxation year ends after April 26, 1995 and the share are disposed of by the estate before 1997.

5. The shares are owned by a spouse trust on April 26, 1995 and are disposed of by the trust after the death of the beneficiary spouse and before 1997.

A share acquired in exchange for another share on a conversion, transfer to a corporation, corporate reorganization or amalgamation to which section 51, 85, 86 or 87 (respectively) of the Act applies is to be treated as being the same as the exchanged share for the purposes of

(i) determining whether a taxpayer owned the share on April 26, 1995; and

(ii) whether it was reasonable to conclude that a life insurance policy was intended to be used primarily to fund a redemption of the share.

Subclauses 58(1) and (2)

ITA
115(1)(*b*), 115(3)

Paragraph 115(1)(*b*) of the Act lists the types of property (called "taxable Canadian property") in respect of which taxable capital gains and allowable capital losses figure in the calculation of a non-resident's taxable income earned in Canada. In addition to renumbering its subparagraphs and updating its language, this paragraph is revised in several respects.

First, subparagraph 115(1)(*b*)(ii) of the Act is modified to clarify that a non-resident's ships and aircraft used principally in international traffic, as well as related personal property, are not taxable Canadian property, provided the country in which the non-resident is resident grants substantially similar relief to persons resident in Canada.

Second, paragraph 115(1)(*b*) is amended to modify the basic criterion for determining whether a share of the capital stock of a corporation is taxable Canadian property, replacing a test based on the status of the corporation as a public corporation with a test based on whether or not the share is listed on a prescribed Canadian or foreign stock exchange. Revised subparagraph 115(1)(*b*)(iv) provides that an unlisted share of a corporation resident in Canada (other than a mutual fund corporation) is taxable Canadian property. Under revised subparagraph 115(1)(*b*)(vi), a listed share of a Canadian-resident corporation, or a share of a mutual fund corporation, is taxable Canadian property if the shareholder, together with all non-arm's length persons, owned 25% or more of the shares of any class of the corporation's stock at any time in the preceding five years.

Third, amended subparagraph 115(1)(*b*)(v) treats certain unlisted shares of non-resident corporations as taxable Canadian property. Such a share will be taxable Canadian property at a particular time if two criteria are both met. First, at some time in the 12 months preceding the particular time more than half of the fair market value of the corporation's property must be in the form of taxable Canadian property, Canadian resource properties, timber resource properties, income interests in Canadian-resident trusts or interests in or options in respect of these sorts of property. Second, at the same time more than half of the fair market value of the share itself must be derived directly or indirectly from any one or more real properties in Canada, Canadian resource properties or timber resource properties.

A share of a non-resident corporation that meets the tests described above will usually not be taxable Canadian property if it is listed on a prescribed stock exchange. If the shareholder has held 25% or more of the shares of any class of the corporation's stock at any time in the preceding five years, however, subparagraph 115(1)(*b*)(vi) provides that the share is taxable Canadian property even if it is listed on a prescribed exchange.

A fourth change to paragraph 115(1)(*b*) treats as taxable Canadian property certain interests in non-resident trusts. The tests for this treatment, set out in subparagraph 115(1)(*b*)(ix), are comparable to those that apply to shares of non-resident corporations.

Another change slightly modifies the description of those partnership interests that are taxable Canadian property. Under existing

paragraph 115(1)(*b*)(v), a partnership interest is taxable Canadian property if, at any time in the 12 months before the interest is disposed of, 50% or more of the value of the partnership's property was represented by taxable Canadian property, Canadian resource property, timber resource property and income interests in Canadian resident trusts. New subparagraph (vii) changes the applicable percentage from 50% or more to over 50%, the same number as in new subparagraphs (v) and (xi). The new subparagraph also clarifies that options in respect of the various sorts of property it describes are treated for this purpose in the same way as the property itself.

Amended paragraph 115(1)(*b*) applies after April 26, 1995, with certain exceptions. The amendments do not apply to a disposition of property before 1996 to a person who was obliged to acquire the property under an agreement in writing made on or before April 26, 1995. (For this purpose a person is not considered to be obliged to acquire property where the obligation can be relieved if there is a change to the Act or an adverse assessment under the Act.) The amendments also do not apply to a disposition before 1996 pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995. And where a property (such as a share of a non-resident corporation, or an unlisted share of a public corporation) has become taxable Canadian property as a result of these amendments, new subsection 40(9) of the Act may reduce a taxpayer's gain or loss on a disposition of the property. For more information on new subsection 40(9), reference should be made to the notes to that provision.

Subclause 59(4)

ITA
116(6)(*a*) and (*b*)

The various rules in section 116 of the Act, which provides a withholding procedure for the purchaser of certain property, do not apply where the property is "excluded property," as defined in subsection 116(6) of the Act. Subsection 116(6) is amended as a consequence of the restructuring and revision of paragraph 115(1)(*b*) of the Act.

Existing subparagraph 115(1)(*b*)(ix) refers to any property that is deemed by any provision of the Act to be taxable Canadian property. Amended paragraph 115(1)(*b*) moves this reference to subparagraph 115(1)(*b*)(xii). Paragraph 116(1)(*a*)'s cross-reference must therefore be updated as well.

Under subparagraphs 115(1)(*b*)(iii) and (iv), a share of a public corporation is taxable Canadian property only if the person disposing of the share (along with persons with whom that person did not deal at arm's length) held a significant interest in the corporation. Since the purchaser of a publicly-traded share will ordinarily not know who the vendor of the share is, let alone the extent of the vendor's interest in the corporation, paragraph 116(6)(*b*) currently treats a share of the capital stock of a public corporation, or an interest in such a share, as excluded property.

