

(II) was an amount designated under subsection 104(20) by the trust in respect of the taxpayer,

(B) where the taxpayer is another trust, was an amount designated under subsection 104(19) or (20) by the trust in respect of the taxpayer, and

(C) where the taxpayer is not a corporation, trust or partnership, was an amount designated under subsection 104(20) by the trust in respect of the taxpayer

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the taxpayer's loss otherwise determined from a previous disposition of an interest in the trust, and

(d) where the taxpayer is a partnership, the share of a person (other than another partnership or a mutual fund trust) of any loss of the partnership from the disposition is deemed to be the amount, if any, by which that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which is a dividend that was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the person is a corporation,

(I) was a taxable dividend that was designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the person's taxable income or taxable income earned in Canada for any taxation year, or

(II) was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person,

(B) where the person is an individual other than a trust, was a dividend designated under subsection

104(20) by the trust in respect of the taxpayer and was an amount received by the person, and

(C) where the person is another trust, was a dividend designated under subsection 104(19) or (20) by the trust in respect of the taxpayer and was an amount received by the person (or that would have been received by the person if this Act were read without reference to subsection 104(19)),

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the person's loss otherwise determined from a previous disposition of an interest in the trust,

(2) Subsection 107(1.1) of the Act is replaced by the following:

Cost of capital
interest in a
trust

(1.1) For the purpose of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before its acquisition by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value of the interest at the time of issuance, is deemed to be

(a) where the taxpayer elects under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil.

(3) The portion of paragraph 107(2)(b) of the Act before subparagraph (i) is replaced by the following:

(b) the taxpayer is, subject to subsection (2.2), deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the amount, if any, by which

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

Other
distributions

(2.1) Where at any time any property of a trust is distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6), and subsection (2) does not apply in respect of the distribution, notwithstanding any other provision of this Act other than section 132.2,

(5) Section 107 of the Act is amended by adding the following after subsection (2.1):

Flow-through
entity

(2.2) Where at any time before 2005 a beneficiary under a trust described in paragraph (h), (i) or (j) of the definition "flow-through entity" in subsection 39.1(1) received a distribution of property from the trust in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes that time an election in respect of the property in prescribed form, there shall be included in the cost to the beneficiary of a particular property (other than money) received by the beneficiary as part of the distribution of property the least of

(a) the amount, if any, by which the beneficiary's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the trust for the beneficiary's taxation year that includes that time exceeds the total of all amounts each of which is

(i) an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust,

(ii) $\frac{4}{3}$ of an amount by which a taxable capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or

(iii) an amount included in the cost to the beneficiary of another property received by the beneficiary at or before that time in the year because of this subsection,

(b) the amount by which the fair market value of the particular property at that time exceeds the adjusted cost base to the trust of the particular property immediately before that time, and

(c) the amount designated in respect of the particular property in the election.

(6) Paragraph 107(6)(b) of the Act is replaced by the following:

(b) neither the vendor nor a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the vendor had a capital interest in the trust.

(7) Subsection (1) applies to dispositions that occur after April 26, 1995 except that, for dispositions that occur before 1998, the first reference to "loss" in paragraph 107(1)(c) of the Act, as enacted by subsection (1), shall be read as "capital loss".

(8) Subsection (2) applies to the 1994 and subsequent taxation years.

(9) Subsections (3) and (5) apply to distributions made after 1993, and a prescribed form filed under subsection 107(2.2) of the Act, as enacted by subsection (5), before the end of the sixth month after the month in which this Act is assented to is deemed to be filed on time.

(10) Subsection (4) applies to distributions made after June 1994.

(11) Subsection (6) applies after April 26, 1995.

129. (1) The definition "excluded property" in subsection 108(1) of the Act is replaced by the following:

"excluded
property"
« *bien exclu* »

"excluded property" means a share of the capital stock of a non-resident-owned investment corporation that is not taxable Canadian property;

(2) Paragraph (e.1) of the definition "trust" in subsection 108(1) of the Act is replaced by the following:

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

(3) Clauses 108(2)(b)(ii)(A) and (B) of the Act are replaced by the following:

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property, or interest in real property, that is capital property of the trust, or

(4) Subparagraph 108(2)(b)(iii) of the Act is replaced by the following:

(iii) at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, mortgages, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in such property, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(5) The portion of paragraph 108(2)(b) of the Act after subparagraph (v) is replaced by the following:

and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property (or interests in real property) situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada, or

(6) Subsection 108(2) of the Act is amended by striking out the word "or" at the end of paragraph (a), by adding the word "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) 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), the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition "qualified investment" in section 204, real property (or an interest in real property) or any combination of those properties.

(7) Subsection (1) applies after April 26, 1995.

(8) Subsection (2) applies to the 1993 and subsequent taxation years.

(9) Subsections (3) to (6) apply to the 1994 and subsequent taxation years.

130. (1) Paragraph 110.6(2.1)(d) of the Act is replaced by the following:

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987.

(2) Paragraph 110.6(14)(f) of the Act is amended by striking out the word "or" at the end of subparagraph (i) and the word "and" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) as payment of a stock dividend; and

(3) The portion of subsection 110.6(27) of the Act before paragraph (a) is replaced by the following:

Amended
election

(27) Subject to subsection (28), an election under subsection (19) in respect of a property or a business is deemed to be amended and the election, as amended, is deemed for the purpose of this

section (other than subsection (29)) to have been filed on the election filing date if

(4) Subsection 110.6(28) of the Act is replaced by the following:

Election that
cannot be
revoked or
amended

(28) An election under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of

(a) if the election is in respect of a property other than an interest in a partnership, the fair market value of the property at the end of February 22, 1994;

(b) if the election is in respect of an interest in a partnership, the greater of \$1 and the fair market value of the property at the end of February 22, 1994; and

(c) if the election is in respect of a business, the greater of \$1 and the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

(5) Subsection (1) applies to the 1996 and subsequent taxation years.

(6) Subsection (2) applies to dispositions of shares that occur after June 17, 1987.

(7) Subsections (3) and (4) apply to the 1994 and subsequent taxation years.

131. (1) Subsections 112(3) to (4.2) of the Act are replaced by the following:

Loss on share
that is capital
property

(3) Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share that is capital property of the taxpayer (other than a share that is property of a partnership) is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share; and

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend.

Loss on share
that is capital
property –
excluded
dividends

(3.01) A dividend shall not be included in the total determined under subparagraph (3)(a)(i) or paragraph (3)(b) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Loss on share
held by
partnership

(3.1) Subject to subsections (5.5) and (5.6), where a taxpayer (other than a partnership or a mutual fund trust) is a member of a

partnership, the taxpayer's share of any loss of the partnership from the disposition of a share that is held by a particular partnership as capital property is deemed to be that share of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) that share of the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share;

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend; and

(c) where the taxpayer is a trust, the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Loss on share
held by
partnership -
excluded
dividends

(3.11) A dividend shall not be included in the total determined under subparagraph (3.1)(a)(i) or paragraph (3.1)(b) or (c) where the taxpayer establishes that

(a) it was received when the particular partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the particular partnership held throughout the 365-day period that ended immediately before the disposition.

Loss on share
held by
partnership -
excluded
dividends

(3.12) A taxable dividend received on a share and designated under subsection 104(19) by a particular trust in respect of a beneficiary that was a partnership or trust shall not be included in the total determined under paragraph (3.1)(c) where the particular trust establishes that the dividend was received by an individual (other than a trust).

Loss on share
held by trust

(3.2) Subject to subsections (5.5) and (5.6), the amount of any loss of a trust (other than a mutual fund trust) from the disposition of a share of the capital stock of a corporation that is capital property of the trust is deemed to be the amount of the loss determined without reference to this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share,

(B) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received while the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) where the trust is an individual's estate, the share was acquired as a consequence of the individual's death and the disposition occurs during the trust's first taxation year, 1/4 of the lesser of

(A) the loss determined without reference to this subsection, and

(B) the individual's capital gain from the disposition of the share immediately before the individual's death, and

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

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Loss on share
held by trust -
special cases

(3.3) Notwithstanding subsection (3.2), where a trust has at any time acquired a share of the capital stock of a corporation

because of subsection 104(4), the amount of any loss of the trust from a disposition after that time is deemed to be the amount of the loss determined without reference to subsection (3.2) and this subsection minus the total of

(a) the amount, if any, by which the lesser of

(i) the total of all amounts each of which is a dividend received after that time by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to subsection (3.2) and this subsection minus the total of all amounts each of which is the amount of a taxable dividend

(A) received by the trust on the share after that time,

(B) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or

(C) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received when the trust, the beneficiary and persons not dealing at arm's length with the beneficiary owned in total less than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received

exceeds

(iii) 1/4 of the lesser of

(A) the loss from the disposition, determined without reference to subsection (3.2) and this subsection, and

(B) the trust's capital gain from the disposition immediately before that time of the share because of subsection 104(4), and

(b) the total of all amounts each of which is a taxable dividend received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

Loss on share
held by trust -
excluded
dividends

(3.31) No dividend received by a trust shall be included under subparagraph (3.2)(a)(i) or (b)(ii) or (3.3)(a)(i) where the trust establishes that the dividend

(a) was received,

(i) in any case where the dividend was designated under subsection 104(19) or (20) by the trust, when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, or

(ii) in any other case, when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Loss on share
held by trust -
excluded
dividends

(3.32) No taxable dividend received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust shall be included under paragraph (3.2)(b) or (3.3)(b) where the trust establishes that the dividend was received by an individual (other than a trust), or

(a) was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Loss on share
that is not
capital
property

(4) Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share of the capital stock of a corporation that is property (other than capital property) of the taxpayer is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual and the corporation is resident in Canada, the total of all dividends received by the individual on the share;

(b) where the taxpayer is a partnership, the total of all dividends received by the partnership on the share; and

(c) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend).

Loss on share
that is not
capital
property -
excluded
dividends

(4.01) A dividend shall not be included in the total determined under paragraph (4)(a), (b) or (c) where the taxpayer establishes that

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

Fair market
value of shares
held as
inventory

(4.1) For the purpose of section 10, the fair market value at any time of a share of the capital stock of a corporation is deemed to be equal to the fair market value of the share at that time, plus

(a) where the shareholder is a corporation, the total of all amounts received by the shareholder on the share before that time each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the shareholder's taxable income or taxable income earned in Canada for any taxation year, or

(ii) a dividend (other than a taxable dividend);

(b) where the shareholder is a partnership, the total of all amounts each of which is a dividend received by the shareholder on the share before that time; and

(c) where the shareholder is an individual and the corporation is resident in Canada, the total of all amounts each of which is a dividend received by the shareholder on the share before that time (or, where the shareholder is a trust, that would have been so received if this Act were read without reference to subsection 104(19)).

Fair market
value of shares
held as
inventory -
excluded
dividends

(4.11) A dividend shall not be included in the total determined under paragraph (4.1)(a), (b) or (c) where the shareholder establishes that

(a) it was received while the shareholder and persons with whom the shareholder was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the shareholder held throughout the 365-day period that ended at the time referred to in subsection (4.1).

Loss on share
held by trust

(4.2) Subject to subsections (5.5) and (5.6), the amount of any loss of a trust from the disposition of a share that is property (other than capital property) of the trust is deemed to be the amount of the loss determined without reference to this subsection minus

(a) the total of all amounts each of which is a dividend received by the trust on the share, to the extent that the amount was not designated under subsection 104(20) in respect of a beneficiary of the trust; and

(b) the total of all amounts each of which is a dividend received on the share that was designated under subsection 104(19) or (20) by the trust in respect of a beneficiary of the trust.

Loss on share
held by trust -
excluded
dividends

(4.21) A dividend shall not be included in the total determined under paragraph (4.2)(a) where the taxpayer establishes that

(a) it was received when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

Loss on share
held by trust -
excluded
dividends

(4.22) A dividend shall not be included in the total determined under paragraph (4.2)(b) where the taxpayer establishes that

(a) it was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

(2) Subsection 112(4.3) of the Act is repealed.

(3) Paragraph 112(5.1)(b) of the Act is replaced by the following:

(b) the taxpayer did not hold the share throughout the 365-day period that ended immediately before the disposition; and

(4) Subparagraph (b)(iv) of the description of B in subsection 112(5.2) of the Act is replaced by the following:

(iv) a dividend (other than a taxable dividend) received by the taxpayer on the share,

(5) Paragraph (b) of the description of C in subsection 112(5.2) of the Act is replaced by the following:

(b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.2), or

(6) Section 112 of the Act is amended by adding the following after subsection (5.2):

Subsection
(5.2) -
excluded
dividends

(5.21) A dividend shall not be included in the total determined under paragraph (b) of the description of B in subsection (5.2) unless

(a) the dividend was received when the taxpayer and persons with whom the taxpayer did not deal at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; or

(b) the share was not held by the taxpayer throughout the 365-day period that ended immediately before the disposition.

(7) The portion of subsection 112(5.5) of the Act before paragraph (a) is replaced by the following:

Stop-loss rules
not applicable

(5.5) Subsections (3) to (4) and (4.2) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

(8) The portion of subsection 112(5.6) of the Act before paragraph (a) is replaced by the following:

Stop-loss rules
restricted

(5.6) In determining whether any of subsections (3) to (4) and (4.2) apply to reduce a loss of a taxpayer from the disposition of a share, this Act shall be read without reference to paragraphs (3.01)(b) and (3.11)(b), subclauses (3.2)(a)(ii)(C)(I) and (3.3)(a)(ii)(C)(I) and paragraphs (3.31)(b), (3.32)(b), (4.01)(b), (4.21)(b) and (4.22)(b) where

(9) Paragraph 112(6)(a) of the Act is replaced by the following:

(a) "dividend" and "taxable dividend" do not include a capital gains dividend (within the meaning assigned by subsection 131(1)) or any dividend received by a taxpayer on which the taxpayer 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;

(10) Subsection 112(7) of the Act is replaced by the following:

Rules where
shares
exchanged

(7) Where a share (in this subsection referred to as the "new share") has been acquired in exchange for another share (in this subsection referred to as the "old share") in a transaction to which section 51, 85.1, 86 or 87 applies, for the purposes of the application of any of subsections (3) to (3.32) in respect of a disposition of the new share, the new share is deemed to be the same share as the old share, except that

(a) any dividend received on the old share is deemed for those purposes to have been received on the new share only to the extent of the proportion of the dividend that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares immediately after the exchange acquired in exchange for the old share; and

(b) the amount, if any, by which a loss from the disposition of the new share is reduced because of the application of this subsection shall not exceed the proportion of the shareholder's adjusted cost base of the old share immediately before the exchange that

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of

(ii) the shareholder's adjusted cost base of all new shares, immediately after the exchange, acquired in exchange for the old share.

(11) Subsections 112(3) to (3.32) of the Act, as enacted by subsection (1), apply to dispositions that occur after April 26, 1995, other than

(a) a disposition that occurs pursuant to an agreement in writing made before April 27, 1995;

(b) a disposition of a share of the capital stock of a corporation that is made to the corporation if

(i) on April 26, 1995 the share was owned by an individual (other than a trust) or by a particular trust under which an individual (other than a trust) was a beneficiary,

(ii) on April 26, 1995 a corporation, or a partnership of which a corporation is a member, was a beneficiary of a life insurance policy that insured the life of the individual or the individual's spouse,

(iii) it was reasonable to conclude on April 26, 1995 that a main purpose of the life insurance policy was to fund, directly or indirectly, in whole or in part, a redemption, acquisition or cancellation of the share by the corporation that issued the share, and

(iv) the disposition is made by

(A) the individual or the individual's spouse,

(B) the estate of the individual or of the individual's spouse within the estate's first taxation year,

(C) the particular trust where it is a trust described in paragraph 104(4)(a) or (a.1) of the Act in respect of a spouse, the spouse is the beneficiary referred to in subparagraph (i) and the disposition occurs before the end of the trust's third taxation year that begins after the spouse's death, or

(D) a trust described in paragraph 73(1)(c) of the Act created by the individual in respect of the individual's spouse, or a trust described in paragraph 70(6)(b) of the Act created by the individual's will in respect of the individual's spouse, before the end of the trust's third taxation year that begins after the spouse's death;

(c) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 that was made by the individual's estate before 1997;

(d) a disposition of a share of the capital stock of a corporation owned by an estate on April 26, 1995, the first taxation year of which ended after that day, that was made by the estate before 1997; or

(e) a disposition of a share of the capital stock of a corporation owned by an individual on April 26, 1995 where the

individual is a trust described in paragraph 104(4)(a) or (a.1) of the Act in respect of a spouse, that was made by the trust after the spouse's death and before 1997.

(12) For the purposes of paragraph (11)(b) and this subsection, a share of the capital stock of a corporation acquired in exchange for another share in a transaction to which section 51, 85, 86 or 87 of the Act applies is deemed to be the same share as the other share.

(13) Subsections 112(4), (4.01) and (4.2) to (4.22) of the Act, as enacted by subsection (1), and subsections (2) to (8) and (10) apply to dispositions that occur after April 26, 1995.

(14) Subsections 112(4.1) and (4.11) of the Act, as enacted by subsection (1), apply to taxation years that end after April 26, 1995.

(15) Subsection (9) applies after April 26, 1995.

132. (1) Paragraph 115(1)(b) of the Act is replaced by the following:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions at any time in the year of property or an interest therein (in this Act referred to as "taxable Canadian property") that was

(i) real property situated in Canada,

(ii) a capital property used by the non-resident person in carrying on a business in Canada, other than

(A) property used in carrying on an insurance business, and

(B) ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the non-resident person is resident grants substantially similar relief for the year to persons resident in Canada,

(iii) where the non-resident person is an insurer, any capital property that is its designated insurance property for the year,

(iv) a share of the capital stock of a corporation (other than a mutual fund corporation) resident in Canada that is not listed on a prescribed stock exchange,

(v) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the corporation each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in any of subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the share is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties,

(vi) a share otherwise described in subparagraph (iv) or (v) that is listed on a prescribed stock exchange, or a share of the capital stock of a mutual fund corporation, if, at any time during the 5-year period that ends at that time, the non-resident person, persons with whom the non-resident person did not deal at arm's length, or the non-resident person together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(vii) an interest in a partnership where, at any particular time during the 12-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in clauses (B) to (D), whether or not that property exists,

was more than 50% of the fair market value of all of its properties,

(viii) a capital interest in a trust (other than a unit trust) resident in Canada,

(ix) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(x) a unit of a mutual fund trust if, at any particular time during the 5-year period that ends at that time, not less than 25% of the issued units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(xi) an interest in a non-resident trust where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the trust each of which was

(I) a taxable Canadian property,

(II) a Canadian resource property,

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in subclauses (II) to (IV), whether or not the property exists,

was more than 50% of the fair market value of all of its properties, and

(B) more than 50% of the fair market value of the interest is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties, or

(xii) a property deemed by any provision of this Act to be taxable Canadian property,

but does not include a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the year, the corporation did not own taxable Canadian property, Canadian resource property, timber resource property nor an income interest in a trust resident in Canada, and

(2) Subsection 115(3) of the Act is replaced by the following.