With the amendment of paragraph 115(1)(*b*), the focus of determining if a share of a corporation resident in Canada is taxable Canadian property under that provision has shifted from whether or not the corporation is a public corporation to whether or not the class of shares in question is listed on a prescribed stock exchange. This amendment to paragraph 116(6)(*b*) imports the same test into the definition of excluded property. Under amended paragraph 116(6)(*b*), a share of a class of a corporation's stock, or an interest in a share, will be excluded property if that class is listed on any prescribed exchange. The amendment applies after April 26, 1995, except in respect of certain dispositions before 1996. The excluded dispositions are the same as those to which the amendments to paragraph 115(1)(*b*) do not apply; for more information, readers should consult the notes to that provision.

Subclause 67(1.1)

ITA
122.6

"eligible individual"

Paragraph (*e*) of the definition "eligible individual" describes certain residency requirements that must be met in order for an individual to be eligible for the child tax benefit. Subparagraph (*e*)(iii), which

provides for the determination of Convention refugee status by the Convention Refugee Determination Division of the Immigration and Refugee Board, is being amended to reflect the fact that individuals may be determined to be Convention refugees not only by this body, but also under other provisions of the *Immigration Act* and Regulations.

This amendment applies after 1992.

Clause 72.1

ITA
127(9)

Subsection 127(9) of the Act provides definitions for terms that are used in the provisions relating to the ITC.

"specified percentage"

The definition "specified percentage" in subsection 127(9) sets out the relevant rates at which investment tax credits are earned in different circumstances.

Paragraph (*f*) of the definition permits an investment tax credit to be earned by the repayment of government assistance, non-government assistance or contract payments that reduced the cost of property under paragraph (11.1)(*b*), the amount of an expenditure under paragraph (11.1)(*c*) or (*e*), or the prescribed proxy amount of the taxpayer under paragraph (11.1)(*f*).

Paragraph (*f*) of the definition is amended consequential on the repeal of paragraphs (11.1)(*c*), (*e*) and (*f*) effective for taxation years beginning after 1995. Those paragraphs were replaced by subsections 127(11.5) and (18) to (20). The definition is, therefore, further amended by the addition of new paragraph (*f*.1) consequential on the introduction of basis reductions in subsections 127(18) to (20) and the additions to the ITC in respect of repayments of those amounts in paragraphs (*e*.1) and (*e*.2) of the definition "investment tax credit".

For more information on those amendments, please see the Explanatory Notes to the February 27, 1995 budget amendments, which were released in December, 1995.

This amendment applies to taxation years that begin after 1995.

Clause 73

Refundable Investment Tax Credits

ITA
127.1(1)(*a*)

Subsection 127.1(1) of the Act allows a taxpayer to claim a refundable investment tax credit for a taxation year.

At present, a trustee in bankruptcy required to file an income tax return under paragraph 128(2)(*e*) of the Act may not claim a refundable investment tax credit under subsection 127.1(1). Paragraph 127.1(1)(*a*) is amended to add a reference to paragraph 128(2)(*f*) of the Act and to delete the reference to paragraph 128(2)(*e*) of the Act. Accordingly, for taxation years that begin after April 26, 1995, an individual who is bankrupt during a taxation year and who is required to file an income tax return under 128(2)(*f*) may not claim a refundable investment tax credit under subsection 127.1(1). The trustee in bankruptcy for the individual may, however, make such a claim for those years.

Subclause 81(2)

ITA
130(3)(*a*)

Paragraph 130(3)(*a*) of the Act sets out the conditions under which a corporation is considered to be an investment corporation. Among those conditions is, in subparagraph 130(3)(*a*)(vii), a requirement that no shareholder hold more than 25% of the shares of the corporation. This amendment expands that rule. In effect, a person will be considered for the purpose of the 25% test to own not only any shares that person actually owns, but also (1) any shares owned by

persons with whom that person does not deal at arm's length, and (2) a proportionate number of any shares held by a trust or partnership of which that person is a beneficiary or member.

More specifically, under new subparagraph 130(3)(*a*)(vii) a corporation will be an investment corporation only if no person acquiring shares of the corporation after June 20, 1996 would be a specified shareholder of the corporation if the references to "not less than 10%" in the definition of "specified shareholder" in subsection 248(1) of the Act were references to "more than 25%".

This amendment applies to taxation years that begin after June 20, 1996. A significant exception applies to corporations that were investment corporations on June 20, 1996 and that had one or more shareholders who would otherwise violate the new 25% specified shareholding test. In such a case, the application of amended subparagraph 130(3)(*a*)(vii) in respect of the corporation and a given 26% specified shareholder will depend on whether the shareholder acquires additional shares of the corporation after June 20, 1996, and if so how those additional shares are acquired.

As long as an existing 26% specified shareholder (and any person who does not deal at arm's length with such a shareholder) does not acquire additional shares of the corporation, or contribute additional capital to it, amended subparagraph 130(3)(*a*)(vii) does not apply in respect of the shareholder's interest in the corporation. This rule is set out in subclause 81(5). Assuming it meets the Act's other requirements, the corporation can remain an investment corporation.

If, after June 20, 1996 and before the end of a given taxation year, an existing 26% specified shareholder or a non-arm's length person acquires additional shares of the corporation, amended subparagraph 130(3)(*a*)(vii) will apply for that taxation year, in respect of the shareholder's investment in the corporation. How the subparagraph is read depends on how the shares are acquired.

Under subclause 81(7) the provision will apply in its ordinary form if the shareholder or a non-arm's length person has acquired a share otherwise than by way of stock dividend or from related persons (described more fully below). An existing 26% specified shareholder who buys a share in the market or from treasury will thus cause the corporation not to be an investment corporation, if the shareholder's

direct and indirect interest totals over 25% at any time in the year. And since the rule looks to share acquisitions at any time after June 20, 1996 and before the end of the particular year, the corporation will remain ineligible for investment corporation status in any year in which the shareholder holds that excessive interest.

On the other hand, if before the end of a given year the shareholder has acquired shares only as stock dividends or from related persons, subclause 81(6) provides that the amended version of subparagraph (vii) is to be read in a special manner for that year. Instead of limiting the shareholder's shareholding to 25%, it will limit it to the greatest percentage of the shares of any class of the corporation's stock that were held at the end of June 20, 1996 by the existing 26% specified shareholder and non-arm's length persons.

Three additional details of these special rules should be noted. First, the class of related persons from whom an existing 26% specified shareholder may acquire a share under subclause 81(6) includes only persons who were related to the shareholder both on June 20, 1996 and at every time (after that date) at which they held the share. This means, for example, that an existing 26% specified shareholder who marries in 1997 cannot acquire additional shares from her or his new spouse without invoking the ordinary version of subparagraph 130(3)(*a*)(vii), even though the spouse is related to the shareholder when the shares are transferred. It also means, however, that every person who holds a share between June 20, 1996 and the time it is acquired by an existing 26% specified shareholder need not remain related to the shareholder throughout, as long as they were related on June 20, 1996 and while the person held the share.

Second, subclause 81(6) includes a special provision with respect to shares that are issued by the corporation to a person related to an existing 26% specified shareholder, and are then transferred by that person to the shareholder. Such shares are in effect treated in the same way as shares that existed on June 20, 1996.

Finally, subclause 81(8) makes special provision for partnerships and trusts. Where a trust that existed on June 20, 1996 distributes a share to a person who has been a beneficiary since that date, in satisfaction of that person's capital interest in the trust, the share is deemed for the purposes of these rules to have been owned by the beneficiary during the period from the later of June 20, 1996 and the time the

trust last acquired the share, until the time the beneficiary acquires it. This ensures that the beneficiary, who has simply acquired a share in which the beneficiary already had a beneficial interest, will not be treated as having acquired a share that was owned by an unrelated person.

Similar treatment is given in respect of a share (or an interest in a share) that a partnership that ceases to exist distributes to a person who has been a member of the partnership since June 20, 1996.

The definition "specified shareholder" in subsection 248(1) of the Act treats a trust beneficiary as owning some or all of any shares held by the trust, and a member of a partnership as owning a proportionate number of any shares held by the partnership. The final provision in the coming-into-force rules for the amendment to subparagraph 130(3)(*a*)(vii) extends this deeming principle to the acquisition of the share. That is, a person who is a trust beneficiary or a partner and who is therefore deemed to own a share is also deemed to have acquired the share, at the later of the time the trust or partnership acquired it and the time the person last became a beneficiary of the trust or member of the partnership. This ensures that share acquisitions by the trust or partnership are appropriately included in determining the person's interest in the corporation.

Subclause 83(2)

Mutual Fund Corporations

ITA
131(5)

Subsection 131(5) of the Act treats a mutual fund corporation as a private corporation for the purposes of the refundable tax imposed under Part IV of the Act on private and certain other ("subject") corporations.

This amendment makes two changes to subsection 131(5). First, it simplifies the description of a mutual fund corporation's refundable dividend tax on hand (RDTOH). Second, it restructures the provision to ensure that a mutual fund corporation does not lose access to its

RDTOH if it becomes an investment corporation, or if it has ceased to be a subject corporation.

The amendment applies to the 1993 and subsequent taxation years.

Subclause 85(2)

ITA
132.2(1)(*p*)

The note on the amendments to subsection 132.2(1) of the Act is set out in the June 1996 release.

An exception to the date of the coming-into-force of the changes, July 1, 1994, has been added. The exception is that funds that have carried out a qualifying exchange before November 1996 may choose not to have new paragraph 132.2(1)(*p*) apply in respect of their exchange. To make this choice, the funds must jointly elect in writing filed with the Minister of National Revenue before the end of the third month following Royal Assent to this legislation.

Clause 94

Notes on section 143.2, subsections 143.2(1) to (5), and (7) to (15) of the Act are set out in the June 1996 release.

Amount of Expenditure

ITA
143.2(6)

New subsection 143.2(6) of the Act applies to reduce the amount of any expenditure that is, or is the cost or capital cost of, a taxpayer's tax shelter investment by certain amounts. This reduction also applies to the amount of any expenditure of a taxpayer where an interest in the taxpayer is considered to be a tax shelter investment.

New subparagraph 143.2(6)(*b*)(i) provides a reduction of the total of all limited-recourse amounts in respect of an affected expenditure. For this purpose, an expenditure's limited-recourse amount refers to

such amounts of the taxpayer and all other taxpayers not dealing at arm's length with the taxpayer, where the particular limited-recourse amount can reasonably be considered to relate to the expenditure. This reduction for limited-recourse amounts occurs at the time the expenditure was acquired, made or incurred including where the limited-recourse amount arises after the acquisition, making or incurring of the expenditure.

New subparagraph 143.2(6)(*b*)(ii) provides for a reduction of an amount, or cost or capital cost, of an affected expenditure of a taxpayer to the extent of the taxpayer's "at-risk adjustment" in respect of the expenditure.

New subparagraph 143.2(6)(*b*)(iii) provides for a reduction of an amount, or cost or capital cost, of an affected expenditure of a taxpayer to the extent of each limited-recourse amount and at-risk amount determined under section 143.2 of each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the expenditure.

New subparagraphs 143.2(6)(*b*)(i) and (iii) generally apply to property acquired and to outlays and expenses made or incurred after November 1994. New subparagraph 143.2(6)(*b*)(ii) generally applies after April 26, 1995.

Subclauses 101(3) and (4)

ITA
149(10)

Subsection 149(10) of the Act sets out the tax treatment of a corporation that either becomes or ceases to be exempt from tax under Part I of the Act (otherwise than because of paragraph 149(1)(*t*), which exempts certain farmers' and fishers' insurers). In broad terms, subsection 149(10) provides for:

- a taxation year-end;

- the mandatory deduction of available reserves;

- the fair market value disposition and reacquisition of the corporation's property;
- the preservation of latent recapture on depreciable property; and
- a limitation on loss carry-forwards.