Property deemed
to include
interests and
options

(3) For the purpose of this section, a property described in subparagraphs (1)(b)(i) to (xii) is deemed to include any interest therein or option in respect thereof, whether or not such property is in existence.

(3) Subsections (1) and (2) apply after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

133. (1) The portion of subsection 116(1) of the Act before paragraph (a) is replaced by the following:

Disposition by
non-resident
person of

certain
property

116. (1) Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

(2) The portion of subsection 116(3) of the Act before paragraph (a) is replaced by the following:

Notice to
Minister

(3) Every non-resident person who in a taxation year disposes of any taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) shall, not later than 10 days after the disposition, send to the Minister, by registered mail, a notice setting out

(3) The portion of subsection 116(5.2) of the Act before paragraph (a) is replaced by the following:

Certificates
for
dispositions

(5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person or any interest in, or option in respect of, a property to which this subsection applies (whether or not the property exists),

(4) Paragraphs 116(6)(a) and (b) of the Act are replaced by the following:

(a) property described in subparagraph 115(1)(b)(xii);

(b) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange, or an interest in the share;

(5) Subsections (1) and (2) apply after April 26, 1995.

(6) Subsection (3) applies to dispositions that occur after 1996.

(7) Subsection (4) applies after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

134. (1) The description of B in subsection 118(2) of the Act is replaced by the following:

B is 15% of the amount, if any, by which the individual's income for the year would exceed \$25,921 if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income.

(2) Subsection (1) applies to the 1994 and subsequent taxation years except that, notwithstanding section 117.1 of the Act, the value of B in subsection 118(2) of the Act shall, for the 1994 taxation year, be determined as the lesser of \$1,741 and 7.5% of the amount, if any, by which the individual's income for the year would exceed \$25,921 if no amount were included in respect of a gain from a disposition of property to which section 79 of the Act applies in computing that income.

135. (1) Paragraph 118.5(1)(a) of the Act is amended by striking out the word "or" at the end of subparagraph (iii.1), by adding the word "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv):

(v) are paid on the individual's behalf, or are fees in respect of which the individual is or was entitled to receive a reimbursement, under a program of Her Majesty in right of Canada designed to assist athletes, where the payment or reimbursement is not included in computing the individual's income;

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

136. (1) The Act is amended by adding the following after section 118.94:

Credits in year
of bankruptcy

118.95 Notwithstanding sections 118 to 118.9, for the purpose of computing an individual's tax payable under this Part for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual shall be allowed only

(a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

(b) such part of the deductions as the individual is entitled to under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable to the taxation year,

except that the total of the amounts so deductible for all taxation years of the individual in the calendar year under any of those provisions shall not exceed the amount that would have been deductible under that provision in respect of the calendar year if the individual had not become bankrupt.

(2) Subsection (1) applies to bankruptcies that occur after April 26, 1995.

137. (1) Paragraph 120.2(4)(a) of the Act is replaced by the following:

(a) an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4); or

(2) Subsection (1) applies to taxation years that begin after April 26, 1995.

138. Subparagraph 122.2(1)(b)(i) of the Act, as it reads in its application to the 1992 taxation year, is replaced by the following:

(i) the total of all amounts each of which would be the income for the year of the individual or a supporting person of an eligible child of the individual for the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income

139. (1) The definition "adjusted income" in subsection 122.5(1) of the Act is replaced by the following:

"adjusted
income"
« *revenu
rajusté* »

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of

(a) the individual, or

(b) the individual's qualified relation for the year

if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

(2) The portion of the definition "eligible individual" in subsection 122.5(1) of the Act before paragraph (a) is replaced by the following:

"eligible
individual"
« *particulier
admissible* »

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December 31 of that year, is resident in Canada and is

(3) Section 122.5 of the Act is amended by adding the following after subsection (6):

Effect of
bankruptcy

(7) For the purpose of this section, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the amount determined for the year under clause (3)(e)(ii)(B) shall include the amount determined for the purpose of paragraph (c) of the description of B in subsection 118(1) for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(4) Subsection (1) applies to the 1992 and subsequent taxation years.

(5) Subsection (2) applies after April 26, 1995.

(6) Subsection (3) applies to bankruptcies that occur after April 26, 1995.

140. (1) The definition "adjusted income" in section 122.6 of the Act is replaced by the following:

"adjusted
income"
« *revenu
modifié* »

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

(2) Subparagraph (e)(iii) of the definition "eligible individual" in section 122.6 of the Act is replaced by the following:

(iii) was determined before that time under the *Immigration Act*, or regulations made under that Act, to be a Convention refugee,

(3) Paragraphs (g) and (h) of the definition "eligible individual" in section 122.6 of the Act are replaced by the following:

(g) the presumption referred to in paragraph (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

(4) Subsection (1) applies in determining the adjusted income of an individual for the 1992 and subsequent taxation years.

(5) Subsection (2) applies after 1992.

(6) Subsection (3) applies after August 27, 1995.

141. (1) Section 122.61 of the Act is amended by adding the following after subsection (3):

Effect of
bankruptcy

(3.1) For the purposes of this subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's earned income for the year shall include the individual's earned income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy;

(b) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(c) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(2) Subsection (1) applies to bankruptcies that occur after April 26, 1995.

142. (1) Subsections 122.62(1) and (2) of the Act are replaced by the following:

Eligible
individuals

122.62 (1) For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

Extension for
notices

(2) The Minister may at any time extend the time for filing a notice under subsection (1).

(2) Subsections 122.62(4) to (9) of the Act are replaced by the following:

Person ceasing
to be an
eligible
individual

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

Death of
cohabiting
spouse

(5) Where

(a) before the end of a particular month the cohabiting spouse of an eligible individual in respect of a qualified dependant dies, and

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Separation from
cohabiting
spouse

(6) Where

(a) before the end of a particular month an eligible individual in respect of a qualified dependant begins to live separate and apart from the individual's cohabiting spouse, because of a breakdown of their marriage, for a period of at least 90 days that includes a day in the particular month, and

(b) the individual so elects, before the end of the eleventh month after the particular month, in a form that is acceptable to the Minister,

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7),

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

Person becoming
a cohabiting
spouse

(7) Where

(a) at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse of an eligible individual, and

(b) the taxpayer and the eligible individual jointly so elect in prescribed form filed with the Minister before the end of the eleventh month after the particular month,

for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year, the taxpayer is deemed to have been the eligible individual's cohabiting spouse throughout the period that began immediately before the end of the base taxation year in relation to the particular month and ended at the particular time.

(3) Subsections (1) and (2) apply after August 27, 1995.

143. (1) Subsection 122.63(1) of the Act is replaced by the following:

Agreement

122.63 (1) The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under paragraph (a) of the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

(2) Subsection (1) applies after August 27, 1995.

144. (1) Subsection 122.64(2) of the Act is replaced by the following:

Communication
of information

(2) Notwithstanding subsection 241(1), an official (as defined in subsection 241(10)) may provide information obtained under subsection 122.62(1), (4), (5), (6) or (7) or the *Family Allowances Act*

(a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or

(b) to an official of the Department of Human Resources Development for the purposes of the administration of the *Family Allowances Act*, the *Canada Pension Plan* or the *Old Age Security Act*.

(2) Subsection 122.64(5) of the Act is repealed.

(3) Subsections (1) and (2) apply after August 27, 1995 except that, before July 12, 1996, the reference in paragraph 122.64(2)(b) of the Act, as enacted by subsection (1), to "Human Resources Development" shall be read as a reference to "National Health and Welfare".

145. (1) The portion of subsection 125(1) of the Act before paragraph (a) is replaced by the following:

Small business
deduction

125. (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

(2) The definition "Canadian-controlled private corporation" in subsection 125(7) of the Act is replaced by the following:

"Canadian-
controlled
private
corporation"
« *société
privée sous*

*contrôle
canadien »*

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation

(a) controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), or by any combination thereof,

(b) that would, if each share of the capital stock of a corporation that is owned by a non-resident person or a public corporation (other than a prescribed venture capital corporation) were owned by a particular person, be controlled by the particular person, or

(c) a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

(3) The definition "specified investment business" in subsection 125(7) of the Act is replaced by the following:

"specified
investment
business"
*« entreprise de
placement
déterminée »*

"specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

(a) the corporation employs in the business throughout the year more than 5 full-time employees, or

(b) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than 5 full-time employees if those services had not been provided;

(4) Subsection (1) applies to taxation years that end after June 1988, except that there shall be added to the amount otherwise determined under subsection 125(1) of the Act, as amended by subsection (1), in respect of a corporation's taxation year that began before July 1988 and ended after June 1988, that proportion of 5% of the least of the amounts determined under paragraphs 125(1)(a) to (c) of the Act in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

(5) Subsection (2) applies after 1995.

(6) Subsection (3) applies to the 1995 and subsequent taxation years.

145.1 (1) The Act is amended by adding the following after section 125.4:

Film or Video Production Services Tax Credit

Definitions

125.5 (1) The definitions in this subsection apply in this section.

"accredited
film or video
production
certificate"
« *certificat de
production
cinématogra-
phique ou
magnétosco-
pique agréée* »

"accredited film or video production certificate", in respect of a film or video production, means a certificate issued by the Minister of Canadian Heritage certifying that the production is an accredited production.

"accredited
production"
« *production
agréée* »

"accredited production" has the meaning assigned by regulation.

"assistance"
« *montant
d'aide* »

"assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

"Canadian
labour
expenditure"
« *dépense de
main-d'oeuvre
au Canada* »

"Canadian labour expenditure" of a corporation for a taxation year in respect of an accredited production means, in the case of a corporation that is not an eligible production corporation in respect of the production for the year, nil, and in any other case, subject to subsection (2), the total of the following amounts in respect of the production to the extent that they are reasonable in the circumstances:

(a) the salary or wages directly attributable to the production that are incurred by the corporation after October 1997, and in the year or the preceding taxation year, and that relate to services rendered in Canada for the stages of production of the production, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year to employees of the corporation who were resident in Canada at the time the payments were made (other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production, that relates to services rendered in Canada after October 1997 and in the year, or that preceding year, to the corporation for the stages of production of the production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to a person or a partnership, that carries on a business in Canada through a permanent establishment (as defined by regulation), and that is

(i) an individual resident in Canada at the time the amount is paid and who is not an employee of the corporation, to the extent that the amount paid

(A) is attributable to services personally rendered by the individual in Canada in respect of the accredited production, or

(B) is attributable to and does not exceed the salary or wages paid by the individual to the individual's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(ii) another corporation that is a taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages paid to the other corporation's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(iii) another corporation that is a taxable Canadian corporation, all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual who was resident in Canada and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally in Canada by the individual in respect of the accredited production, or

(iv) a partnership, to the extent that the amount paid

(A) is attributable to services personally rendered in respect of the accredited production by an individual who is resident in Canada and who is a member of the partnership, or

(B) is attributable to and does not exceed the salary or wages paid by the partnership to its employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another corporation that is a taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have filed with the Minister an agreement that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of the production and that would be included in the Canadian labour expenditure of the corporation in respect of the production for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was incurred by the parent and were paid at the same time and to the same person or partnership as it was paid by the parent.

"eligible
production
corporation"
« *société de
production
admissible* »

"eligible production corporation", in respect of an accredited production for a taxation year, means a corporation, the activities of which in the year in Canada are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a film or video production business or a film or video production services business and that

(a) owns the copyright in the accredited production throughout the period during which the production is produced in Canada, or

(b) has contracted directly with the owner of the copyright in the accredited production to provide production services in respect of the production, where

the owner of the copyright is not an eligible production corporation in respect of the production,

except a corporation that is

(c) a person all or part of whose taxable income is exempt from tax under this Part,

(d) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under this Part, or

(e) prescribed to be a labour-sponsored venture capital corporation for the purpose of section 127.4.

"qualified
Canadian labour
expenditure"
« *dépense de
main-d'oeuvre
admissible au
Canada* »

"qualified Canadian labour expenditure" of an eligible production corporation for a taxation year in respect of an accredited production means the amount, if any, by which

(a) the total of all amounts each of which is the corporation's Canadian labour expenditure for the year or a preceding taxation year

exceeds the aggregate of

(b) the total of all amounts, each of which is an amount of assistance that can reasonably be considered to be in respect of amounts included in the total determined under paragraph (a) in respect of the corporation for the year that, at the time of filing its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that expenditure),

(c) the total of all amounts, each of which is the qualified Canadian labour expenditure of the corporation in respect of the accredited production for a preceding taxation year before the end of which the principal filming or taping of the production began, and

(d) where the corporation is a parent, the total of all amounts each of which is included in the total determined under paragraph (a) in respect of the corporation for the year and is the subject of an agreement in respect of the accredited production referred to in paragraph (c) of the definition "Canadian labour expenditure" between the corporation and its subsidiary wholly-owned corporation.

"salary or
wages"
« *traitement ou
salaire* »

"salary or wages" does not include an amount described in section 7 or an amount determined by reference to profits or revenues.

Rules governing
Canadian labour
expenditure of
a corporation

(2) For the purpose of the definition "Canadian labour expenditure" in subsection (1),

(a) remuneration does not include remuneration determined by reference to profits or revenues;

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the accredited production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician - clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty;

(c) that definition does not apply to an amount to which section 37 applies; and

(d) for greater certainty, that definition does not apply to an amount that is not a production cost including an amount in respect of advertising, marketing, promotion, market research or an amount related in any way to another film or video production.

Tax credit

(3) Subject to subsection (4), where

(a) an eligible production corporation in respect of an accredited production for a taxation year files with its return of income for the year

(i) a prescribed form containing prescribed information in respect of the production,

(ii) an accredited film or video production certificate in respect of the production, and

(iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 11% of its qualified Canadian labour expenditure for the year in respect of the production.

Canadian film
or video
production

(4) Subsection (3) does not apply in respect of a production in respect of which an amount is deemed to have been paid under subsection 125.4(3).

When assistance
received

(5) For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Revocation of
certificate

(6) An accredited film or video production certificate in respect of an accredited production may be revoked by the Minister of Canadian Heritage where

(a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or

(b) the production is not an accredited production, and, for the purpose of subparagraph (3)(a)(ii), a certificate that has been revoked is deemed never to have been issued.

(2) Subsection (1) applies to taxation years that end after October 1997.

146. (1) Paragraph (f) of the definition "specified percentage" in subsection 127(9) of the Act is replaced by the following:

(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) or (e) for taxation years that began before 1996, or

(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996,

the specified percentage that applied in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

(f.1) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), 20%,

(2) Subsection (1) applies to taxation years that begin after 1995.

147. (1) Paragraph 127.1(1)(a) of the Act is replaced by the following:

(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(f) or subsection 150(4)) for a taxation year, or

(2) Subsection (1) applies to taxation years that begin after April 26, 1995.

148. (1) The description of B in paragraph 127.41(1)(a) of the Act is replaced by the following:

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing that income, and

(2) Subsection (1) applies to taxation years that end after February 22, 1994.

149. (1) The portion of section 127.5 of the Act before paragraph (a) is replaced by the following:

Obligation to
pay minimum tax

127.5 Notwithstanding any other provision of this Act but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual is the amount, if any, by which

(2) Subsection (1) applies to the 1992 and subsequent taxation years.