The principle underlying subsection 149(10) is that where a corporation's tax status changes, it ought to be treated more or less as though it had begun a new existence. This amendment applies that "fresh start" principle more comprehensively, drawing a clearer line between a corporation's tax position before it becomes or ceases to be exempt, and its position once that has happened. This is accomplished chiefly by broadening the deemed disposition and reacquisition rule in paragraph 149(10)(*b*) and by substantially reworking the portion of the subsection that follows that paragraph.

Paragraph 149(10)(*a*) is amended to allow a corporation that becomes or ceases to be tax-exempt to establish a new fiscal period for taxation years that begin after that change in its status.

The deemed disposition and reacquisition rules in paragraph 149(10)(*b*) are made more complete by deleting the existing exception for the resource properties of a corporation that ceases to be tax-exempt. A corporation will be treated as having disposed of all of its property for proceeds equal to its fair market value, at the "disposition time" - that is, the time immediately before the time immediately before it becomes or ceases to be exempt.

Next, the amendment replaces existing paragraphs 149(10)(*c*) and (*d*). Paragraph 149(10)(*c*) currently applies where the corporation's capital cost of a depreciable property exceeds the property's fair market value. To ensure that on a later disposition of the property the corporation is subject to the recapture of any excess capital cost allowance it claimed before its status changed, the paragraph preserves the property's capital cost, and treats the excess as having been allowed as capital cost allowance. In keeping with the more complete separation between the tax history of a corporation before its status changes and its treatment afterwards, this rule is deleted.

New paragraph 149(10)(*c*), which is unrelated to the existing provision, provides that a corporation that becomes or ceases to be

exempt from tax is to be treated for certain purposes of the Act as a new corporation the first taxation year of which began with its change in status. Those purposes include: the scientific research and experimental development deduction and credit under sections 37 and 127.3, the resource property rules in sections 65 to 66.4 and 66.7, loss carryovers under section 111, foreign tax credits under section 126, and investment tax credits under subsections 127(5) to (26). New paragraph 149(10)(*c*) thus precludes a corporation whose tax status changes from subsequently using any of the listed deductions and credits it may have accumulated before the change, and vice versa.

Existing paragraph 149(10(*d*) limits a corporation's use of losses incurred before its tax status changed. Since new paragraph 149(10)(*c*) denies any carryover of losses across a change in status, existing paragraph (*d*) is superfluous. It is replaced with a rule requiring the corporation to realize any latent loss in respect of its cumulative eligible capital (CEC). Where, immediately before the disposition time, the corporation's CEC in respect of a business exceeds the total of 3/4 of the fair market value of the business's eligible capital property and the CEC amount otherwise deducted under paragraph 20(1)(*b*) of the Act for the corporation's last taxation year before its tax status changes, the excess is to be deducted in computing the corporation's income for that year.

These changes to subsection 149(10) apply where a corporation becomes or ceases to be exempt from tax under Part I of the Act after April 26, 1995.

Clause 102.1

ITA
150(1)(*d*)(ii)(A)

Subsection 150(1) of the Act requires taxpayers to file their income tax returns by certain dates. Clause 150(1)(*d*)(ii)(A) is amended to replace the reference to "tax shelter" with "tax shelter investment" consequential on the enactment of the definition "tax shelter investment" in new subsection 143.2(1). Generally, this amendment applies to the 1995 and subsequent taxation years.

Subclause 103(2)

Notes on subsection 152(1.5), (1.6), (1.7) and (1.8) of the Act are set out in the June 1996 release.

Determination in Respect of a Partnership

ITA
152(1.4)

New subsection 152(1.4) of the Act provides the Minister of National Revenue with the authority to determine any income or loss of a partnership for a fiscal period within three years after the later of the day on which an information return in respect of the partnership for the fiscal period is required to be filed under section 229 of the *Income Tax Regulations* and the day on which the return is actually filed. This determination is made at the partnership level. The Minister will also have the authority to determine any deduction, amount or matter at the partnership level or relating to the partnership and that is considered relevant in determining the tax liability of, and various amounts payable by, or refundable to, the members of the partnership under the Act for any taxation year. This amendment applies on Royal Assent.

Subclause 103(4)

Assessment and Reassessment

ITA
152(4)

In general terms, subsection 152(4) of the Act provides that the Minister of National Revenue may not reassess tax payable by a taxpayer for a taxation year after the normal reassessment period for the taxpayer in respect of the year unless certain conditions described in paragraph 152(4)(*a*) or (*b*) have been met. More specifically, paragraph 152(4)(*a*) provides that the Minister may reassess at any time in cases of misrepresentation or fraud or where a waiver has been filed within the normal reassessment period for the taxpayer in respect of the year. Paragraph 152(4)(*b*) allows the Minister to reassess a taxpayer within 3 years after the end of the normal reassessment period for the taxpayer in respect of the year, where the

reassessment is required because of an adjustment described in subsection 152(6), such as the carryback of a loss, or is made as a consequence of certain other matters described in that paragraph.

Subsection 152(4) is amended as a consequence of the addition of new subsection 152(4.01). That provision limits the matters in respect of which the Minister may reassess, where a reassessment to which paragraph 152(4)(*a*) or (*b*) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. A similar limitation was previously found in subsections 152(4) and (5). This amendment applies after April 27, 1989.

Subparagraph 152(4)(*b*)(v) is introduced to allow the Minister to reassess a taxpayer within 3 years after the end of the normal reassessment period where the reassessment is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66 in respect of a flow-through share. This amendment applies to the 1996 and subsequent taxation years.

Assessment to which par. 152(4)(*a*) or (*b*) applies

ITA
152(4.01)

New subsection 152(4.01) of the Act limits the matters in respect of which the Minister of National Revenue can reassess, where a reassessment to which paragraph 152(4)(*a*) or (*b*) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year. In general terms, such a reassessment can be made only to the extent that it can reasonably be regarded as relating to a misrepresentation, fraud or waiver, or a matter specified in any of subparagraphs 152(4)(*b*)(i) to (v), because of which the Minister is able to reassess beyond the normal reassessment period. This limitation replaces similar ones in subsections 152(4) and (5) of the existing Act. New subsection 152(4.01) applies after April 27, 1989, except that the reference to subparagraph 152(4)(*b*)(v) dealing with adjustments to flow-through share renunciations applies only to the 1996 and subsequent taxation years.

Clause 104

Withholding

ITA
153

Section 153 authorizes the withholding of tax from any of the payments described in subsection (1). Paragraph 153(1)(*d*.1) is amended to add a reference to the *Unemployment Insurance Act*, which was repealed by Bill C-12. This amendment is deemed to have come into force on June 30, 1996.

Clause 105

ITA
154(2)

Subsection 154(2) of the Act permits the Minister of National Revenue to make a tax transfer payment in respect of an individual to the government of a province in certain cases where the individual has filed a return under the Act.

Paragraph 154(2)(*a*) is amended to clarify that the return filed with the Minister must be a return of income under Part I of the Act.

This amendment applies to the 1996 and subsequent taxation years.

Subclause 106(1)

Special case

ITA
157(2)(*c*)

Subsection 157(2) of the Act sets out conditions under which a co-operative corporation or a credit union is permitted to make only one payment of the whole of its tax payable for a taxation year, rather than having to make instalments.

Subsection 157(2) is amended to ensure that these conditions apply to credit unions on a year-by-year basis. It is also amended to eliminate unnecessary words in existing paragraph 157(2)(*a*).

These amendments apply to taxation years that end after February 22, 1994.

Subclause 106(2) as set out in the June release is deleted.

Clause 132

Foreign Property Tax

Notes on other amendments to Part XI of the Act are set out in the June release.

ITA
206(1.1)(*d*) and (1.3)

New paragraph 206(1.1)(*d*) of the Act provides the fourth of the five tests for substantial Canadian presence for a Canadian corporation. Unlike the other tests under paragraphs 206(1.1)(*a*) to (*c*), this test is designed to apply on an ongoing basis. However, should a corporation cease to qualify under the criteria established in this paragraph, relief is provided under existing subparagraph 206(2)(*a*)(iii) for up to 24 months. Under paragraph 206(1.1)(*d*), a share or a debt obligation issued by a corporation will not be considered to be a foreign property of a taxpayer at a particular time where the particular time is after 1995 and three further conditions are met.

The first condition is satisfied where the issuing corporation was incorporated under the laws of Canada or a province. Alternatively, where the corporation was not required to maintain an office under the laws under which it was incorporated, this condition is satisfied where the maintenance of an office in Canada is required under the constitutional documents of the corporation. (A corporation continued under the laws of Canada or a province is deemed to have been incorporated under the laws of Canada or the province pursuant to paragraph 250(5.1)(*a*) of the Act.)

The second condition is satisfied if the corporation actually does maintain an office in Canada.

The third condition is satisfied where any of the following criteria is met:

- the corporation employs more than 5 individuals in Canada full time otherwise than in connection with certain specified activities,

- another corporation that is controlled by the corporation employs more than 5 individuals in Canada full time otherwise than in connection with certain specified activities,

- the total amount incurred by the corporation for the services (other than services relating to an "investment activity" of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in the any of the last 15 months that end before the particular time exceeds $250,000,

- the total amount incurred by another corporation that is controlled by the corporation for the services (other than services relating to an "investment activity" of the other corporation or another corporation with which the other corporation does not deal at arm's length) of employees and other individuals rendered in Canada in any calendar year that ends in the any of the last 15 months that end before the particular time exceeds $250,000, or

- the corporation was incorporated in the calendar year that includes the particular time and the total amount incurred by the corporation for the services (other than services relating to an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length) of employees and other individuals rendered in Canada in that calendar year exceeds $250,000.

For the purposes of the third condition, it is relevant whether or not the issuing corporation or a corporation controlled by it (referred to below as the "relevant corporation") is considered to carry on an "investment activity". As defined in subsection 206(1), an investment activity generally includes any business the principal purpose of which is to derive income from, or to derive profits from the

disposition of, a number of listed properties (shares, trust interests, indebtedness, etc.) set out in the definition. If the corporation is not considered to carry on a business for tax purposes, the holding of such properties for such purposes likewise would generally be considered to be an "investment activity".

However, there is an important exception from this definition where the properties so held are shares and debts issued by other corporations in which the relevant corporation has a "significant interest". Where this is the case, such shares and debts are ignored, provided that the primary activity of the other corporation is not an "investment activity". Under the definition "investment activity", a relevant corporation has a significant interest in another corporation where

- the relevant corporation is related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) to the other corporation, or

- the relevant corporation holds shares of the capital stock of the other corporation and those shares represent at least 10% of the fair market value of, and the votes at an annual general meeting associated with, all issued shares of the other corporation.

Subsection 206(1.3) also provides a relieving rule relevant in applying the third condition, above. For this purpose, an employee of a corporation is deemed to be employed in Canada if the corporation's permanent establishment (as defined by regulation) to which the employee principally reports is situated in Canada. In addition, services are deemed to be rendered in Canada to a corporation where the permanent establishment for which the services are rendered is situated in Canada. Note, in this regard, that it is contemplated that services could be rendered to a corporation directly (i.e., where the relevant corporation employs the individual or contracts directly with the individual) or indirectly (e.g., where the relevant corporation engages another corporation the employees of which render services to the relevant corporation). For this purpose, it is proposed to define "permanent establishment" in the manner set out in draft section 8201 of the Regulations.

These amendments apply after 1995.

Clause 133.1

RCA transfers

ITA
207.6(7)

New subsection 207.6(7) of the Act provides for the transfer of amounts between retirement compensation arrangements (RCAs) on a tax-neutral basis. It achieves this by providing that there is no inclusion required, or deduction permitted, in computing the income of any taxpayer under Part I of the Act where a lump sum amount is transferred directly from one RCA (the "transferor plan") to another RCA (the "transferee plan").