150. (1) Paragraphs 127.52(1)(b) and (c) of the Act are replaced by the following:

(b) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a rental or leasing property (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of a rental or leasing property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a film property referred to in paragraph (w) of Class 10 of Schedule II to the *Income Tax Regulations* (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a film property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f), and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is the individual's taxable capital gain for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds

(B) the total of all amounts each of which is the individual's allowable capital loss for the year from the disposition of such a film property owned by the individual or by a partnership

exceeds the total of all amounts each of which is the individual's loss for the year from such a film property owned by the individual or by a partnership (other than amounts included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c.1) where, during a partnership's fiscal period that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)), the individual is a limited partner of the partnership or a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or the individual's interest in the partnership is an interest for which an identification number is required to be, or has been, obtained under section 237.1,

(i) the individual's share of allowable capital losses of the partnership for the fiscal period were the lesser of

(A) the total of all amounts each of which is the individual's

(I) share of a taxable capital gain for the fiscal period from the disposition of property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

(II) taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year, and

(B) the individual's share of allowable capital losses of the partnership for the fiscal period,

(ii) the individual's share of each loss from a business of the partnership for the fiscal period were the lesser of

(A) the individual's share of the loss, and

(B) the amount, if any, by which

(I) the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property used by the partnership in the business (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year

exceeds

(II) the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(iii) the individual's share of losses from property of the partnership for the fiscal period were the lesser of

(A) the total of

(I) the individual's share of incomes for the fiscal period from properties of the partnership, and

(II) the amount, if any, by which the total of all amounts each of which is the individual's

1. share of a taxable capital gain for the fiscal period from the disposition of property held by the partnership for the purpose of earning income from property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied), or

2. taxable capital gain for the year from the disposition of the individual's interest in the partnership if the individual, or a person who does not deal

at arm's length with the individual, does not have an interest in the partnership (otherwise than because of the application of paragraph 98(1)(a) or 98.1(1)(a)) throughout the following taxation year,

exceeds the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and

(B) the individual's share of losses from property of the partnership for the fiscal period;

(c.2) where, during a fiscal period of a partnership that ends in the year (other than a fiscal period that ends because of the application of subsection 99(1)),

(i) the individual is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or

(ii) the partnership owns a rental or leasing property or a film property and the individual is a member of the partnership,

the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of the individual's acquisition of the partnership interest were the lesser of

(iii) the total of all amounts otherwise so deductible, and

(iv) the total of all amounts each of which is the individual's share of any income of the partnership for the fiscal period, determined in accordance with subsection 96(1);

(c.3) the total of all amounts each of which is an amount deductible in computing the individual's income for the year in respect of a property for which an identification number is required to be, or has been, obtained under section 237.1 (other than an amount to which any of paragraphs (b) to (c.2) applies) were nil;

(2) Subsection 127.52(1) of the Act is amended by adding the following after paragraph (e):

(e.1) the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a property that is a flow-through share (if the individual is the person to whom the share was issued under an agreement referred to in the definition "flow-through share" in subsection 66(15)), a Canadian resource property or a foreign resource property were the lesser of the total of the amounts otherwise so determined for the year and the amount, if any, by which

(i) the total of all amounts each of which is an amount described in subparagraph (e)(i) or (ii), determined without reference to paragraphs 20(1)(c) to (f),

exceeds

(ii) the total of all amounts each of which is an amount deductible under section 65, 66, 66.1, 66.2 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year;

(3) Subsection 127.52(1) of the Act is amended by adding the following after paragraph (h):

(h.1) the formula in paragraph 110.6(21)(a) were read as

A - B

(4) Clause 127.52(1)(i)(i)(B) of the Act is replaced by the following:

(B) the total of all amounts that would be deductible under those paragraphs for the year if

(I) paragraphs (b), (c) and (e) of this subsection, as they read in respect of taxation years that began after 1985 and before 1995, applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any of those years, and

(II) paragraphs (b) to (c.3), (e) and (e.1) of this subsection applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any taxation year that begins after 1994, and

(5) Clause 127.52(1)(i)(ii)(B) of the Act is replaced by the following:

(B) the total of all amounts that would be deductible under that paragraph for the year if

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began before 1995, and

(II) paragraphs (c.1) and (d) of this subsection applied in computing the individual's net capital loss for any taxation year that begins after 1994; and

(6) Subsection 127.52(2) of the Act is replaced by the following:

Partnerships

(2) For the purposes of subsection (1) and this subsection, any amount deductible under a provision of this Act in computing the income or loss of a partnership for a fiscal period is, to the extent of a member's share of the partnership's income or loss, deemed to be deductible by the member under that provision in computing the member's income for the taxation year in which the fiscal period ends.

(7) Section 127.52 of the Act is amended by adding the following after subsection (2):

Specified
member of a
partnership

(2.1) Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of this section to the member's interest in the partnership, the member is deemed for the purpose of this section to have been a specified member of the partnership at all times since becoming a member of the partnership.

(8) The definition "residential property" in subsection 127.52(3) of the Act is repealed.

(9) Subsection 127.52(3) of the Act is amended by adding the following in alphabetical order:

"limited
partner"
« *commanditaire*
»

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and";

"rental or
leasing
property"
« *bien de
location* »

"rental or leasing property" means a property that is a rental property or a leasing property for the purpose of section 1100 of the *Income Tax Regulations*.

(10) Subsections (1), (2), (6), (8) and (9) apply to taxation years of an individual that begin after 1994.

(11) Subsection (3) applies to the 1994 and 1995 taxation years.

(12) Subsections (4) and (5) apply to all taxation years except that, in determining an individual's adjusted taxable income for taxation years that began before 1995, subclause 127.52(1)(i)(ii)(B)(I) of the Act, as enacted by subsection (5), shall be read as follows:

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began after 1985 and before 1995, and

(13) Subsection (7) applies after April 26, 1995.

151. (1) Section 127.55 of the Act is amended by striking out the word "and" at the end of paragraph (d), by adding the word "and" at the end of paragraph (e) and by adding the following after paragraph (e):

(f) a taxation year of a trust throughout which the trust is

(i) a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),

(ii) a mutual fund trust, or

(iii) a trust prescribed to be a master trust.

(2) Subsection (1) applies to the 1992 and subsequent taxation years.

152. (1) The portion of paragraph 128(2)(e) of the Act after subparagraph (i) is replaced by the following:

(ii) in computing the individual's taxable income for that taxation year, no deduction were permitted by Division C, other than

(A) an amount under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 to the extent that the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and

(B) an amount under section 111 to the extent that the amount was in respect of a loss of the individual for any taxation year that ended before the individual was discharged absolutely from bankruptcy, and

(iii) in computing the individual's tax payable under this Part for that taxation year, no deduction were allowed

(A) under section 118, 118.2, 118.3, 118.5, 118.6, 118.61, 118.8 or 118.9,

(B) under section 118.1 with respect to a gift made by the individual on or after the day the individual became bankrupt, and

(C) under subsection 127(5) with respect to an expenditure incurred or property acquired by the individual in any taxation year that ends after the individual was discharged absolutely from bankruptcy,

and the trustee is liable to pay any tax so determined for that taxation year;

(2) Paragraph 128(2)(f) of the Act is amended by striking out the word "and" at the end of subparagraph (ii) and by replacing the portion of that paragraph after subparagraph (ii) with the following:

(iii) in computing the individual's taxable income for the year, no amount were deductible under paragraph

110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and

(iv) in computing the individual's tax payable under this Part for the year, no amount were deductible under section 118.1 in respect of a gift made before the day the individual became bankrupt or under section 118.61 or 120.2 or subsection 127(5),

and the individual is liable to pay any tax so determined for that taxation year;

(3) Paragraph 128(2)(g) of the Act is replaced by the following:

(g) notwithstanding subparagraphs (e)(ii) and (iii) and (f)(iii) and (iv), where at any time an individual was discharged absolutely from bankruptcy,

(i) in computing the individual's taxable income for any taxation year that ends after that time, no amount shall be deducted under section 111 in respect of losses for taxation years that ended before that time,

(ii) in computing the individual's tax payable under this Part for any taxation year that ends after that time,

(A) no amount shall be deducted under section 118.61 or 120.2 in respect of an amount for any taxation year that ended before that time,

(B) no amount shall be deducted under section 118.1 in respect of a gift made before the individual became bankrupt, and

(C) no amount shall be deducted under subsection 127(5) in respect of an expenditure incurred or a property acquired by the individual in any taxation year that ended before that time, and

(iii) the individual's unused tuition and education tax credits at the end of the last taxation year that ended before that time is deemed to be nil;

(4) Subsection 128(3) of the Act is repealed.

(5) Subsections (1) to (4) apply to bankruptcies that occur after April 26, 1995 except that, in applying subsection 128(2) of

the Act, as amended by subsections (1) to (3), to taxation years that ended before 1997,

(a) clause 128(2)(e)(iii)(A) of the Act, as enacted by subsection (1), shall be read without reference to "118.61";

(b) subparagraph 128(2)(f)(iv) of the Act, as enacted by subsection (2), shall be read without reference to "118.61 or";

(c) clause 128(2)(g)(ii)(A) of the Act, as enacted by subsection (3), shall be read without reference to "118.61 or"; and

(d) paragraph 128(2)(g) of the Act, as enacted by subsection (3), shall be read without reference to subparagraph (iii).

153. (1) Paragraph (c) of the description of C in subsection 128.1(2) of the Act is replaced by the following:

(c) any amount claimed under paragraph 219(1)(j) by the corporation for its last taxation year that began before the particular time; and

(2) Subsection (1) applies to taxation years that begin after 1995 except that, in its application to taxation years that begin in 1996, the reference in paragraph (c) of the description of C in subsection 128.1(2) of the Act, as enacted by subsection (1), to "paragraph 219(1)(j)" shall be read as a reference to "paragraph 219(1)(h) as it read in its application to the 1995 taxation year or paragraph 219(1)(j)".

154. (1) Paragraph 129(1)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make the dividend refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subsection (1) applies after April 27, 1989.

155. (1) The portion of subsection 130(2) of the Act before paragraph (a) is replaced by the following:

Application of
ss. 131(1) to
(3.2) and (6)

(2) Where a corporation was an investment corporation throughout a taxation year (other than a corporation that was a mutual fund corporation throughout the year), subsections 131(1) to (3.2) and (6) apply in respect of the corporation for the year

(2) Subparagraph 130(3)(a)(vii) of the Act is replaced by the following:

(vii) no person would be a specified shareholder of the corporation in the year if, in the definition "specified shareholder" in subsection 248(1),

(A) the portion of that definition before paragraph (a) were read as follows:

"specified shareholder" of a corporation in a taxation year means a taxpayer who owns, directly or indirectly, at any time in the year, more than 25% of the issued shares of any class of the capital stock of the corporation and, for the purpose of this definition,

and

(B) the reference in paragraph (d) of that definition to "not less than 10%" were read as a reference to "more than 25%", and

(3) Subsection (1) applies to the 1993 and subsequent taxation years.

(4) Subsection (2) applies to corporations for taxation years that begin after June 20, 1996 except that, where

(a) a corporation was an investment corporation on June 20, 1996,

(b) a particular person would be a specified shareholder of the corporation in the year, within the meaning assigned by subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), if that subsection applied to the corporation for the year, and,

(c) the particular person would have been a specified shareholder of the corporation on June 20, 1996, within the meaning assigned by subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), if that subsection applied to the corporation for the year that includes that day,

subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), does not apply to the corporation, with respect to the particular person and persons related to the particular person, except as provided in subsections (5) to (8).

(5) Subsection (2) applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day where, at any time after that day and before the end of the year, a particular person described in paragraph (4)(b) contributed capital to the corporation or acquired a share of the capital stock of the corporation, other than a share described in paragraph (8)(a), (b) or (c).

(6) Subsection (2) applies to a corporation that was an investment corporation on June 20, 1996 for a taxation year that begins after that day where, at any time after that day and before the end of the year, a newly related person in respect of the corporation

(a) contributed capital to the corporation; or

(b) held at any particular time property (in this paragraph referred to as an "ineligible investment") that is

(i) a share of the capital stock of the corporation, or

(ii) a share of the capital stock of a corporation, or an interest in a partnership or trust, that held an ineligible investment at the particular time.

(7) For the purpose of subsection (6), a newly related person in respect of a corporation at any time means a person who, at any other time that is before that time and after June 20, 1996, became related to a particular person described in paragraph (4)(b) in respect of the corporation, but does not include a person who would, if the taxation year of the corporation that includes that other time had ended immediately before that other time, have been a particular person described in paragraph (4)(b) in respect of the corporation for the year.

(8) Where, after June 20, 1996 and before the end of a taxation year of a corporation that was an investment corporation on June 20, 1996, a particular person described in paragraph (4)(b) in respect of the corporation has acquired one or more shares of the capital stock of the corporation, and each such share was

(a) a share that was held, at each particular time after June 20, 1996 and before the time (in this subsection referred to as the "acquisition time") at which the particular person acquired it, by the particular person or by a person who was

related to the particular person throughout the period from June 20, 1996 to the particular time,

(b) a share that was issued by the corporation as a stock dividend to the particular person, or

(c) a share that was issued by the corporation as a stock dividend to a person who was related to the particular person throughout the period from June 20, 1996 to the time at which the share was issued and that was held, at each particular time from the time the share was issued to the acquisition time, by the particular person or by a person who was related to the particular person throughout the period from June 20, 1996 to the particular time,

subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), shall be read, with respect to the particular person and the corporation for the year, as though the references in that subparagraph to "25%" were references to "the greatest percentage that is the total percentage of the shares of a class of the capital stock of the corporation held at the end of June 20, 1996 by the person and other persons with whom the person did not at that time deal at arm's length".

(9) For the purposes of subsections (5) to (8),

(a) where at a particular time

(i) a trust that existed on June 20, 1996 distributes a share of the capital stock of a corporation to a person who was a beneficiary under the trust throughout the period from June 20, 1996 to the particular time in satisfaction of all or any part of the beneficiary's capital interest in the trust, or

(ii) a partnership that existed on June 20, 1996 distributes, on ceasing to exist, a share of the capital stock of a corporation or an interest in a share to a person who was a member of the partnership throughout the period from June 20, 1996 to the particular time,

the share is deemed to have been owned by the beneficiary or member from the later of June 20, 1996 and the time the share was last acquired by the trust or partnership until the particular time; and

(b) where a person who is a beneficiary of a trust or a member of a partnership is deemed by paragraph (b), (c) or (e) of the definition "specified shareholder" in subsection 248(1) of the Act to own a share owned by the partnership or trust, the person is deemed to have acquired the share at the later of

the time the share was acquired by the trust or partnership and the time the person last became a beneficiary of the trust or a member of the partnership.

156. (1) Subparagraph 130.1(6)(f)(i) of the Act is replaced by the following:

(i) debts owing to the corporation that were secured, whether by mortgages or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included within a housing project (as defined in that section), and

(2) Subsection (1) is deemed to have come into force on June 23, 1993.

157. (1) Paragraph 131(2)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subsection 131(5) of the Act is replaced by the following:

Dividend refund
to mutual fund
corporation

(5) A corporation that was a mutual fund corporation throughout a taxation year

(a) is deemed for the purposes of paragraph 87(2)(aa) and section 129 to have been a private corporation throughout the year, except that its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph 129(3)(a); and

(b) where it was not an investment corporation throughout the year, is deemed for the purposes of Part IV to have been a private corporation throughout the year except that, in applying subsection 186(1) to the corporation in respect of the year, that subsection shall be read without reference to paragraph 186(1)(b).

(3) Subparagraphs 131(8)(b)(i) and (ii) of the Act are replaced by the following:

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the corporation, or

(4) Subsection (1) applies after April 27, 1989.

(5) Subsection (2) applies to the 1993 and subsequent taxation years.

(6) Subsection (3) applies to the 1994 and subsequent taxation years.

158. (1) Paragraph 132(1)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the trust within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the trust for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subparagraphs 132(6)(b)(i) and (ii) of the Act are replaced by the following:

(i) the investing of its funds in property (other than real property or an interest in real property),

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or

(3) The portion of subsection 132(6) of the Act after paragraph (c) is repealed.

(4) Section 132 of the Act is amended by adding the following after subsection (6):

Election to be
mutual fund

(6.1) Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of the calendar

year in which its first taxation year began, and the trust so elects in its return of income under this Part for that first year, the trust is deemed to have been a mutual fund trust from the beginning of that first year until the particular time.

(5) Subsection (1) applies after April 27, 1989.

(6) Subsections (2) to (4) apply to the 1994 and subsequent taxation years.

159. (1) The portion of paragraph 132.2(1)(h) of the Act before subparagraph (i) is replaced by the following:

(h) except as provided in paragraph (p), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be

(2) Paragraphs 132.2(1)(o) and (p) of the Act are replaced by the following:

(o) where the transferor is a mutual fund corporation,

(i) for the purposes of subsection 131(4), the transferor is deemed in respect of any share disposed of in accordance with paragraph (j) to be a mutual fund corporation at the time of the disposition, and

(ii) for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph shall affect the computation of any amount determined under this Part);

(p) for the purpose of determining the funds' capital gains redemptions (as defined in subsection 131(6) or 132(4)), for their taxation years that include the transfer time,

(i) the total of the cost amounts to the transferor of all its properties at the end of the year is deemed to be the total of all amounts each of which is

(A) the transferor's proceeds of disposition of a property that was transferred to a transferee on the qualifying exchange, or

(B) the cost amount to the transferor at the end of the year of a property that was not transferred on the qualifying exchange, and

(ii) the transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(q) except as provided in subparagraph (o)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

(3) Paragraph (b) of the definition "qualifying exchange" in subsection 132.2(2) of the Act is replaced by the following:

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee, and

(4) Subsections (1) to (3) apply after June 1994 except that, where

(a) a qualifying exchange (as defined in subsection 132.2(2) of the Act) between funds occurs before November 1996, and

(b) the funds jointly elect in writing filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to,

subsection 132.2(1) of the Act, as amended by subsection (2), shall be read without reference to paragraph 132.2(1)(p), as enacted by subsection (2), in its application to the exchange.

160. (1) Paragraph 133(6)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make that allowable refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subsection (1) applies after April 27, 1989.

161. (1) Subsection 136(1) of the Act is replaced by the following:

Cooperative not
private
corporation

136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c).

(2) Subsection (1) applies to taxation years that end after February 22, 1994.

162. (1) Section 141.1 of the Act is replaced by the following:

Deemed not to
be a private
corporation

141.1 Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation is deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and sections 123.3 and 129.

(2) Subsection (1) applies to taxation years that end after June 1995.

163. (1) The portion of the definition "specified debt obligation" in subsection 142.2(1) of the Act after paragraph (b) is replaced by the following:

other than an interest in

(c) an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property, or

(d) an instrument issued by or made with a person to whom the taxpayer is related or with whom the taxpayer does not otherwise deal at arm's length, or in which the taxpayer has a significant interest.

(2) Subsection (1) applies to taxation years that end after February 22, 1994.

164. (1) The portion of subsection 142.3(1) of the Act before paragraph (a) is replaced by the following:

Amounts to be
included and
deducted

142.3 (1) Subject to subsection (3), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

(2) The portion of subsection 142.3(1) of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:

Amounts to be
included and
deducted

142.3 (1) Subject to subsections (3) and (4), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

(3) Paragraph 142.3(1)(c) of the Act is replaced by the following:

(c) except as provided by this section, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obligation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

(4) Subsection 142.3(2) of the Act is replaced by the following:

Failure to
report accrued
amounts

(2) Subject to subsection (3), where

(a) a taxpayer holds a specified debt obligation at any time in a particular taxation year in which the taxpayer is a financial institution, and

(b) all or part of an amount required by paragraph (1)(a) or subsection 12(3) to be included in respect of the obligation in computing the taxpayer's income for a preceding taxation year was not so included,

that part of the amount shall be included in computing the taxpayer's income for the particular year, to the extent that it was not included in computing the taxpayer's income for a preceding taxation year.

Exception for
certain
obligations

(3) Subsections (1) and (2) do not apply for a taxation year in respect of a taxpayer's specified debt obligation that is

(a) a mark-to-market property for the year; or

(b) an indexed debt obligation, other than a prescribed obligation.