This means that, where such a transfer constitutes a payment out of the transferor plan to an employer or an individual, there is no requirement for the employer or the individual to include the payment in income under paragraph 12(1)(*n*.3) or under paragraph 56(1)(*x*) or (*z*). Also, the individual is denied a deduction under paragraph 60(*t*), although consequential amendments to paragraphs 60(*t*) and (*u*) allow for the deduction when payments are ultimately received out of the transferee plan. (See the commentary on paragraphs 60(*t*) and (*u*) for further details.)

Similarly, where such a transfer constitutes a contribution to the transferee plan by an individual or an employee, subsection 207.6(7) denies any deduction that might otherwise be available under paragraph 8(1)(*m*.2) or 20(1)(*r*).

Subsection 207.6(7) also clarifies that, for purposes of the 50% refundable RCA tax imposed under Part XI.3, an amount transferred under that subsection is considered to be a distribution from the transferor plan and a contribution to the transferee plan. This ensures that the obligation for the tax is transferred from the transferor plan to the transferee plan.

Amendments to the *Income Tax Regulations* will be proposed to provide that, where an amount is transferred under subsection 207.6(7), there is no withholding on the amount when it is paid out of the transferor plan or when it is paid into the transferee plan.

Subsection 207.6(7) applies to amounts that are transferred after 1995. However, it does not apply where the transferee plan has a non-resident custodian or is a foreign plan deemed by subsection 207.6(5) of the Act to be an RCA in respect of Canadian residents participating in the plan.

Clause 137

RCA benefits to non-residents

ITA
212(1)(*j*)

Paragraph 212(1)(*j*) of the Act imposes a 25% withholding tax on certain amounts including an amount paid or credited to a non-resident person on account of, or in satisfaction of, an amount described in paragraph 56(1)(*x*). Paragraph 56(1)(*x*) refers to amounts received from a retirement compensation arrangement by a person (other than an employer) that can reasonably be considered to be in respect of a person's office or employment.

Paragraph 212(1)(*j*) is amended so that there is no requirement to withhold on amounts transferred after 1995 from one retirement compensation arrangement to another in accordance with subsection 207.6(7).

Subclause 139(1)

A note on subsection 219(1) of the Act is set out in the June 1996 release.

ITA
219(1.1)

Under subsection 219(1) of the Act, a non-resident corporation's taxable income earned in Canada for a taxation year (which the subsection terms the corporation's "base amount") is one of the elements of the corporation's branch tax base. In determining a non-resident's taxable income earned in Canada, paragraph 115(1)(*b*) of the Act provides that the only taxable capital gains and allowable

capital losses to be taken into account are those arising from dispositions of what is defined as "taxable Canadian property" (TCP).

New subsection 219(1.1) of the Act restricts the definition of TCP for purposes of computing a non-resident corporation's branch tax base under subsection 219(1). For those purposes, paragraph 115(1)(*b*) is to be read without reference to subparagraphs (i) and (iii) to (xii). This includes in the subsection 219(1) base amount only those gains and losses that arose on capital property used in carrying on the non-resident corporation's business in Canada.

This new provision applies to taxation years beginning after 1995.

Clause 140

Corporate Emigration

ITA
219.1

Section 219.1 of the Act currently imposes a tax under Part XIV of the Act (commonly known as the "departure tax") where a corporation ceases to be a Canadian corporation. For the 1996 and subsequent taxation years, this amendment to section 219.1 applies the tax not to corporations that cease to be Canadian corporations, but rather to corporations that cease to be resident in Canada. This ensures a better matching of the departure tax and the "branch tax" imposed under subsection 219(1) of the Act and, together with the amendments to that provision (see the commentary on subsection 219(1)), simplifies Part XIV and better conforms it to the general scheme of the Act.

Paragraph 128.1(4)(*a*) of the Act treats an emigrating corporation's taxation year as having ended immediately before the corporation ceased to be resident in Canada. Under amended section 219.1, such a corporation will be required to pay the 25% departure tax by the day it is required to file its return of income under Part I of the Act for that taxation year. The tax is payable on the fair market value of the corporation's property minus the total of the paid-up capital in respect of all of the corporation's shares immediately before year-end (paragraph 219.1(*b*)) and the corporation's debts and obligations,

other than amounts payable in respect of dividends and amounts payable under section 219.1 itself (paragraph 219.1(*c*)). New paragraph 219.1(*d*) deducts a further amount in calculating the departure tax base where a corporation has paid tax under subsection 219(1) or section 219.1 for a taxation year that began before 1996. The need for paragraph 219.1(*d*) and its operation are explained below.

Pre-1996 Part XIV Tax - Paragraph 219.1(*d*)

The amendments to sections 219 and 219.1 shift the focus of both the subsection 219(1) branch tax and the section 219.1 departure tax in Part XIV of the Act from a corporation's status as a Canadian or other corporation to its residence. In most cases, this change will operate appropriately. In a few special circumstances, however, special relief is necessary to ensure that a corporation is not in effect taxed twice on the same amount.

For example, a corporation that is resident in Canada but not a Canadian corporation may have paid branch tax on any Canadian-source taxable income that was not reinvested in its Canadian business. If the corporation ceases to be resident in Canada after 1995, it will be subject to departure tax on the difference between the fair market value of its property and the total of its paid-up capital and its debts. To avoid taxing surplus on which the corporation has already been taxed under Part XIV, the corporation's departure tax base should be reduced.

Similarly, a corporation that before 1996 ceases to be a Canadian corporation -- perhaps by continuing abroad -- and then ceases to be resident after 1995 will be subject to departure tax twice (and may be subject to branch tax in the interim as well). Again, the corporation's departure tax base on ceasing to be resident in Canada should be reduced to reflect the amounts on which it has already been taxed.