(5) Section 142.3 of the Act is amended by adding the following after subsection (3):

Impaired
specified debt
obligations

(4) Subsection (1) does not apply to a taxpayer in respect of a specified debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of subparagraph 20(1)(1)(ii) in computing the taxpayer's income for the year.

(6) Subsections (1), (3) and (4) apply to taxation years that end after February 22, 1994, except that those subsections do not apply to debt obligations disposed of before February 23, 1994.

(7) Subsections (2) and (5) apply

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that ended after 1995 and before October 1997 where the taxpayer files an election in accordance with paragraph 81(11)(b).

165. (1) Paragraph (b) of the definition "tax basis" in subsection 142.4(1) of the Act is replaced by the following:

(b) an amount included under subsection 12(3) or 16(2) or (3), paragraph 142.3(1)(a) or subsection 142.3(2) in respect of the obligation in computing the taxpayer's income for a taxation year that began before that time,

(2) Paragraph (j) of the definition "tax basis" in subsection 142.4(1) of the Act is replaced by the following:

(j) the amount of a payment received by the taxpayer under the obligation at or before that time, other than

(i) a fee or similar payment, and

(ii) proceeds of disposition of the obligation,

(3) Paragraph 142.4(3)(a) of the Act is replaced by the following:

(a) except as provided by paragraph 79.1(7)(d) or this section, no amount shall be included or deducted in respect of the disposition in computing the taxpayer's income; and

(4) Subsections 142.4(4) and (5) of the Act are replaced by the following:

Inclusions and
deductions re
disposition

(4) Subject to subsection (5), where after 1994 a taxpayer disposes of a specified debt obligation in a taxation year,

(a) where the transition amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the transition amount in respect of the disposition of the obligation is negative, the absolute value of the transition amount shall be deducted in computing the income of the taxpayer for the year;

(c) where the taxpayer has a gain from the disposition of the obligation,

(i) the current amount of the gain shall be included in computing the income of the taxpayer for the year, and

(ii) there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and

(d) where the taxpayer has a loss from the disposition of the obligation,

(i) the current amount of the loss shall be deducted in computing the taxpayer's income for the year, and

(ii) there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with

prescribed rules, to the year in respect of the residual portion of the loss.

Gain or loss
not amortized

(5) Where after February 22, 1994 a taxpayer disposes of a specified debt obligation in a taxation year, and

(a) the obligation is

(i) an indexed debt obligation (other than a prescribed obligation), or

(ii) a debt obligation prescribed in respect of the taxpayer,

(b) the disposition occurred

(i) before 1995,

(ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or

(iii) because of paragraph 142.6(1)(c), or

(c) in the case of a taxpayer other than a life insurance corporation,

(i) the disposition occurred before 1996, and

(ii) the taxpayer elects in writing, filed with the Minister before July 1997, to have this paragraph apply,

the following rules apply:

(d) subsection (4) does not apply to the disposition,

(e) there shall be included in computing the taxpayer's income for the year the amount, if any, by which the taxpayer's proceeds of disposition exceed the tax basis of the obligation to the taxpayer immediately before the disposition, and

(f) there shall be deducted in computing the taxpayer's income for the year the amount, if any, by which the tax basis of the obligation to the taxpayer immediately before the disposition exceeds the taxpayer's proceeds of disposition.

(5) Paragraph 142.4(6)(b) of the Act is replaced by the following:

(b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, the absolute value of that amount is the taxpayer's loss from the disposition of the obligation; and

(6) The description of C in paragraph 142.4(6)(c) of the Act is replaced by the following:

C is the taxpayer's transition amount in respect of the disposition.

(7) Subsections 142.4(7) to (9) of the Act are replaced by the following:

Current amount

(7) For the purposes of subsections (4) and (8), the current amount of a taxpayer's gain or loss from the disposition of a specified debt obligation is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation; and

(b) where the taxpayer has a loss from the disposition of the obligation, the amount that the taxpayer claims not exceeding the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation.

Residual
portion of gain
or loss

(8) For the purpose of subsection (4), the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount, if any, by which the gain or loss exceeds the current amount of the gain or loss.

Disposition of
part of
obligation

(9) Where a taxpayer disposes of part of a specified debt obligation, section 142.3 and this section apply as if the part disposed of and the part retained were separate specified debt obligations.

Penalties and
bonuses

(10) Notwithstanding subsection 18(9.1), where a taxpayer that holds a specified debt obligation receives a penalty or bonus because of the repayment before maturity of all or part of the principal amount of the debt obligation, the payment is deemed to be received by the taxpayer as proceeds of disposition of the specified debt obligation.

Payments
received on or
after
disposition

(11) For the purposes of this section, where at any time a taxpayer receives a payment (other than proceeds of disposition) under a specified debt obligation on or after the disposition of the obligation, the payment is deemed not to have been so received at that time but to have been so received immediately before the disposition.

(8) Subsections (1) to (7) apply to taxation years that end after February 22, 1994.

166. (1) Subsections 142.5(5) to (7) of the Act are replaced by the following:

Transition -
inclusion re
non-capital
amounts

(5) Where an amount is deducted under subsection (4) in computing a taxpayer's income, there shall be included, in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the total of all amounts prescribed for the year.

Transition -
deduction re
net capital
gains

(6) Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), is deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property).

Transition –
inclusion re
net capital
gains

(7) A taxpayer that elects an amount under subsection (6) is deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property) equal to the total of all amounts prescribed for the year.

(2) Subsection (1) applies to taxation years that end after October 30, 1994.

167. (1) Section 142.6 of the Act is amended by adding the following after subsection (7):

Accrued capital
gains and
losses election

(8) Where a taxpayer that is a financial institution in its first taxation year that ends after February 22, 1994 so elects by notifying the Minister in writing before July 1997 or within 90 days after the day on which a notice of assessment of tax payable under this Part for the year or notification that no tax is payable under this Part for the year is mailed to the taxpayer,

(a) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had a fair market value at that time greater than its adjusted cost base to the taxpayer at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the lesser of

(v) the fair market value of the property at that time, and

(vi) the greater of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property; and

(b) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994,

(ii) that was not a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time,

(iii) that had an adjusted cost base to the taxpayer at that time greater than its fair market value at that time, and

(iv) that is designated by the taxpayer in the election

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the greater of

(v) the fair market value of the property at that time, and

(vi) the lesser of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property.

Accrued capital
gains election
limit

(9) Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(a)(iv), the election is deemed not to have been made where

(a) the amount that would be the taxpayer's taxable capital gains from dispositions of property for the taxpayer's last taxation year that ended before February 23, 1994 if this subsection and subsection (10) did not apply

exceeds the total of

(b) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if this subsection and subsection (10) did not apply,

(c) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if there were sufficient taxable capital gains for the year from dispositions of property, and

(d) the amount, if any, by which

(i) the amount that would be the taxpayer's taxable capital gains for the taxpayer's last taxation year that ended before February 23, 1994 from dispositions of property if no election were made under subsection (8)

exceeds the total of

(ii) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if no election were made under subsection (8), and

(iii) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if no election were made under subsection (8).

Accrued capital
losses election
limit

(10) Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(b)(iv), the election is deemed not to have been made where

(a) the total of the amounts determined under paragraphs (9)(b) and (c) in respect of the taxpayer exceeds the amount determined under paragraph (9)(a) in respect of the taxpayer; or

(b) the total of all amounts each of which would, if this subsection did not apply, be the taxpayer's allowable capital loss for the taxpayer's last taxation year that ended before February 23, 1994 from the disposition of a property deemed to have been disposed of under paragraph (8)(b) exceeds the total of all amounts each of which is the taxpayer's taxable capital gain for the year from the disposition of a property deemed to have been disposed of under paragraph (8)(a).

(2) Subsection (1) applies to the 1993 and subsequent taxation years.

168. (1) The Act is amended by adding the following after section 143.1:

Cost of Tax Shelter Investments

Definitions

143.2 (1) The definitions in this subsection apply in this section.

"expenditure"
« *dépense* »

"expenditure" means an outlay or expense or the cost or capital cost of a property.

"limited
partner"
« *commanditaire*
»

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and".

"limited-
recourse
amount"
« *montant à
recours limité*
»

"limited-recourse amount" means the unpaid principal amount of any indebtedness for which recourse is limited, either immediately or in the future and either absolutely or contingently.

"taxpayer"
« *contribuable*
»

"taxpayer" includes a partnership.

"tax shelter
investment"
« *abri fiscal
déterminé* »

"tax shelter investment" means

(a) a property that is a tax shelter for the purpose of subsection 237.1(1); or

(b) a taxpayer's interest in a partnership where

(i) an interest in the taxpayer

(A) is a tax shelter investment, and

(B) the taxpayer's partnership interest would be a tax shelter investment if

(I) this Act were read without reference to this paragraph and to the words "having regard to statements or representations made or proposed to be made in connection with the property" in the definition "tax shelter" in subsection 237.1(1),

(II) the references in that definition to "represented" were read as references to "that can reasonably be expected", and

(III) the reference in that definition to "is represented" were read as a reference to "can reasonably be expected",

(ii) another interest in the partnership is a tax shelter investment, or

(iii) the taxpayer's interest in the partnership entitles the taxpayer, directly or indirectly, to a share of the income or loss of a particular partnership where

(A) another taxpayer holding a partnership interest is entitled, directly or indirectly, to a share of the income or loss of the particular partnership, and

(B) that other taxpayer's partnership interest is a tax shelter investment.

At-risk
adjustment

(2) For the purpose of this section, an at-risk adjustment in respect of an expenditure of a particular taxpayer, other than the

cost of a partnership interest to which subsection 96(2.2) applies, means any amount or benefit that the particular taxpayer, or another taxpayer not dealing at arm's length with the particular taxpayer, is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness, or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the particular taxpayer may sustain in respect of the expenditure or, where the expenditure is the cost or capital cost of a property, any loss from the holding or disposition of the property.

Amount or
benefit not
included

(3) For the purpose of subsection (2), an at-risk adjustment in respect of a taxpayer's expenditure does not include an amount or benefit

(a) to the extent that it is included in determining the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer; or

(b) the entitlement to which arises

(i) because of a contract of insurance with an insurance corporation dealing at arm's length with the taxpayer (and, where the expenditure is the cost of an interest in a partnership, with each member of the partnership) under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the business of the taxpayer or the partnership,

(ii) as a consequence of the death of the taxpayer,

(iii) in respect of an amount not included in the expenditure, determined without reference to subparagraph (6)(b)(ii), or

(iv) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the taxpayer or, where the

expenditure is the cost of an interest in a partnership, to the partnership.

Amount or benefit

(4) For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire property, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement is considered to be not less than the fair market value of the property at that time.

Amount or benefit

(5) For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Amount of expenditure

(6) Notwithstanding any other provision of this Act, the amount of any expenditure that is, or is the cost or capital cost of, a taxpayer's tax shelter investment, and the amount of any expenditure of a taxpayer an interest in which is a tax shelter investment, shall be reduced to the amount, if any, by which

(a) the amount of the taxpayer's expenditure otherwise determined

exceeds

(b) the total of

(i) the limited-recourse amounts of

(A) the taxpayer, and

(B) all other taxpayers not dealing at arm's length with the taxpayer

that can reasonably be considered to relate to the expenditure,

(ii) the taxpayer's at-risk adjustment in respect of the expenditure, and

(iii) each limited-recourse amount and at-risk adjustment, determined under this section when this section is applied to 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.

Repayment of indebtedness

(7) For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount unless

(a) *bona fide* arrangements, evidenced in writing, were made, at the time the indebtedness arose, for repayment by the debtor of the indebtedness and all interest on the indebtedness within a reasonable period not exceeding 10 years; and

(b) interest is payable at least annually, at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the indebtedness arose, and

(ii) the prescribed rate of interest applicable from time to time during the term of the indebtedness,

and is paid in respect of the indebtedness by the debtor no later than 60 days after the end of each taxation year of the debtor that ends in the period.

Limited-recourse amount

(8) For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount of a taxpayer where the taxpayer is a partnership and recourse against any member of the partnership in respect of the indebtedness is limited, either immediately or in the future and either absolutely or contingently.

Timing

(9) Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness that was, before that time, the unpaid principal amount of a loan or any other form of indebtedness to which subsection (2) applies (in this subsection referred to as the "former amount or benefit") relating to an expenditure of the taxpayer,

(a) the former amount or benefit is considered to have been an amount or benefit under subsection (2) in respect of the taxpayer at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the payment of, the repaid amount.

Timing

(10) Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse amount (in this subsection referred to as the "former limited-recourse indebtedness") relating to an expenditure of the taxpayer,

(a) the former limited-recourse indebtedness is considered to have been a limited-recourse amount at all times before that time; and

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the amount of, the repaid amount.

Short-term debt

(11) Where a taxpayer pays all of the principal of an indebtedness no later than 60 days after that indebtedness arose and the indebtedness would otherwise be considered to be a limited-recourse amount solely because of the application of subsection (7) or (8), that subsection does not apply to the indebtedness unless

(a) any portion of the repayment is made with a limited-recourse amount; or

(b) the repayment can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 60 days after the indebtedness arose.

Series of loans
or repayments

(12) For the purpose of paragraph (7)(a), a debtor is considered not to have made arrangements to repay an indebtedness within 10 years where the debtor's arrangement to repay can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 10 years after it begins.

Information
located outside
Canada

(13) For the purpose of this section, where it can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness relating to the taxpayer's expenditure is deemed to be a limited-recourse amount relating to the expenditure unless

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

Information
located outside
Canada

(14) For the purpose of this section, where it can reasonably be considered that information relating to whether a taxpayer is not dealing at arm's length with another taxpayer is available outside Canada and the Minister is not satisfied that the taxpayer is dealing at arm's length with the other taxpayer, the taxpayer and the other taxpayer are deemed not to be dealing with each other at arm's length unless

(a) the information is provided to the Minister; or

(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

Assessments

(15) Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to this section.

(2) Subsection (1) applies to property acquired and to outlays and expenses made or incurred by a taxpayer after November 1994, except that

(a) it does not apply where

(i) the property was acquired, or the outlay or expense was made or incurred, before 1995 pursuant to an agreement in writing made by the taxpayer before December 1994, or

(ii) the property is

(A) a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act where

(I) the principal photography of the production began before 1995, or, in the case of a production that is a television series, one episode of the series began before 1995, and

(II) the principal photography of the production was completed before March 2, 1995, or

(B) an interest in a partnership (all or substantially all of the property of which is a film production referred to in clause (A)) acquired before 1995 by a taxpayer that is a partnership

and the following conditions are met:

(iii) in the case of an interest that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before December 1994, and

(iv) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(b) it does not apply to revenue guarantees prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act that were granted before 1996;

(c) subparagraph 143.2(6)(b)(ii) of the Act, as enacted by subsection (1), does not apply

(i) to property acquired, or outlays or expenses made or incurred, by a taxpayer before April 27, 1995, or

(ii) to property acquired, or outlays or expenses made or incurred, by a taxpayer before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 where the following conditions are met:

(A) in the case of a property that is a tax shelter for which section 237.1 of the Act requires an identification number, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

(d) paragraph 143.2(7)(a) of the Act, as enacted by subsection (1), shall be read without reference to "not exceeding 10 years" where

(i) the indebtedness arises

(A) pursuant to the terms of an agreement in writing made by the taxpayer before April 27, 1995,

(B) before 1996, in respect of the acquisition of a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act or an interest in a partnership all or substantially all of the property of which is either a film production prescribed for the purpose of that subparagraph or an interest in one or more partnerships all or substantially all of the property of each of which is such a film production, where

(I) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

(II) the principal photography of the production was completed before March 1996, or

(C) before July 1995

(I) pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(II) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

1. the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

2. the memorandum was distributed before April 27, 1995,

3. solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

4. the sale of the securities was substantially in accordance with the memorandum, and

5. the funds were expended before 1996 in accordance with the memorandum, and

(ii) the following conditions are met:

(A) in the case of an interest to which clause (i)(A) or (C) applies that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and

(B) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived

if there is a change to the Act or if there is an adverse assessment under the Act; and

(e) subsection 143.2(8) of the Act, as enacted by subsection (1), does not apply to a taxpayer in respect of an indebtedness

(i) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer

before April 27, 1995, nor

(ii) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred, by the taxpayer,

before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 and there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

169. (1) Subparagraph 144(1)(a)(iii) of the English version of the Act is replaced by the following:

(iii) any combination of the amounts described in subparagraphs (i) and (ii)

(2) Subsection 144(1) of the Act is replaced by the following:

Definitions

144. (1) The definitions in this subsection apply in this section.

"employees
profit sharing
plan"
« régime de
participation
des employés
aux bénéfiques »

"employees profit sharing plan" at a particular time means an arrangement

- (a) under which payments computed by reference to
 - (i) an employer's profits from the employer's business,
 - (ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or
 - (iii) any combination of the amounts described in subparagraphs (i) and (ii)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length; and

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

- (i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length,

- (ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955),

- (iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

- (iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and

- (v) in each year that ended after 1991 and at or before the particular time, the total of all

amounts each of which is an amount that may be deducted under subsection (9) in computing the employee's income because the employee ceased to be a beneficiary under the plan in the year.

"unused portion
of a
beneficiary's
exempt capital
gains balance"
« *fraction
inutilisée du
solde des gains
en capital
exonérés* »

"unused portion of a beneficiary's exempt capital gains balance" in respect of a trust governed by an employees profit sharing plan, at any particular time in a taxation year of the beneficiary, means

(a) where the year ends before 2005, the amount, if any, by which the beneficiary's exempt capital gains balance (in this paragraph having the same meaning as in subsection 39.1(1)) in respect of the trust for the year exceeds the total of all amounts each of which is an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust; or

(b) where the year ends after 2004, the amount, if any, by which

(i) the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the beneficiary's exempt capital gains balance in respect of the trust for the year

exceeds

(ii) where there has been a disposition of an interest or a part of an interest of the beneficiary in the trust after the beneficiary's 2004 taxation year (other than a disposition that is a part of a transaction described in paragraph (7.1)(c) in which property is received in satisfaction of all or a portion of the beneficiary's interests in the trust), the total of all amounts each of which is an amount by which the

adjusted cost base of an interest or a part of an interest disposed of by the beneficiary (other than an interest or a part of an interest that is all or a portion of the beneficiary's interests referred to in paragraph (7.1)(c)) was increased because of paragraph 53(1)(p), and

(iii) in any other case, nil.