Paragraph 219.1(*d*) is intended to accommodate such cases, by applying to any corporation resident in Canada that has paid either the subsection 219(1) branch tax or the section 219.1 departure tax for a taxation year beginning before 1996 and after the corporation last became resident in Canada. In effect, paragraph 219.1(*d*) reduces the emigrant corporation's departure tax base by the total

of the amounts on which the corporation has paid branch tax or departure tax.

More specifically, paragraph 219.1(*d*) reduces a corporation's departure tax base by 4 times the total of the amounts that the corporation would have paid under subsection 219(1) or section 219.1 for the years in question if sections 219.2 and 219.3 of the Act and any applicable international agreement or convention did not apply. By multiplying by 4 the (25%) tax that would have been payable but for tax treaties and sections 219.2 and 219.3 (which reduce the rate of Part XIV tax to the relevant treaty rate), the provision establishes the base on which the tax was paid.

Clause 143.1

Amounts payable

ITA
223

Section 223 allows Revenue Canada to register with the Federal Court a certificate specifying an amount payable by a taxpayer under the Act. Paragraph 223(1)(*b*) is amended to add a reference to the *Unemployment Insurance Act*, which was repealed by Bill C-12. This amendment is deemed to have come into force on June 30, 1996.

Clause 145(1.1)

Penalty

ITA
227(9.1)

Subsection 227(9.1) restricts the application of the penalty contained in subsection 227(9) for late or deficient remittances. Subsection 227(9.1) is amended to add a reference to the *Unemployment Insurance Act*, which was repealed by Bill C-12. This amendment is deemed to have come into force on June 30, 1996.

Subclause 147(4)

Notes on subsections 237.1(4) to (6), (6.1), (6.2), (7) and (7.4) of the Act are set out in the June 1996 release.

ITA
237.1(7.1) to (7.3)

New subsection 237.1(7.1) of the Act provides that a tax shelter information return required under new subsection 237.1(7) is required to be filed with the Minister of National Revenue by the end of February of the year after the year in which the tax shelter was acquired. Where, however, the person required to file the information return in respect of a business or activity discontinues that business or activity in a calendar year, new subsection 237(7.2) provides that the return in respect of the calendar year is due the earlier of the day that is provided under new subsection 237.1(7.1) and the day that is 30 days after the discontinuance. Further, new subsection 237.1(7.3) provides that the filer of such an information return is to forward to each person to whom the return related two copies of the portion of the return relating to that person. These amendments apply after December 1, 1994.

Subclause 148(1)

ITA
239(1.1)

Subsection 239(1) of the Act creates an offence for making false statements, altering documents, etc. for the purpose of evading or reducing the tax payable by a person under the Act. It has been suggested that this subsection does not cover the situation where no tax is payable by the person but the same things are done for the purpose of obtaining or increasing a refund or credit under the Act. New subsection 239(1.1) avoids further uncertainty by creating a new offence for doing those things for the purpose of obtaining or increasing a refund or credit. This amendment applies on Royal Assent.

Clause 148.1

Taxpayer information

ITA
241

Section 241 prohibits the use or communication of information obtained under the Act unless specifically authorized by one of the provisions found in that section. Various provisions in section 241 are amended to add a reference to the *Unemployment Insurance Act*, which was repealed by Bill C-12. This amendment is deemed to have come into force on June 30, 1996.

Subclauses 150(1) and (2)

ITA
248(1)
"mineral"
"mineral resource"

Subsection 248(1) of the Act includes definitions of "mineral" and "mineral resource", which are used in the Act and the Income Tax Regulations for the purposes of determining a taxpayer's mining income.

The definition "mineral" is amended to eliminate a reference to "oil sands". This reference is redundant because of the existing reference in the definition to "bituminous sands". The definition "mineral" is also amended so that ammonite gemstone is included within its scope. Ammonite gemstone is a naturally occurring substance which is obtained from the fossils of ammonite (an extinct shellfish).

The definition "mineral resource" is likewise amended so that a "mineral resource" includes deposits from which the main mineral extracted is ammonite gemstone.

These amendments generally apply to taxation years that begin after 1996, subject to transition rules described below.

The first transition rule provides, for greater certainty, that the amendments with respect to ammonite gemstone do not result in the recategorization of previously-made resource expenditures or previously incurred resource costs. Thus, for example, pre-1997 exploration expenses for ammonite gemstone deposits will not be included in a taxpayer's cumulative Canadian exploration expense after 1996. In addition, the amendments will not result in the creation of depletion pools that are deductible under section 65 of the Act.

The second transition rule allows for the conversion, on a rollover basis, from another category of property for income tax purposes to either Canadian resource property or foreign resource property. The conversion normally takes place at the beginning of taxation years that begin after 1996. Note, in this context, that subsection 13(5) already provides rules to allow transfers on a rollover basis between different classes of depreciable properties (including transfers resulting from changes to the law or regulations).

The intention of the second transition rule, in conjunction with subsection 13(5), is to provide for a fresh start in connection with properties that are recategorized as a consequence of the changes with respect to ammonite gemstones. In this context, it is contemplated that these amendments may have the following effect:

- certain non-depreciable capital property (e.g., real property with substantial ammonite gemstone content) could be reclassified as "Canadian resource property" or "foreign resource property" for income tax purposes, and

- depreciable property of a class may be recategorized as depreciable property of another class.

Clause 150.1

ITA
249.1(5)

Subsection 249.1(5) of the Act provides that the "alternative fiscal-period method" in subsection 249.1(4) does not apply in the case of a business the expenditures of which are, or were, primarily

tax shelters. Subsection 249.1(5) is amended, applicable to fiscal periods that begin after 1994, consequential on the enactment of the definition of "tax shelter investment" in new subsection 143.2(1).

Clause 161

CPP
23(3)

Subsection 23(3) of the *Canada Pension Plan* provides for a deemed trust in respect of amounts deducted by an employer from the remuneration of an employee on account of Canada Pension Plan premiums. The amendment to this subsection is similar to the amendment to subsection 227(4) of the *Income Tax Act* described in subclause 145(1). This amendment is deemed to have come into force on June 15, 1994.

Subclauses 161.2(1) and (2)

CPP
25(7) and (10)

The Minister of National Revenue must, pursuant to subsection 25(6) of the *Canada Pension Plan*, obtain judicial authorization before imposing a requirement that a person provide information related to unnamed third parties. Subsection 25(7) sets out the conditions that must be met before such judicial authorization is granted. Paragraphs 25(7)(*c*) and (*d*) are repealed in order to simplify those conditions. The amendment to subsection 25(10) of the Act is consequential to the repeal of paragraphs 25(7)(*c*) and (*d*). Both these amendments, which apply on Royal Assent, are consequential to the repeal of paragraphs 231.2(3)(*c*) and (*d*) of the *Income Tax Act*, which were repealed in Bill C-36.

The note for subsection 25(12) of this Act is set out in the June 1996 release.

Clause 171.01

EIA
86(2)

Subsection 86(2) of the *Employment Insurance Act* provides for a deemed trust in respect of amounts deducted by an employer from the remuneration of an employee on account of unemployment insurance premiums. The amendment to this subsection is similar to the amendment to subsection 227(4) of the *Income Tax Act* described in subclause 145(1). This amendment applies after June 29, 1996.

Clause 171.02

Electronic Records

EIA
87(3.1) and (3.2)

Subsection 87(3) of the *Employment Insurance Act* requires every employer paying remuneration to a person employed by the employer in insurable employment to keep records and books of account. New subsection 87(3.1) requires an employer who keeps records in an electronic format to retain them in that format for the retention period referred to in subsection 87(2). New subsection 87(3.2) enables the Minister to exempt an employer or a class of employees from the requirement to keep their records in electronic format under such terms and conditions as are acceptable to the Minister.

This amendment applies on Royal Assent.

Clause 171.03

Appeal to the Tax Court of Canada

EIA
103(1)

Current subsection 103(1) of the *Employment Insurance Act* provides that an appeal to the Tax Court of Canada, of a decision on an appeal

to the Minister of National Revenue in respect of a ruling or an assessment, must be made in the prescribed manner. In effect, the rules governing those appeals are found in the *Tax Court of Canada Rules of Procedure respecting the Unemployment Insurance Act*. The amendment provides that the appeal shall be made in accordance with the *Tax Court of Canada Act*. Therefore, the rules governing those appeals will be contained in both the above-mentioned Rules of Procedure and the *Tax Court of Canada Act*.

This amendment will come into force on a day to be fixed by an Order of the Governor in Council to allow for that amendment to be in force simultaneously with the amendments made to the *Tax Court of Canada Act* in this Bill (see relevant notes in clauses 174 to 181) and new provisions that the Rules Committee will have to make to the *Tax Court of Canada Rules of Procedure respecting the Unemployment Insurance Act*.

Reasons for Decisions

EIA
103(3)

Subsection 103(3) of the *Employment Insurance Act* provides that when the Tax Court of Canada hears an appeal in respect of a ruling or an assessment, it must notify the parties to the appeal, in writing, of the reasons for its decision. In order to achieve greater procedural harmonization between income tax and employment insurance matters, this amendment removes the obligation on the Tax Court to provide written reasons for its decision. In this respect, amended subsection 103(3) will be similar to section 18.23 of the *Tax Court of Canada Act*, which governs appeals under the *Income Tax Act* that are subject to the informal procedure.

This amendment applies on Royal Assent.

Clause 171.04

Delegation

EIA
108(1.1)

New subsection 108(1.1) is added to the *Employment Insurance Act* to provide that the Minister of National Revenue may administratively delegate powers and duties of that Minister under that Act to an officer or a class of officers in the Department. This new subsection replaces the requirement in the former *Unemployment Insurance Act* that such delegation be done by regulation. This amendment will allow a more timely revision of the delegation of the Minister's powers and duties required by an amendment to the Act or a reorganization within Revenue Canada, and is consequential to similar amendments to the *Income Tax Act*.

This amendment applies on Royal Assent.

Clause 171.05

Judicial Authorization

EIA
126(16) and (19)

The Minister of National Revenue must, pursuant to subsection 126(15) of the Act, obtain judicial authorization before imposing a requirement that a person provide information related to unnamed third parties. Subsection 126(16) sets out the conditions that must be met before such judicial authorization is granted. Paragraphs 126(16)(*c*) and (*d*) are repealed in order to simplify those conditions. The amendment to subsection (19) of the Act is consequential to the repeal of paragraphs 126(16)(*c*) and (*d*). Both these amendments, which apply on Royal Assent, are consequential to the repeal of paragraphs 231.2(3)(*c*) and (*d*) of the *Income Tax Act*, which were repealed in Bill C-36.

Clause 171.06

Time for repayment

EIA
145(7)

A claimant required to make a benefit repayment must repay the amount within a specific time. Subsection 145(7) sets out the date by which this repayment must be made, which, in the previous wording, referred to the date in section 146. Since section 146 is being amended to use current terms from the *Income Tax Act*, subsection 145(7) is amended to require that the repayment must be made by April 30 in the next year, or, in the case of a claimant who dies after October in the year and before May in the next year, within six months after the day of death. This amendment is deemed to have come into force on June 30, 1996.

Clause 171.07

Returns

EIA
146(*b*)

A claimant required to make a benefit repayment must submit the social benefits repayment portions of the tax return. Section 146 sets out the time periods in which this return must be filed. As a result of changes to the filing requirements in the *Income Tax Act*, this provision is amended to refer to the claimants filing-due date, as defined in subsection 248(1) of the *Income Tax Act*. This amendment is deemed to have come into force on June 30, 1996.

Clause 185.1

This clause from the June 1996 release respecting subsections 58(3.1) and (3.2) of the Unemployment Insurance Act has been deleted.

Clauses 192 and 193

These clauses from the June 1996 release respecting conditional amendments have been deleted.