(3) The portion of paragraph 144(7.1)(b) of the Act after subparagraph (iii) and before subparagraph (iv) is replaced by the following:

is, subject to paragraph (c), deemed to be

(4) Subsection 144(7.1) of the Act is amended by striking out the word "and" at the end of paragraph (a), by adding the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) where a particular property received is all or a portion of property received in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-date for the taxation year that includes the particular time an election in respect of the particular property in prescribed form, there shall be included in the cost to the beneficiary of the particular property determined under paragraph (b) the least of

(i) the amount, if any, by which the unused portion of the beneficiary's exempt capital gains balance in respect of the trust at the particular time exceeds the total of all amounts each of which is an amount included because of this paragraph in the cost to the beneficiary of another property received by the beneficiary at or before the particular time in the year,

(ii) the amount, if any, by which the fair market value of the particular property at the particular time exceeds the amount deemed by subparagraph (b)(iv) to be the cost to the beneficiary of the particular property, and

(iii) the amount designated in the election in respect of the particular property.

(5) Subsection (1) applies to the 1992 and 1993 taxation years.

(6) Subsections (2) to (4) apply to the 1994 and subsequent taxation years, and a prescribed form filed under paragraph

144(7.1)(c) of the Act, as enacted by subsection (4), before the end of the sixth month after the month in which this Act is assented to is deemed to be filed on time.

170. (1) Paragraph (a) of the definition "annuitant" in subsection 146(1) of the English version of the Act is replaced by the following:

(a) until such time after maturity of the plan as an individual's spouse becomes entitled, as a consequence of the individual's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and

(2) The definition "benefit" in subsection 146(1) of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(c.1) a tax-paid amount described in paragraph (b) of the definition "tax-paid amount" in this subsection that relates to interest or another amount included in computing income otherwise than because of this section

(3) The definition "earned income" in subsection 146(1) of the Act is amended by striking out the word "or" at the end of paragraph (f), by adding the word "or" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) the portion of an amount included under subparagraph (a)(ii) or (c)(ii) in determining the taxpayer's earned income for the year because of subparagraph 14(1)(a)(v)

(4) Paragraph (c) of the definition "qualified investment" in subsection 146(1) of the Act is replaced by the following:

(c) an annuity described in the definition "retirement income" in respect of the annuitant under the plan, if purchased from a licensed annuities provider,

(c.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(c.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than the life of the annuitant under the plan (in this definition referred to as the "RRSP annuitant"),

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year in which the RRSP annuitant attains 70 years of age,

(v) either

(A) the periodic payments are payable for the life of the RRSP annuitant and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRSP annuitant (determined on the assumption that the RRSP annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse of the RRSP annuitant (determined on the assumption that a spouse of the RRSP annuitant at the time the contract was acquired is a spouse of the RRSP annuitant at the start date), or

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs (3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(5) Paragraphs (a) and (b) of the definition "refund of premiums" in subsection 146(1) of the Act are replaced by the following:

(a) any amount paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan), where the annuitant died before the maturity of the plan and the amount was paid as a consequence of the death, or

(b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of the amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

(6) Subsection 146(1) of the Act is amended by adding the following in alphabetical order:

"tax-paid amount"
« *montant libéré d'impôt* »

"tax-paid amount" paid to a person in respect of a registered retirement saving plan means

(a) an amount paid to the person in respect of the amount that would, if this Act were read without reference to subsection 104(6), be income of a trust governed by the plan for a taxation year for which the trust was subject to tax because of paragraph (4)(c), or

(b) where

(i) the plan is a deposit with a depository referred to in clause (b)(iii)(B) of the definition "retirement savings plan" in this subsection, and

(ii) an amount is received at any time out of or under the plan by the person,

the portion of the amount that can reasonably be considered to relate to interest or another amount in respect of the deposit that was required to be included in computing the income of any person (other than the annuitant) otherwise than because of this section;

(7) The description of A in subsection 146(8.9) of the Act is replaced by the following:

A is the total of

(a) all refunds of premiums in respect of the plan,

(b) all tax-paid amounts in respect of the plan paid to individuals who, otherwise than because of subsection (8.1), received refunds of premiums in respect of the plan, and

(c) all amounts each of which is a tax-paid amount in respect of the plan paid to the legal representative of the annuitant under the plan, to the extent that the legal representative would have been entitled to designate that tax-paid amount under subsection (8.1) if tax-paid amounts were not excluded in determining refunds of premiums;

(8) Section 146 of the Act is amended by adding the following after subsection (11):

Exception

(11.1) Subsection (11) does not apply to annuity contracts issued after 1997.

(9) Subsection (1) applies to taxation years that end after November 1991.

(10) Subsections (2) and (5) to (7) apply to deaths occurring after 1992.

(11) Subsection (3) applies to the 1995 and subsequent taxation years.

(12) Subsection (4) applies after 1996.

(13) Subsection (8) applies after 1997.

171. (1) The definition "minimum amount" in subsection 146.3(1) of the Act is replaced by the following:

"minimum
amount"
« *minimum* »

"minimum amount" under a retirement income fund for a year is the amount determined by the formula

$$(A \times B) + C$$

where

A is the total fair market value of all properties held in connection with the fund at the beginning of the year (other than annuity contracts held by a trust governed by the fund that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment");

B is

(a) where the first annuitant under the fund elected in respect of the fund under paragraph (b) of the definition "minimum amount" in this subsection, as it read before 1992, or under subparagraph 146.3(1)(f)(i) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, to use the age of another individual, the prescribed factor for the year in respect of the other individual,

(b) where paragraph (a) does not apply and the first annuitant under the fund so elects before any payment has been made under the fund by the carrier, the prescribed factor for the year in

respect of an individual who was the spouse of the first annuitant at the time of the election, and

(c) in any other case, the prescribed factor for the year in respect of the first annuitant under the fund, and

C is, where the fund governs a trust, the total of all amounts each of which is

(a) a periodic payment under an annuity contract held by the trust at the beginning of the year (other than an annuity contract described at the beginning of the year in paragraph (b.1) of the definition "qualified investment") that is paid to the trust in the year, or

(b) if the periodic payment under such an annuity contract is not made to the trust because the trust disposed of the right to that payment in the year, a reasonable estimate of that payment on the assumption that the annuity contract had been held throughout the year and no rights under the contract were disposed of in the year;

(2) The definition "qualified investment" in subsection 146.3(1) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(b.1) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would, if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract,

(b.2) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than

(A) if the annuitant under the fund (in this paragraph referred to as the "RRIF annuitant") has made the election referred to in the definition "retirement income fund" in respect of the fund and a spouse, the life of the RRIF annuitant or the life of the spouse, and

(B) in any other case, the life of the RRIF annuitant,

(iv) the day on which the periodic payments began or are to begin (in this paragraph referred to as the "start date") is not later than the end of the year following the year in which the contract was acquired by the trust,

(v) either

(A) the periodic payments are payable for the life of the RRIF annuitant or the joint lives of the RRIF annuitant and the RRIF annuitant's spouse and either there is no guaranteed period under the contract or there is a guaranteed period that begins at the start date and does not exceed a term equal to 90 years minus the lesser of

(I) the age in whole years at the start date of the RRIF annuitant (determined on the assumption that the RRIF annuitant is alive at the start date), and

(II) the age in whole years at the start date of a spouse of the RRIF annuitant (determined on the assumption that a spouse of the RRIF annuitant at the time the contract was acquired is a spouse of the RRIF annuitant at the start date), or

(B) the periodic payments are payable for a term equal to

(I) 90 years minus the age described in subclause (A)(I), or

(II) 90 years minus the age described in subclause (A)(II), and

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(b)(iii) to (v) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(3) Paragraph 146.3(2)(a) of the English version of the Act is replaced by the following:

(a) the fund provides that the carrier shall make only those payments described in any of paragraphs (d) and (e), the definition "retirement income fund" in subsection (1) and paragraph (14)(b);

(4) Paragraph 146.3(2)(e) of the Act is replaced by the following:

(e) the fund provides that, at the direction of the annuitant, the carrier shall transfer all or part of the property held in connection with the fund, or an amount equal to its value at the time of the direction (other than property required to be retained in accordance with the provision described in paragraph (e.1) or (e.2)), together with all information necessary for the continuance of the fund, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant;

(5) The portion of paragraph 146.3(2)(e.1) of the Act before subparagraph (i) is replaced by the following:

(e.1) where the fund does not govern a trust or the fund governs a trust created before 1998 that does not hold an annuity contract as a qualified investment for the trust, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of

another registered retirement income fund of the annuitant, the transferor shall retain an amount equal to the lesser of

(6) Subsection 146.3(2) of the Act is amended by adding the following after paragraph (e.1):

(e.2) where paragraph (e.1) does not apply, the fund provides that if an annuitant, at any time, directs that the carrier transfer all or part of the property held in connection with the fund, or an amount equal to its value at that time, to a person who has agreed to be a carrier of another registered retirement income fund of the annuitant, the transferor shall retain property in the fund sufficient to ensure that the total of

(i) all amounts each of which is the fair market value, immediately after the transfer, of a property held in connection with the fund that is

(A) property other than an annuity contract, or

(B) an annuity contract described, immediately after the transfer, in paragraph (b.1) of the definition "qualified investment" in subsection (1), and

(ii) all amounts each of which is a reasonable estimate, as of the time of the transfer, of the amount of an annual or more frequent periodic payment under an annuity contract (other than an annuity contract described in clause (i)(B)) that the trust may receive after the transfer and in the year of the transfer

is not less than the amount, if any, by which the minimum amount under the fund for that year exceeds the total of all amounts received out of or under the fund before the transfer that are included in computing the income of the annuitant under the fund for that year;

(7) Subsection 146.3(5) of the Act is amended by striking out the word "or" at the end of paragraph (a), by adding the word "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) an amount that relates to interest, or to another amount included in computing income otherwise than because of this section, and that would, if the fund were a registered retirement savings plan, be a tax-paid amount (within the meaning assigned by paragraph (b) of the definition "tax-paid amount" in subsection 146(1)).

(8) The description of A in subsection 146.3(6.2) of the Act is replaced by the following:

A is the total of

(a) all designated benefits of individuals in respect of the fund,

(b) all amounts that would, if the fund were a registered retirement savings plan, be tax-paid amounts (in this subsection having the meaning assigned by subsection 146(1)) in respect of the fund received by individuals who received, otherwise than because of subsection (6.1), designated benefits in respect of the fund, and

(c) all amounts each of which is an amount that would, if the fund were a registered retirement savings plan, be a tax-paid amount in respect of the fund received by the legal representative of the last annuitant under the fund, to the extent that the legal representative would have been entitled to designate that tax-paid amount under paragraph (a) of the definition "designated benefit" in subsection (1) if tax-paid amounts were not excluded in determining refunds of premiums (as defined in subsection 146(1));

(9) Subsection (1) applies

(a) to the 1998 and subsequent years with respect to

(i) retirement income funds entered into after February 1986, and

(ii) retirement income funds entered into before March 1986 and revised or amended after February 1986 and before 1998;

(b) to the year in which a retirement income fund is first revised or amended after 1997 and to subsequent years, if the fund was entered into before March 1986 and was not revised or amended after February 1986 and before 1998; and

(c) with respect to a retirement income fund that governs a trust that, after July 1997, holds a contract for an annuity, to all years that begin after the first day

(i) that is after July 1997, and

(ii) on which the trust holds such a contract.

(10) Subsection (2) applies after 1996.

(11) Subsection (3) applies to taxation years that end after November 1991.

(12) Subsections (4) to (6) apply to retirement income funds entered into after July 13, 1990 and, in its application to retirement income funds entered into before July 14, 1990, paragraph 146.3(2)(e) of the Act, as enacted by subsection (4), shall be read without reference to the words "in prescribed form and manner".

(13) Subsections (7) and (8) apply to deaths that occur after 1992.

172. (1) Subparagraph 147(19)(b)(ii) of the Act is replaced by the following:

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse of the employee,

(2) Subsection (1) applies after 1992.

173. (1) The portion of paragraph 147.1(3)(a) of the Act before subparagraph (i) is replaced by the following:

(a) subject to paragraph (b), the plan is, for the purposes of this Act other than paragraphs 60(j) and (j.2) and sections 147.3 and 147.4, deemed to be a registered pension plan throughout the period that begins on the latest of

(2) Subsection (1) applies after 1996.

174. (1) Paragraph 147.2(2)(b) of the Act is replaced by the following:

(b) the recommendation is approved by the Minister in writing,

(2) Clause (B) of the description of Z in subparagraph 147.2(4)(b)(iii) of the Act is replaced by the following:

(B) where the preceding year was before 1987, under subparagraph 8(1)(m)(ii) (as it read in its application to that preceding year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and

(3) Section 147.2 of the Act is amended by adding the following after subsection (5):

Deductible
contributions
when taxpayer
dies

(6) Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's income for the year and the preceding taxation year,

(a) paragraph (4)(b) shall be read without reference to subparagraph (ii) and as if the reference to "the least of" were a reference to "the lesser of"; and

(b) paragraph (4)(c) shall be read without reference to subparagraph (ii) and the words "the lesser of".

(4) Subsection (1) applies after March 1996.

(5) Subsection (2) applies to the 1991 and subsequent taxation years.

(6) Subsection (3) applies to taxpayers who die after 1992.

175. (1) Paragraph 147.3(10)(a) of the Act is replaced by the following:

(a) the amount is deemed to have been paid from the transferor plan to the individual;

(2) Subsection 147.3(15) of the Act is repealed.

(3) Subsection (1) applies to transfers that occur after July 30, 1997.

(4) Subsection (2) applies after 1996.

176. (1) The Act is amended by adding the following after section 147.3:

RPP annuity
contract

147.4 (1) Where

(a) at any time an individual acquires, in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, an interest in an annuity contract purchased from a licensed annuities provider,

(b) the rights provided for under the contract are not materially different from those provided for under the plan as registered,

(c) the contract does not permit premiums to be paid at or after that time, other than a premium paid at that time out of or under the plan to purchase the contract,

(d) either the plan is not a plan in respect of which the Minister may, under subsection 147.1(11), give a notice of intent to revoke the registration of the plan or the Minister waives the application of this paragraph with respect to the contract and so notifies the administrator of the plan in writing, and

(e) the individual does not acquire the interest as a consequence of a transfer of property from the plan to a registered retirement savings plan or a registered retirement income fund,

the following rules apply for the purposes of this Act:

(f) the individual is deemed not to have received an amount out of or under the registered pension plan as a consequence of acquiring the interest, and

(g) other than for the purposes of sections 147.1 and 147.3, any amount received at or after that time by any individual under the contract is deemed to have been received under the registered pension plan.

Amended
contract

(2) Where

(a) an amendment is made at any time to an annuity contract to which subsection (1) or paragraph 254(a) applies (other than an amendment the sole effect of which is to provide for an earlier annuity commencement that avoids the application of paragraph (4)(b)), and

(b) the rights provided for under the contract are materially altered as a consequence of the amendment,

the following rules apply for the purposes of this Act:

(c) each individual who has an interest in the contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal

to the fair market value of the interest immediately before that time,

(d) the contract as amended is deemed to be a separate annuity contract issued at that time otherwise than pursuant to or under a superannuation or pension fund or plan, and

(e) each individual who has an interest in the separate annuity contract immediately after that time is deemed to have acquired the interest at that time at a cost equal to the fair market value of the interest immediately after that time.

New contract

(3) For the purposes of this Act, where an annuity contract (in this subsection referred to as the "original contract") to which subsection (1) or paragraph 254(a) applies is, at any time, substituted by another contract,

(a) if the rights provided for under the other contract are not materially different from those provided for under the original contract, the other contract is deemed to be the same contract as, and a continuation of, the original contract; and

(b) in any other case, each individual who has an interest in the original contract immediately before that time is deemed to have received at that time the payment of an amount under a pension plan equal to the fair market value of the interest immediately before that time.

RPP annuity contract beginning after age 69

(4) For the purposes of this Act, where, under circumstances to which paragraph 254(a) applied, an individual acquired before 1997 an interest in an annuity contract in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, and payment of the annuity has not begun by the end of the particular year in which the individual attains 69 years of age,

(a) the interest is deemed not to exist after the particular year;

(b) the individual is deemed to have received immediately after the particular year the payment of an amount from the plan equal to the fair market value of the interest at the end of the particular year;

(c) the individual is deemed to have acquired immediately after the particular year an interest in the contract as a separate annuity contract issued immediately after the particular year at a cost equal to the amount referred to in paragraph (b); and

(d) the issue and acquisition of the separate annuity contract are deemed not to be pursuant to or under a registered pension plan.

(2) Subsections 147.4(1) to (3) of the Act, as enacted by subsection (1), apply to annuity contract acquisitions, amendments and substitutions that occur after July 30, 1997.

(3) Subsection 147.4(4) of the Act, as enacted by subsection (1), applies after 1996, except that

(a) it does not apply to an individual who attained 70 years of age before 1997;

(b) in applying it to an individual who attained 69 years of age in 1996, the reference in that provision to "69 years of age" shall be read as a reference to "70 years of age"; and

(c) it does not apply to an annuity contract if an individual received an interest in the contract before March 6, 1996 and, under the terms and conditions of the contract as they read immediately before that day,

(i) the day on which the annuity payments are to begin under the contract is fixed and determined and is after the year in which the individual attains

(A) 69 years of age, if the individual had not attained that age before 1997, or

(B) 70 years of age, if the individual attained 69 years of age in 1996, and

(ii) the amount and timing of each annuity payment are fixed and determined.

177. (1) The definitions "eligible funeral arrangement", "funeral services" and "qualifying person" in subsection 148.1(1) of the Act are replaced by the following:

"eligible
funeral
arrangement"

« *arrangement
de services
funéraires* »

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral or cemetery services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral or cemetery services to be provided by the qualifying person with respect to an individual, and

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual does not exceed

(i) \$15,000, where the arrangement solely covers funeral services with respect to the individual,

(ii) \$20,000, where the arrangement solely covers cemetery services with respect to the individual, and

(iii) \$35,000, in any other case,

and, for the purpose of this definition, any payment (other than the portion of the payment to be applied as a contribution to a cemetery care trust) that is made in consideration for the immediate acquisition of a right to burial in or on property that is set apart or used as a place for the burial of human remains or of any interest in a building or structure for the permanent placement of human remains, shall be considered to have been made pursuant to a separate arrangement that is not an eligible funeral arrangement;

"funeral
services"
« *services
funéraires* »

"funeral services" with respect to an individual means property and services (other than cemetery services with respect to the individual) that relate directly to funeral arrangements in Canada in consequence of the death of the individual;

"qualifying
person"
« *personne*
admissible »

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral or cemetery services with respect to individuals;

(2) Paragraph (b) of the definition "custodian" in subsection 148.1(1) of the Act is replaced by the following:

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral or cemetery services;

(3) Paragraphs (a) and (b) of the definition "relevant contribution" in subsection 148.1(1) of the Act are replaced by the following:

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer from an eligible funeral arrangement) for the purpose of funding funeral or cemetery services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral or cemetery services with respect to the individual.

(4) Subsection 148.1(1) of the Act is amended by adding the following in alphabetical order:

"cemetery care
trust"
« *fiducie pour*
l'entretien
d'un
cimetière »

"cemetery care trust" means a trust established pursuant to an Act of a province for the care and maintenance of a cemetery;

"cemetery
services"

« services de
cimetière »

"cemetery services" with respect to an individual means property (including interment vaults, markers, flowers, liners, urns, shrubs and wreaths) and services that relate directly to cemetery arrangements in Canada in consequence of the death of the individual including, for greater certainty, property and services to be funded out of a cemetery care trust;

"funeral or
cemetery
services"
« services de
funérailles ou
de cimetière »

"funeral or cemetery services" with respect to an individual means funeral services with respect to the individual, cemetery services with respect to the individual or any combination of such services;

(5) Paragraphs 148.1(2)(b) and (c) of the Act are replaced by the following:

(b) subject to paragraph (c) and subsection (3), no amount shall be

(i) included in computing a person's income solely because of the provision by another person of funeral or cemetery services under an eligible funeral arrangement, or

(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral or cemetery services.

(6) Subsection 148.1(3) of the Act is replaced by the following:

Income
inclusion on
return of funds

(3) Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral or cemetery services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula

$$A + B - C$$

where

A is the balance in respect of the individual under the arrangement immediately before the particular time (determined without regard to the value of property in a cemetery care trust);

B is the total of all payments made from the arrangement before the particular time for the provision of funeral or cemetery services with respect to the individual (other than cemetery services funded by property in a cemetery care trust); and

C is the total of all relevant contributions made before the particular time in respect of the individual under the particular arrangement (other than contributions in respect of the individual that were in a cemetery care trust).

(7) Subsections (1) to (6) apply to the 1993 and subsequent taxation years.

178. (1) Paragraph 149(1)(d) of the Act is replaced by the following:

Corporations
owned by the
Crown

(d) a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by Her Majesty in right of Canada or a province;

Corporations
90% owned by
the Crown

(d.1) a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of

the capital of which was owned by Her Majesty in right of Canada or a province;

Wholly-owned
corporations

(d.2) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

90% owned
corporations

(d.3) a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by

(i) Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period;

Combined
ownership

(d.4) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by a corporation, commission or association to which this paragraph or any of subparagraphs (d) to (d.3) applies for the period;

Municipal
corporations

(d.5) subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more municipalities in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

(2) Paragraph 149(1)(o.1) of the Act is replaced by the following:

Pension
corporations

(o.1) a corporation

(i) incorporated and operated throughout the period either

(A) solely for the administration of a registered pension plan, or

(B) for the administration of a registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement, where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and

(ii) accepted by the Minister as a funding medium for the purpose of the registration of the pension plan;

(3) Subsection 149(1) of the Act is amended by adding the following after paragraph (s.1):

Cemetery care
trust

(s.2) a cemetery care trust;

(4) Section 149 of the Act is amended by adding the following after subsection (1):

Exception

(1.1) Paragraphs (1)(d) to (d.5) do not apply to a corporation, commission or association during a period in which a person other than Her Majesty in right of Canada or a province or a municipality in Canada had a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently to, or to acquire, shares or capital of the corporation, commission or association.

Income test

(1.2) For the purpose of paragraph (1)(d.5), income of a corporation, commission or association not less than 90% of the capital of which was owned by one or more municipalities in Canada from activities carried on outside the geographical boundaries of the municipalities does not include income from activities carried on under an agreement in writing between

(a) the corporation, commission or association, and

(b) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.5) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(c) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(d) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(e) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality.

Capital ownership

(1.3) For the purposes of paragraph (1)(d.5) and subsection (1.2), 90% of the capital of a corporation that has issued share capital is owned by one or more municipalities only when the municipalities own shares of the capital stock of the corporation that give the municipalities 90% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation.

(5) Paragraph 149(10)(a) of the Act is replaced by the following:

(a) the taxation year of the corporation that would otherwise have included that time is deemed to have ended immediately before that time, a new taxation year of the corporation is deemed to have begun at that time and, for the purpose of determining the taxpayer's fiscal period after that time, the taxpayer is deemed not to have established a fiscal period before that time;

(6) Paragraphs 149(10)(b) to (d) of the Act are replaced by the following:

(b) the corporation is deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time for an amount equal to its fair market value

at that time and to have reacquired the property at that time at a cost equal to that fair market value;

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 111 and 126, subsections 127(5) to (26) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

(d) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of

(i) 3/4 of the fair market value of the eligible capital property in respect of the business, and

(ii) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time.

(7) Subsection 149(11) of the Act is repealed.

(8) Subsections (1) and (4) apply to taxation years and fiscal periods that begin after 1997.

(9) Subsection (2) applies to the 1994 and subsequent taxation years.

(10) Subsection (3) applies to the 1993 and subsequent taxation years.

(11) Subsections (5) and (6) apply to a corporation that becomes or ceases to be exempt from tax on its taxable income under Part I of the Act after April 26, 1995.

179. (1) The formula in the definition "disbursement quota" in subsection 149.1(1) of the Act is replaced by the following:

$$A + A.1 + B + \frac{C \times 0.045}{365} [D - (E + F)] + G$$

(2) The portion of the description of A in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (a) is replaced by the following:

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

(3) Subsections (1) and (2) apply to taxation years that end after November 1991 except that, for such taxation years that began before 1993, the formula in the definition "disbursement quota" in subsection 149.1(1) of the Act, as enacted by subsection (1), shall be read as follows:

$$365 \quad A + B + \frac{C \times 0.045}{\quad} \quad \frac{[D - (E + F)]}{\quad} + G$$

180. (1) Clause 150(1)(d)(ii)(A) of the Act is replaced by the following:

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)), or

(2) Subsection 150(4) of the Act is replaced by the following:

Death of
partner or
proprietor

(4) Where

(a) subsection 34.1(9) or 34.2(8) applies in computing an individual's income for a taxation year from a business, or

(b) an individual who carries on a business in a taxation year dies in the year and after the end of a fiscal period of the business that ends in the year, another fiscal period of the business (in this subsection referred to as the "short period") ends in the year because of the individual's death, and the individual's legal representative elects that this subsection apply,

the individual's income from businesses for short periods, if any, shall not be included in computing the individual's income for the year and the individual's legal representative shall file an additional return of income for the year in respect of the individual as if the return were filed in respect of another person and shall pay the tax payable under this Part by that other person for the year computed as if

(c) the other person's only income for the year were the amount determined by the formula

$$A + B - C$$

where

- A is the total of all amounts each of which is the individual's income from a business for a short fiscal period,
- B is the total of all amounts each of which is an amount deducted under subsection 34.2(8) in computing the individual's income for the taxation year in which the individual dies, and
- C is the total of all amounts each of which is an amount included under subsection 34.1(9) in computing the individual's income for the taxation year in which the individual dies, and

(d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual is entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the individual's taxable income or tax payable under this Part, as the case may be, for the year.

(3) Subsection (1) applies to the 1995 and subsequent taxation years.

(4) Subsection (2) applies to the 1996 and subsequent taxation years.

181. (1) Subsection 152(1.2) of the Act is replaced by the following:

Provisions
applicable

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that

(a) subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11);

(b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer; and

(c) subsection 164(4.1) does not apply to a determination made under subsection (1.4).

(2) Section 152 of the Act is amended by adding the following after subsection (1.3):

Determination
in respect of a
partnership

(1.4) The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

Notice of
determination

(1.5) Where a determination is made under subsection (1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the partnership during the fiscal period.

Absence of
notification

(1.6) No determination made under subsection (1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

Binding effect
of
determination

(1.7) Where the Minister makes a determination under subsection (1.4) or a redetermination in respect of a partnership,

(a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and

(b) notwithstanding subsections (4), (4.01), (4.1) and (5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as may be necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada.

Time to assess

(1.8) Where, as a result of representations made to the Minister that a person was a member of a partnership in respect of a fiscal period, a determination is made under subsection (1.4) for the period and the Minister, the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada concludes at a subsequent time that the partnership did not exist for the period or that, throughout the period, the person was not a member of the partnership, the Minister may, notwithstanding subsections (4), (4.1) and (5), within one year after that subsequent time, assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been an overpayment under this Part, by any taxpayer for any taxation year, but only to the extent that the assessment or determination can reasonably be regarded

(a) as relating to any matter that was relevant in the making of the determination made under subsection (1.4);

(b) as resulting from the conclusion that the partnership did not exist for the period; or

(c) as resulting from the conclusion that the person was, throughout the period, not a member of the partnership.

(3) Subsection 152(3.1) of the Act is replaced by the following:

Definition of
"normal
reassessment
period"

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year.

(4) Subsection 152(4) of the Act is replaced by the following:

Assessment and
reassessment

(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has

committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

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

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection (6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66, or

(vi) is made in order to give effect to the application of subsection 118.1(15) or (16).

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

(4.01) Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a) or (b) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where paragraph (4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or

(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(b) where paragraph (4)(b) applies to the assessment, reassessment or additional assessment,

(i) the assessment, reassessment or additional assessment to which subparagraph (4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph (4)(b)(ii),

(iii) the transaction referred to in subparagraph (4)(b)(iii),

(iv) the payment or reimbursement referred to in subparagraph (4)(b)(iv),

(v) the reduction referred to in subparagraph (4)(b)(v), or

(vi) the application referred to in subparagraph (4)(b)(vi).

(5) Subsection 152(5) of the Act is replaced by the following:

Limitation on assessments

(5) There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an assessment, reassessment or additional assessment made under this Part before the end of the period.

(6) Subsection 152(6) of the Act is amended by striking out the word "or" at the end of paragraph (f) and by adding the following after that paragraph:

(g) a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, or

(7) Subsections (1) and (2) apply in respect of determinations made after the day on which this Act is assented to.

(8) Subsections (3) to (5) apply after April 27, 1989, except that

(a) in applying subsection 152(4) to the Act, as enacted by subsection (4), before August 1997, it shall be read without reference to subparagraph (b)(vi);

(b) in applying subsection 152(4) of the Act, as enacted by subsection (4), to a taxation year before the 1996 taxation year, it shall be read without reference to subparagraph (b)(v);

(c) in applying subsection 152(4.01) of the Act, as enacted by subsection (4), before August 1997, it shall be read without reference to subparagraph (b)(vi); and

(d) in applying subsection 152(4.01) of the Act, as enacted by subsection (4), to a taxation year before the 1996 taxation year, it shall be read without reference to subparagraph (b)(v).

(9) Subsection (6) applies to taxpayers who die after 1992.

182. (1) Paragraph 153(1)(d.1) of the Act is replaced by the following:

(d.1) an amount described in subparagraph 56(1)(a)(iv),

(2) Subsection (1) is deemed to have come into force on June 30, 1996.

183. (1) Paragraph 154(2)(a) of the Act is replaced by the following:

(a) has filed a return of income for the year with the Minister,

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

184. (1) The portion of subsection 157(2) of the Act before paragraph (c) is replaced by the following:

Special case

(2) Where in a taxation year a corporation

(a) has held out the prospect that it will make allocations in proportion to patronage as described in section 135, or

(b) is a credit union,

and for the year or the preceding taxation year

(2) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

(3) Subsections (1) and (2) apply to taxation years that end after February 22, 1994 except that,

(a) for taxation years that ended before 1995, paragraph 157(3)(e) of the Act, as enacted by subsection (2), shall be read without reference to subsection 125.4(3) of the Act; and

(b) for taxation years that ended before November 1997, paragraph 157(3)(e) of the Act, as enacted by subsection (2), shall be read without reference to subsection 125.5(3) of the Act.

185. Subsections 159(1) to (3) of the Act are replaced by the following:

Person acting
for another

159. (1) For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,

(a) the legal representative is jointly and severally liable with the taxpayer

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and

(ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that

remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

Certificate
before
distribution

(2) Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Personal
liability

(3) Where a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection, the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed, and the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection, and the provisions of this Division apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152.

Appropriation
of property

(3.1) For the purposes of subsections (2) and (3), an appropriation by a legal representative of a taxpayer of property in the possession or control of the legal representative acting in that capacity is deemed to be a distribution of the property to a person.

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

Joint liability
where s. 69(11)
applies

(1.1) Where a particular person or partnership is deemed by subsection 69(11) to have disposed of a property at any time, the person referred to in that subsection to whom a benefit described in that subsection was available in respect of a subsequent disposition of the property or property substituted for the property is jointly and severally liable with each other taxpayer to pay a part of the other taxpayer's liabilities under this Act in respect of each taxation year equal to the amount determined by the formula

A - B

where

A is the total of amounts payable under this Act by the other taxpayer in respect of the year, and

B is the amount that would, if the particular person or partnership were not deemed by subsection 69(11) to have disposed of the property, be determined for A in respect of the other taxpayer in respect of the year,

but nothing under this subsection is deemed to limit the liability of the other taxpayer under any other provision of this Act.

(2) Subsections 160(2) and (3) of the Act are replaced by the following:

Assessment

(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

Discharge of
liability

(3) Where a particular taxpayer has become jointly and severally liable with another taxpayer under this section in respect of part or all of a liability under this Act of the other taxpayer,

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge the joint liability; but

(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally liable.

(3) Subsection (1) applies in respect of dispositions that are deemed by subsection 69(11) of the Act to occur after April 26, 1995.

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

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

(2) Paragraph 161(7)(a) of the Act is amended by adding the following after subparagraph (viii):

(viii.1) any amount deducted under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year,

(3) Paragraph 161(7)(a) of the English version of the Act is amended by replacing the word "or" at the end of subparagraph (ix) with the word "and", by adding the word "and" at the end of subparagraph (x) and by repealing the portion after subparagraph (x).

(4) The portion of paragraph 161(7)(b) of the Act before subparagraph (i) is replaced by the following:

(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is the latest of

(5) Subsection 161(11) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) in the case of a penalty under subsection 237.1(7.4), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(6) Section 161 of the Act is amended by adding the following after subsection (11):

Partnership
liable to
interest

(12) Where a partnership is liable to a penalty under subsection 237.1(7.4), sections 152, 158 to 160.1, this section and sections 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to interest on the penalty as if the partnership were a corporation.

(7) Subsections (1), (3) and (4) apply to amounts that become payable after December 1995.

(8) Subsection (2) applies to taxpayers who die after 1992.

(9) Subsections (5) and (6) apply after December 1, 1994.

188. (1) Paragraph 162(5)(a) of the Act is replaced by the following:

(a) in the case of information required in respect of another person or partnership, a reasonable effort was made by the person to obtain the information from the other person or partnership; or

(2) Subsection 162(6) of the Act is replaced by the following:

Failure to
provide
identification
number

(6) Every person or partnership who fails to provide on request their Social Insurance Number or their business number to a person required under this Act or a regulation to make an information return requiring the number is liable to a penalty of \$100 for each such failure, unless

(a) an application for the assignment of the number is made within 15 days after the request was received; and

(b) the number is provided to the person who requested the number within 15 days after the person or partnership received it.

(3) Subsection 162(8.1) of the Act is replaced by the following:

Rules where
partnership
liable to a
penalty

(8.1) Where a partnership is liable to a penalty under subsection (5), (6), (7), (7.1), (8) or (10), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

(4) Subsection 162(9) of the Act is repealed.

(5) Subsection (4) applies after December 1, 1994.

189. (1) The portion of subsection 163(2) of the Act before paragraph (a) is replaced by the following:

False
statements or
omissions

(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50% of the total of

(2) Subsection 163(2) of the Act is amended by striking out the word "and" at the end of paragraph (e), by adding the word "and" at the end of paragraph (f) and by adding the following after paragraph (f):

(g) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.5(3) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person.

(3) Subsection 163(4) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) any amount that may be deducted under subsection 147.2(4) in computing the person's income for the year because of the application of subsection 147.2(6) as a result of the person's death in the subsequent taxation year; and

(4) Subsection (1) applies after June 20, 1996.

(5) Subsection (2) applies after October 1997.

(6) Subsection (3) applies to taxpayers who die after 1992.

190. (1) Subparagraph 164(1)(a)(i) of the Act is replaced by the following:

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income under this Part for the year to have paid an amount on account of its tax payable under this Part for the year by reason of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year, and

(2) Paragraph 164(1)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

(3) Section 164 of the Act is amended by adding the following after subsection (1.7):

Request to pay
refund to
province

(1.8) An individual (other than a trust) may, in the individual's return of income for a taxation year, request the Minister to pay to Her Majesty in right of a prescribed province all or any part of a refund for the year claimed by the individual in the return and, where the individual makes such a request,

(a) the Minister may make the payment to Her Majesty in right of the province in accordance with the request; and

(b) the amount of the payment is deemed to have been refunded under this section to the individual at the time a notice of an original assessment of tax payable under this Part by the individual for the year, or a notification that no tax is payable under this Part by the individual for the year, is sent to the individual.

(4) Subsection 164(2) of the Act is replaced by the following:

Application to
other debts

(2) Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

(5) Subsection 164(2.1) of the Act is replaced by the following:

Application
respecting
refunds under
s. 122.5

(2.1) Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is applied under subsection (2) to a liability of the individual and the individual's return of income for the year is filed on or before the individual's balance-due day for the year, the amount is deemed to have been so applied on the day on which the amount would have been refunded if the individual were not liable to make a payment to Her Majesty in right of Canada.

(6) Subsection 164(5) of the Act is amended by adding the following after paragraph (h):

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

(7) Subsection 164(5.1) of the Act is amended by adding the following after paragraph (h):

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the following taxation year,

(8) Paragraph 164(6)(c) of the Act is replaced by the following:

(c) such parts of one or more capital losses of the estate from the disposition of properties in the year (the total of which is not to exceed the excess referred to in paragraph (a)) as the legal representative so elects, in prescribed manner and within a prescribed time, are deemed (except for the purpose of subsection 112(3) and this paragraph) to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's last taxation year and not to be capital losses of the estate from the disposition of those properties,

(9) Subsection (1) applies to taxation years that end after December 2, 1992.

(10) Subsection (2) applies after April 27, 1989.

(11) Subsection (3) applies to requests made in returns of income for the 1997 and subsequent taxation years filed after 1997.

(12) For the purpose of applying subsection 164(1.8) of the Act, as enacted by subsection (3), Ontario is deemed to be a prescribed province until the *Income Tax Regulations* are amended to prescribe a province for the purpose of subsection 164(1.8) of the Act.

(13) Subsections (6) and (7) apply to taxpayers who die after 1992.

(14) Subsection (8) applies to deaths that occur after 1993.

Transitional
provision

191. Where

(a) the first taxation year of an estate of an individual ended after April 26, 1995 and before 1997,

(b) the estate had a capital loss from the disposition after the year and before 1997 of a share of the capital stock of a corporation that was owned by the individual or the estate on April 26, 1995 and acquired by the estate as a consequence of the individual's death, and

(c) the individual's legal representative so elects in writing filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to,

the following rules apply:

(d) the disposition is deemed to have occurred in the first taxation year of the estate,

(e) an election under paragraph 164(6)(c) of the Act, as enacted by subsection 190(8), for the year is deemed to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to, and

(f) an amended return of income under Part I of the Act for the individual's last taxation year is deemed for the purpose of paragraph 164(6)(e) of the Act to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to.

192. (1) The portion of subsection 165(1.1) of the Act before paragraph (b) is replaced by the following:

Limitation of
right to object
to assessments
or
determinations

(1.1) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(2) The portion of subsection 165(1.1) of the Act after paragraph (c) is replaced by the following:

the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

(3) Section 165 of the Act is amended by adding the following after subsection (1.14):

Partnership

(1.15) Notwithstanding subsection (1), where the Minister makes a determination under subsection 152(1.4) in respect of a fiscal period of a partnership, an objection in respect of the determination may be made only by one member of the partnership, and that member must be either

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or

(b) otherwise expressly authorized by the partnership to so act.

(4) Subsections 165(3.1) and (3.2) of the Act are repealed.

(5) Subsection 165(5) of the Act is replaced by the following:

Validity of
reassessment

(5) The limitations imposed under subsections 152(4) and (4.01) do not apply to a reassessment made under subsection (3).

(6) Subsections (1) to (3) apply in respect of determinations made after the day on which this Act is assented to.

(7) Subsection (4) applies after August 27, 1995.

(8) Subsection (5) applies after April 27, 1989.

193. (1) The portion of subsection 169(2) of the Act before paragraph (b) is replaced by the following:

Limitation of
right to appeal
from
assessments or
determinations

(2) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(2) The portion of subsection 169(2) of the Act after paragraph (c) is replaced by the following:

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

(3) Subsections (1) and (2) apply in respect of determinations made after the day on which this Act is assented to.

194. (1) Paragraphs 181.1(7)(a) and (b) of the Act are replaced by the following:

(a) the corporation's unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

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

(I) its income under Part I for the particular year from a business that was carried on by the corporation throughout the subsequent year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year that ended before that time (in this paragraph referred to as the "preceding year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

(i) the amount, if any, by which

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

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, the corporation's income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing the corporation's taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

(2) Subsection (1) applies to acquisitions of control that occur after April 26, 1995.

195. (1) Subsection 181.2(3) of the Act is amended by adding the following after paragraph (b):

(b.1) the amount of its deferred unrealized foreign exchange gains at the end of the year,

(2) Paragraph 181.2(3)(g) of the Act is replaced by the following:

(g) where the corporation was a member of a partnership at the end of the year, that proportion of the amount, if any, by which

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would be determined under this paragraph and paragraphs (b) to (d) and (f) in respect of the partnership at the end of its last fiscal period that ends at or before the end of the year (if paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations)

exceeds

(ii) the amount of the partnership's deferred unrealized foreign exchange losses at the end of that period

that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period

(3) Subsection 181.2(3) of the Act is amended by striking out the word "and" at the end of paragraph (i), by adding the word "and" at the end of paragraph (j) and by adding the following after paragraph (j):

(k) the amount of its deferred unrealized foreign exchange losses at the end of the year.

(4) Subsections (1) to (3) apply to the 1995 and subsequent taxation years.

196. (1) Subparagraph 181.3(3)(d)(i) of the Act is replaced by the following:

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) the corporation's surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under this Part or Part VI for the year

exceeds the total of all amounts each of which is

(II) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under

Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) the corporation's attributed surplus for the year,

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

197. (1) Subparagraph 181.4(d)(i) of the Act is replaced by the following:

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods by ship or aircraft in international traffic, and

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

198. (1) The portion of subsection 181.5(6) of the Act after paragraph (b) is replaced by the following:

are, for the purposes of this section and subsection 181.3(4), deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purposes of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

(2) Subsection (1) applies after April 26, 1995.

199. (1) The Act is amended by adding the following after section 181.7:

Provisions
applicable –
Crown
corporations

181.71 Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies to taxation years that end after June 1989.

200. (1) Paragraph 186.1(b) of the Act is replaced by the following:

(b) that was, throughout the year,

(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

(iii) an insurance corporation,

(iv) a prescribed labour-sponsored venture capital corporation,

(v) a prescribed investment contract corporation,

(vi) a non-resident-owned investment corporation, or

(vii) a registered securities dealer that was throughout the year a member of a prescribed stock exchange in Canada.

(2) Subsection (1) applies after February 22, 1994 except that, in its application to taxation years that ended before 1997, paragraph 186.1(b) of the Act, as enacted by that subsection, shall be read without reference to subparagraph 186.1(b)(vii) of the Act, as enacted by that subsection.

201. (1) The Act is amended by adding the following after section 187.6:

Provisions
applicable –
Crown
corporations

187.61 Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after 1987.

202. (1) Paragraphs 190.1(6)(a) and (b) of the Act are replaced by the following:

(a) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

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

(I) its income under Part I for the particular year from a business that was carried on by the corporation for profit or with a reasonable expectation of profit throughout the subsequent year, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year (in this paragraph referred to as the "preceding year") that ended before that time to the extent of that proportion of the corporation's tax payable under Part I for the particular year that

(i) the amount, if any, by which

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

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A)

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year.

(2) Subsection (1) applies to acquisitions of control that occur after April 26, 1995.

203. (1) Subparagraph 190.13(c)(i) of the Act is replaced by the following:

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) its surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under Part I.3 or this Part for the year

exceeds the total of all amounts each of which is

(II) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and

(III) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and

(B) its attributed surplus for the year,

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

204. (1) The portion of subsection 190.15(6) of the Act after paragraph (b) is replaced by the following:

are, for the purposes of this section and section 190.14, deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purpose of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

(2) Subsection (1) applies after April 26, 1995.

205. (1) The Act is amended by adding the following after section 190.21:

Provisions
applicable –
Crown
corporations

190.211 Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after May 23, 1985.

206. Where an amount in respect of deferred realized gains or losses of a life insurance corporation is added or deducted, as the case may be, in computing its taxable capital employed in Canada or capital under Part VI of the Act for a taxation year that ends after February 25, 1992 and began before 1999, the amount determined by the formula

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

shall be deducted, or, where the amount is negative, the absolute value of the amount shall be added, in computing the corporation's taxable capital employed in Canada under Part VI of the Act for the year, where

A is the corporation's taxable capital employed in Canada for the year under Part VI of the Act (determined without reference to this section);

B is the amount that would be the value of A if no amount were added or deducted in computing the corporation's taxable capital employed in Canada or capital for the year under Part VI of the Act in respect of its deferred realized gains or losses, as the case may be;

C is the number of days in the year that are after February 25, 1992 and before 1999; and

D is the number of days in the year.

207. (1) The portion of subsection 191.3(1) of the Act before paragraph (a) and paragraphs 191.3(1)(a) and (b) of the Act are replaced by the following:

Agreement
respecting

liability for
tax

191.3 (1) Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") that was related (otherwise than because of a right referred to in paragraph 251(5)(b) or because of the control of any corporation by Her Majesty in right of Canada or a province) to the transferor corporation

(a) throughout a particular taxation year of the transferor corporation (or, where the transferee corporation came into existence in that year, throughout the part of that year in which the transferee corporation was in existence), and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of the particular taxation year (or, where the transferor corporation came into existence in that last taxation year of the transferee corporation, throughout that part of that last year in which the transferor corporation was in existence)

(2) Subsection (1) applies to taxation years of a transferor corporation that begin after 1994, except that the amendment to the portion of subsection 191.3(1) of the Act before paragraph (a), as enacted by subsection (1), applies only to taxation years of the transferor corporation that end after April 26, 1995.

(3) Where an agreement under subsection 191.3(2) of the Act can be made between a transferor corporation and a transferee corporation solely because of the amendment to paragraph 191.3(1)(a) or (b) of the Act, as enacted by subsection (1), the agreement is deemed to have been filed on time if it is filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to.

208. (1) Section 191.4 of the Act is amended by adding the following after subsection (2):

Provisions
applicable –
Crown
corporations

(3) Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after 1987.

209. (1) The definition "specified active business" in section 204.8 of the Act is replaced by the following:

"specified
active
business"
« *entreprise
déterminée
exploitée
activement* »

"specified active business", at any time, means an active business that is carried on in Canada where

(a) at least 50% of the full-time employees employed at that time in respect of the business are employed in Canada, and

(b) at least 50% of the salaries and wages paid to employees employed at that time in respect of the business are reasonably attributable to services rendered in Canada by the employees;

(2) Subsection (1) applies after 1988.

210. (1) Paragraphs (d.1) and (e) of the definition "foreign property" in subsection 206(1) of the Act are replaced by the following:

(d.1) except as provided by subsection (1.1), any share (other than an excluded share) of the capital stock of, or any debt obligation issued by, a corporation (other than an investment corporation, mutual fund corporation or registered investment) that is a Canadian corporation, where shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property,

(e) except as prescribed, any share of the capital stock of a mutual fund corporation or investment corporation that is not a registered investment, other than a share of the capital stock of an investment corporation that was last acquired before October 14, 1971,

(2) Paragraph (g) of the definition "foreign property" in subsection 206(1) of the Act is amended by striking out the word "or" at the end of subparagraph (iv) and by adding the following after that subparagraph:

(iv.1) the European Bank for Reconstruction and Development,

(iv.2) the African Development Bank, or

(3) Subsection 206(1) of the Act is amended by adding the following in alphabetical order:

"affiliate"
« *société*
affiliée »

"affiliate" of a corporation (in this definition referred to as the "parent corporation") at any time is any other corporation where, at that time,

(a) the parent corporation controls the other corporation,

(b) the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the other corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of that other corporation, and

(ii) shares of the capital stock of the other corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of that other corporation, or

(c) the other corporation is controlled by a particular corporation and the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the particular corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the particular corporation, and

(ii) shares of the capital stock of the particular corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the particular corporation;

"carrying
value"

« valeur
comptable »

"carrying value" of a property of a corporation or partnership at any time means

(a) where a balance sheet of the corporation or the partnership as of that time was presented to the shareholders of the corporation or the members of the partnership and the balance sheet was prepared using generally accepted accounting principles and was not prepared using the equity or consolidation method of accounting, the amount in respect of the property reflected in the balance sheet, and

(b) in any other case, the amount that would have been reflected in a balance sheet of the corporation or the partnership as of that time if the balance sheet had been prepared in accordance with generally acceptable accounting principles and neither the equity nor consolidation method of accounting were used;

"designated
value"
« valeur
désignée »

"designated value" of a property at any time means the greater of

(a) the fair market value at that time of the property, and

(b) the carrying value at that time of the property;

"excluded
share"
« action exclue
»

"excluded share" means

(a) a share that is of a class of shares listed on a prescribed stock exchange in Canada, where no share of that class has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),

(b) a share last acquired after 1995 that is of a class of shares listed on a prescribed stock exchange in Canada, where

(i) no share of that class has been issued after July 20, 1995 (otherwise than pursuant to an agreement in writing made before July 21, 1995), and

(ii) the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)", and

(c) a share last acquired after 1995 as a consequence of the exercise of a right acquired before 1996 where the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)";

"investment
activity"
« *activité*
d'investissemen
t »

"investment activity" of a particular corporation means any business carried on by the corporation, or any holding of property by the corporation otherwise than as part of a business carried on by the corporation, the principal purpose of which is to derive income from, or to derive profits from the disposition of,

(a) shares (other than shares of the capital stock of another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),

(b) interests in trusts,

(c) indebtedness (other than indebtedness owing by another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),

(d) annuities,

(e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the corporation or another corporation with which the corporation does not deal at arm's length),

(f) currencies (other than currencies in the form of numismatic coins),

(g) interests in funds or entities other than corporations, partnerships and trusts,

(h) interests or options in respect of property described in any of paragraphs (a) to (g), or

(i) any combination of properties described in any of paragraphs (a) to (h);

"qualified
property"
« *bien
admissible* »

"qualified property" of a corporation means a property (other than a debt obligation or share issued by an affiliate of the corporation or by any corporation related to the corporation) owned by the corporation and used by it or an affiliate of the corporation in a specified active business carried on by it or the affiliate;

"significant
interest"
« *participation
notable* »

"significant interest" has the meaning that would be assigned by section 142.2 if that section were read without reference to paragraphs 142.2(3)(b) and (c);

"specified
active
business"
« *entreprise
déterminée
exploitée
activement* »

"specified active business" carried on by a corporation, at any time, means a particular business that is carried on by the corporation in Canada where

(a) the corporation employs in the particular business at that time more than 5 full-time employees and at least

(i) 50% of the full-time employees employed by the corporation at that time in the particular business are employed in Canada, and

(ii) 50% of the salaries and wages paid to employees employed at that time in the particular business are reasonably attributable to services rendered in Canada by the employees, or

(b) one or more other corporations associated with the corporation provide, in the course of carrying on one or more other active businesses, managerial, administrative, financial, maintenance or other similar services to the corporation in respect of the particular business and

(i) the corporation could reasonably be expected to require more than 5 full-time employees at that time in respect of the particular business if those services had not been provided,

(ii) at least 50% of the full-time employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are employed in Canada, and

(iii) at least 50% of the salaries and wages paid to employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are reasonably attributable to services rendered in Canada by the employees,

but does not include a business carried on by the corporation the principal purpose of which is to derive income from, or from the disposition of, shares and debt obligations the value of which can reasonably be considered to derive, directly or indirectly, primarily from foreign property;

"specified
proportion"
« *proportion
déterminée* »

"specified proportion" of a member of a partnership for a fiscal period of the partnership means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's

total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of \$1,000,000.

(4) Section 206 of the Act is amended by adding the following after subsection (1):

Exception where
substantial
Canadian
presence

(1.1) Property described in paragraph (d.1) of the definition "foreign property" in subsection (1) does not, at a particular time, include property of a taxpayer that is a share or debt obligation that was issued by a corporation that, at the particular time, is a Canadian corporation where

(a) either at any time in any of the last 15 months beginning before the time (in this subsection referred to as the "acquisition time") when the property was last acquired before the particular time by the taxpayer or at any time in the calendar year that includes the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or an affiliate of the corporation exceeded \$50,000,000;

(b) the particular time is not later than the end of the 15th month ending after the acquisition time and, at any time in any of the last 15 months beginning before the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(c) the particular time is after the acquisition time and, at any time in any of the first 15 months beginning after the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property;

(d) the particular time is after 1995 and, at the particular time,

(i) either

(A) the corporation was incorporated or otherwise formed under the laws of Canada or a province, or

(B) where the corporation was not required to maintain an office under the laws by or under which it was incorporated, the maintenance of an office in Canada is required under the constitutional documents of the corporation,

(ii) the corporation maintains an office in Canada, and

(iii) any of the following conditions applies, namely,

(A) the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the corporation or another corporation with which the corporation does not deal at arm's length,

(II) a business carried on by the corporation through a partnership of which the corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(B) another corporation that is controlled by the corporation employs more than 5 individuals in Canada full time and those individuals are not employed primarily in connection with

(I) an investment activity of the other corporation or another corporation with which the other corporation does not deal at arm's length,

(II) a business carried on by the other corporation through a partnership of which the other corporation is not a majority interest partner, or

(III) a business carried on by another corporation with which the other corporation does not deal at arm's length through a partnership of which that other corporation is not a majority interest partner,

(C) 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 any of the last 15 months that end before the particular time exceeds \$250,000,

(D) 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 any of the last 15 months that end before the particular time exceeds \$250,000, or

(E) in the calendar year that includes the particular time the corporation was continued from a jurisdiction outside Canada, or incorporated or otherwise formed and the total amount incurred in the year 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 exceeds \$250,000; or

(e) the particular time is after 1995 and, at the particular time, all or substantially all of the property of the corporation is not foreign property.

Partnerships

(1.2) For the purposes of paragraphs (1.1)(a) to (c) and this subsection,

(a) a member of a partnership

(i) is deemed not to own any interest in the partnership at any time, and

(ii) is deemed to own the member's specified proportion for the partnership's first fiscal period that ends at or after that time of each property that would, if the assumption in paragraph 96(1)(c) were made, be owned by the partnership at that time; and

(b) the carrying value at that time of that specified proportion of a partnership's property is deemed to be that specified proportion of the carrying value at that time to the partnership of that property.

Interpretation

(1.3) For the purpose of paragraph (1.1)(d),

(a) an employee of a corporation is deemed to be employed in Canada where the corporation's permanent establishment (as defined by regulation) to which the employee principally reports is situated in Canada; and

(b) services are deemed to be rendered in Canada to a corporation where the permanent establishment (as defined by regulation) for which the services are rendered is situated in Canada.

Rights in respect of foreign property

(1.4) For the purpose of determining whether a property owned by a taxpayer is foreign property at any time because of paragraph (f) or (h) of the definition "foreign property" in subsection (1), it shall be assumed that each other property not owned at that time by the taxpayer was acquired immediately before that time by the taxpayer.

Identical property

(1.5) Notwithstanding paragraphs (d.1), (f) and (h) of the definition "foreign property" in subsection (1), a property shall not be considered to be foreign property at a particular time of a taxpayer because of any of those paragraphs where

(a) the property is

(i) a share or debt obligation issued by a Canadian corporation, or

(ii) an interest in, a right to, a property that is convertible into or a property that is exchangeable for, a share or debt obligation issued by a Canadian corporation; and

(b) the property, or the share or obligation referred to in subparagraph (a)(ii), is identical to another property that is

owned at the particular time by the taxpayer and that is not foreign property at the particular time of the taxpayer.

(5) Section 206 of the Act is amended by adding the following after subsection (2):

Registered
investments

(2.01) Notwithstanding subsection (2), the tax payable under this section by a registered investment in respect of a month is equal to the lesser of

(a) the tax that would, but for this subsection, be payable by the registered investment in respect of the month, and

(b) the greater of

(i) 20% of the amount determined under paragraph (a), and

(ii) the amount determined by the formula

$$\$5,000 + (A \times B/C)$$

where

A is equal to the amount determined under paragraph (a),

B is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual

fund trust, prescribed trust or prescribed partnership, and

C is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time.

(6) Subsection 206(3) of the Act is repealed.

(7) Paragraph (d.1) of the definition "foreign property" in subsection 206(1) of the Act, as enacted by subsection (1), and the definitions "affiliate", "carrying value", "designated value", "excluded share", "qualified property", "specified active business" and "specified proportion" in subsection 206(1) of the Act, as enacted by subsection (3), apply to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. Eastern Standard Time on December 4, 1985) except that, with respect to shares and indebtedness last acquired before 1996, the reference to "primarily from foreign property" in that paragraph shall be read as a reference to "primarily from portfolio investments in property that is foreign property".

(8) Paragraph (e) of the definition "foreign property" in subsection 206(1) of the Act, as enacted by subsection (1), and subsection (6) apply to months that end after June 1995.

(9) Subsection (2) applies to months after March 1991, except that subparagraph (g)(iv.2) of the definition "foreign property" in subsection 206(1) of the Act, as enacted by subsection (2), does not apply to months before 1997.

(10) The definitions "investment activity" and "significant interest" in subsection 206(1) of the Act, as enacted by subsection (3), apply after 1995.

(11) Subsection (4) applies after December 4, 1985.

(12) Subsection (5) applies to months that end after 1992.

211. (1) Section 206.1 of the Act is replaced by the following:

Tax in respect
of acquisition
of shares

206.1 Where at any time a taxpayer to which this Part applies makes an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which

(a) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(b) the amount, if any, of the dividend that is received by the taxpayer.

(2) Subsection (1) applies to agreements entered into after 1992 except that, in its application to agreements entered into after 1992 and before April 26, 1995, section 206.1 of the Act, as enacted by subsection (1), shall be read as follows:

206.1 Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the lesser of

(a) the total of all amounts each of which is the amount, if any, by which

(i) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(ii) the amount, if any, of the dividend that is received by the taxpayer, and

(b) 1% of the fair market value of the share at the time the agreement is entered into.

212. (1) Section 207.6 of the Act is amended by adding the following after subsection (6):

Transfers

(7) Where an amount (other than an amount that is part of a series of periodic payments) is transferred directly to a retirement compensation arrangement (other than an arrangement the custodian of which is non-resident or which is deemed by subsection (5) to be a retirement compensation arrangement) from another retirement compensation arrangement,

(a) the amount shall not, solely because of the transfer, be included in computing a taxpayer's income under Part I;

(b) no deduction may be made in respect of the amount in computing a taxpayer's income under Part I; and

(c) the amount is considered, for the purpose of the definition "refundable tax" in subsection 207.5(1), to be paid as a distribution to one or more persons under the arrangement from which the amount is transferred and to be a contribution made under the arrangement to which the amount is transferred.

(2) Subsection (1) applies to amounts transferred after 1995.

213. (1) The portion of the description of A in subsection 211.1(3) of the Act before paragraph (a) is replaced by the following:

A is, subject to subsection (4), the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by 1/2 of the total of

(2) The portion of the description of D in subsection 211.1(3) of the Act before paragraph (a) is replaced by the following:

D is, subject to subsection (4), the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by 1/2 of the total of

(3) Section 211.1 of the Act is amended by adding the following after subsection (3):

Short taxation
year

(4) Where a taxation year of a life insurer is less than 51 weeks, the values of A and D in subsection (3) for the year are that proportion of those values otherwise so determined that the number of days in the year (other than February 29) is of 365.

(4) Subsections (1) to (3) apply to the 1992 and subsequent taxation years.

214. (1) Section 211.3 of the Act is replaced by the following:

Instalments

211.3 (1) Every life insurer shall, in respect of each of its taxation years, pay to the Receiver General on or before the last day of each month in the year, an amount equal to 1/12 of the lesser of

(a) the amount estimated by the insurer to be the annualized tax payable under this Part by it for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

Annualized tax
payable

(2) For the purposes of subsections (1) and 211.5(2), the annualized tax payable under this Part by a life insurer for a taxation year is the amount determined by the formula

$$(365/A) \times B$$

where

A is

(a) if the year is less than 357 days, the number of days in the year (other than February 29), and

(b) otherwise, 365; and

B is the tax payable under this Part by the insurer for the year.

(2) Subsection (1) applies to taxation years that begin after 1995.

215. (1) Section 211.5 of the Act is renumbered as subsection 211.5(1) and is amended by adding the following:

Interest on
instalments

(2) For the purposes of subsection 161(2) and section 163.1 as they apply to this Part, a life insurer is, in respect of a taxation year, deemed to have been liable to pay, on or before the last day of each month in the year, an instalment equal to 1/12 of the lesser of

(a) the annualized tax payable under this Part by the insurer for the year, and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year.

(2) Subsection (1) applies to taxation years that begin after 1995.

216. (1) Paragraph 212(1)(j) of the Act is replaced by the following:

Benefits

(j) any benefit described in any of subparagraphs 56(1)(a)(iii) to (vi), any amount described in paragraph 56(1)(x) or (z) (other than an amount transferred under circumstances in which subsection 207.6(7) applies) or the purchase price of an interest in a retirement compensation arrangement;

(2) Subsection 212(9) of the Act is replaced by the following:

Exemptions

(9) Where

(a) a dividend or interest is received by a trust from a non-resident-owned investment corporation,

(b) an amount (in this subsection referred to as the "royalty payment") is received by a trust as, on account of, in lieu of payment of or in satisfaction of, a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work, or

(c) interest is received by a mutual fund trust maintained primarily for the benefit of non-resident persons

and a particular amount is paid or credited to a non-resident person as income of or from the trust and can reasonably be regarded as having been derived from the dividend, interest or royalty payment, as the case may be, no tax is payable because of paragraph (1)(c) as a consequence of the payment or crediting of the particular amount if no tax would have been payable under this Part in respect of the dividend, interest or royalty payment, as the case may be, if it had been paid directly to the non-resident person instead of to the trust.

(3) Subsection (1) applies to amounts paid or credited after 1995.

(4) Subsection (2) applies to amounts paid or credited after April 1995 to non-resident persons.

217. (1) Subsection 216(4) of the Act is replaced by the following:

Optional method
of payment

(4) Where a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within 6 months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part; and

(b) if the non-resident person or, in the case of a partnership, a non-resident person who is a member of the partnership

(i) does not file a return for the year in accordance with the undertaking, or

(ii) does not pay under this section the tax the non-resident person or member is liable to pay for the year within the time provided for payment,

pay to the Receiver General, on account of the non-resident person's or the partnership's tax under this Part, on the expiration of the time for filing or payment, as the case may be, the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty minus the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

(2) Subsection (1) applies to amounts paid or credited after November 1991.

218. The heading "ADDITIONAL TAX ON CORPORATIONS (OTHER THAN CANADIAN CORPORATIONS) CARRYING ON BUSINESS IN CANADA" before section 219 of the Act is replaced by the following:

ADDITIONAL TAX ON NON-RESIDENT CORPORATIONS

219. (1) Subsection 219(1) of the Act is replaced by the following:

Additional tax

219. (1) Every corporation that is non-resident in a taxation year shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which the total of

(a) the corporation's taxable income earned in Canada for the year (in this subsection referred to as the corporation's "base amount"),

(b) the amount deducted because of section 112 and paragraph 115(1)(d.1) in computing the corporation's base amount,

(c) the amount deducted under paragraph 20(1)(v.1) in computing the corporation's base amount, other than any portion of the amount so deducted that was deductible because of the membership of the corporation in a partnership,

(d) 1/3 of the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property exceeds the total of all amounts each of which is

(i) an allowable capital loss of the corporation for the year from a disposition of a taxable Canadian property, or

(ii) an amount deductible because of paragraphs 111(1)(b) and 115(1)(e) in computing the corporation's base amount,

(e) the total of all amounts each of which

(i) is an amount in respect of a grant or credit that can reasonably be considered to have been received by the corporation in the year as a reimbursement or repayment of, or as indemnification or compensation for, an amount deducted because of

(A) paragraph (j), as it read in its application to the 1995 taxation year, in computing the amount determined under this subsection for a preceding taxation year that began before 1996, or

(B) paragraph (k) in computing the amount determined under this subsection for the year or for a preceding taxation year that began after 1995, and

(ii) was not included in computing the corporation's base amount for any taxation year,

(f) where, at any time in the year, the corporation has made one or more dispositions described in paragraph (l) of qualified property, the total of all amounts each of which is an amount in respect of one of those dispositions equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the corporation's proceeds of disposition of the property, and

(g) the amount, if any, claimed for the immediately preceding taxation year under paragraph (j) by the corporation,

exceeds the total of

(h) that proportion of the total of

(i) the total of the taxes payable under Parts I, I.3 and VI for the year by the corporation, determined without reference to subsection (1.1), and

(ii) the total of the income taxes payable to the government of a province for the year by the corporation, determined without reference to subsection (1.1),

that the corporation's base amount is of the amount that would, if this Act were read without reference to subsection (1.1), be the corporation's base amount,

(i) the total of all amounts each of which is the amount of interest or a penalty paid by the corporation in the year

(i) under this Act, or

(ii) on or in respect of an income tax payable by it to the government of a province under a law of the province relating to income tax,

to the extent that the interest or penalty was not deductible in computing its base amount for any taxation year,

(j) where the corporation was carrying on business in Canada at the end of the year, the amount claimed by the corporation for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada,

(k) the portion of the total of all amounts, each of which is an amount by which the corporation's base amount is increased because of paragraph 12(1)(o) or 18(1)(1.1) or (m) or subsection 69(6) or (7), that is not deductible under paragraph (h) or (j), and

(l) where the corporation has at any time in the year disposed of property (in this paragraph and paragraph (f) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation (in this paragraph referred to as the "purchaser corporation") that was, immediately after the disposition, a qualified related corporation of the corporation for consideration that includes a share of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in respect of a disposition in the year of a qualified property equal to the amount, if any, by which

(i) the fair market value of the qualified property at the time of the disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased because of the disposition, and

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Excluded gains

(1.1) For the purposes of subsection (1), paragraph 115(1)(b) shall be read without reference to subparagraphs (i) and (iii) to (xii).

(2) Subsection 219(8) of the Act is replaced by the following:

Meaning of
"qualified
related
corporation"

(8) For the purposes of this Part, a corporation is a "qualified related corporation" of a particular corporation if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of its capital stock (having full voting rights under all circumstances) are owned by

- (a) the particular corporation,
- (b) a subsidiary wholly-owned corporation of the particular corporation,
- (c) a corporation of which the particular corporation is a subsidiary wholly-owned corporation,
- (d) a subsidiary wholly-owned corporation of a corporation of which the particular corporation is also a subsidiary wholly-owned corporation, or
- (e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

(3) Subsections (1) and (2) apply to taxation years that begin after 1995 except that, in its application to taxation years that began in 1996, the reference in paragraph 219(1)(g) of the Act, as enacted by subsection (1), to "paragraph (j)" shall be read as a reference to "paragraph (h), as it read in its application to the 1995 taxation year, or paragraph (j)".

220. (1) Section 219.1 of the Act is replaced by the following:

Corporate
emigration

219.1 Where a taxation year of a corporation is deemed by paragraph 128.1(4)(a) to have ended at any time, the corporation shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which

(a) the fair market value of all the property owned by the corporation immediately before that time

exceeds the total of

(b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before that time,

(c) all amounts (other than amounts payable by the corporation in respect of dividends and amounts payable under this section) each of which is a debt owing by the corporation, or an obligation of the corporation to pay an amount, that is outstanding at that time, and

(d) where a tax was payable by the corporation under subsection 219(1) or this section for a preceding taxation year that began before 1996 and after the corporation last became resident in Canada, 4 times the total of all amounts that would, but for sections 219.2 and 219.3 and any agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada, have been so payable.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

220.1 (1) Section 219.3 of the Act is replaced by the following:

Effect of tax
treaty

219.3 For the purpose of section 219.1, where an agreement or convention between the Government of Canada and the government of another country that has the force of law in Canada provides that the rate of tax imposed on a dividend paid by a corporation resident in Canada to a corporation resident in the other country that owns all of the shares of the capital stock of the corporation

resident in Canada shall not exceed a specified rate, the reference in section 219.1 to "25%" shall, in respect of a corporation that ceased to be resident in Canada and to which the agreement or convention applies at the beginning of its first taxation year after its taxation year that is deemed by paragraph 128.1(4)(a) to have ended, be read as a reference to the specified rate unless it can reasonably be concluded that one of the main reasons that the corporation became resident in the other country was to reduce the amount of tax payable under this Part or Part XIII.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

221. (1) Section 220 of the Act is amended by adding the following after subsection (2):

Delegation

(2.01) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

(2) Subsection 220(3.4) of the Act is replaced by the following:

Assessments

(3.4) Notwithstanding subsections 152(4), (4.01), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year that began before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3).

(3) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under paragraph 221(1)(f) of the Act before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by that Minister made under subsection 220(2.01) of the Act, as enacted by subsection (1), changes the delegation of that power or duty.

(4) Subsection (2) applies to elections in respect of the 1985 and subsequent taxation years.

222. (1) Paragraph 221(1)(d.1) of the Act is replaced by the following:

(d.1) requiring any person or partnership to provide any information including their name, address, Social Insurance

Number or business number to any class of persons required to make an information return containing that information;

(2) Paragraph 221(1)(f) of the Act is repealed.

(3) Section 221 of the Act is amended by adding the following after subsection (3):

Incorporation
by reference

(4) A regulation made under this Act may incorporate by reference material as amended from time to time.

(4) Subsection (3) applies to any regulation, regardless of whether it is made before or after this Act is assented to.

223. (1) The Act is amended by adding the following after section 222:

Court costs

222.1 Where an amount is payable by a person to Her Majesty because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, subsections 220(4) and (4.2) and sections 223, 224 to 225 and 226 apply to the amount as if the amount were a debt owing by the person to Her Majesty on account of tax payable by the person under this Act.

(2) Subsection (1) applies to amounts that are payable after this Act is assented to, including amounts that became payable before this Act is assented to.

224. (1) Subsection 223(1) of the Act is amended by adding the following after paragraph (b):

(b.1) an amount payable under the *Unemployment Insurance Act* by the person;

(2) Subsection (1) is deemed to have come into force on June 30, 1996.

225. The portion of subsection 225.1(1) of the Act before paragraph (a) is replaced by the following:

Collection
restrictions

225.1 (1) Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under

subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount,

226. (1) Subsection 227(4) of the Act is replaced by the following:

Trust for
moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of
trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of
security
interest

(4.2) For the purposes of subsections (4) and (4.1), a security interest does not include a prescribed security interest.

(2) Subsection 227(9.1) of the Act is replaced by the following:

Penalty

(9.1) Notwithstanding any other provision of this Act, any other enactment of Canada, any enactment of a province or any other law, the penalty for failure to remit an amount required to be remitted by a person on or before a prescribed date under subsection 153(1), subsection 21(1) of the *Canada Pension Plan*, subsection 53(1) of the *Unemployment Insurance Act* and subsection 82(1) of the *Employment Insurance Act* shall, unless the person who is required to remit the amount has, knowingly or under circumstances amounting to gross negligence, delayed in remitting the amount or has, knowingly or under circumstances amounting to gross negligence, remitted an amount less than the amount required, apply only to the amount by which the total of all amounts so required to be remitted on or before that date exceeds \$500.

(3) Subsection 227(10) of the Act is replaced by the following:

Assessment

(10) The Minister may at any time assess any amount payable under

(a) subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235 by a person,

(b) subsection 237.1(7.4) by a person or partnership,

(c) subsection (10.2) by a person as a consequence of a failure of a non-resident person to deduct or withhold any amount, or

(d) Part XIII by a person resident in Canada,

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

(4) Subsection (1) is deemed to have come into force on June 15, 1994.

(5) Subsection (2) is deemed to have come into force on June 30, 1996.

(6) Subsection (3) applies after December 1, 1994.

227. Section 230 of the Act is amended by adding the following after subsection (4):

Electronic
records

(4.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

Exemptions

(4.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (4.1).

228. The definition "documents" in section 231 of the Act is replaced by the following:

"document"
« *document* »

"document" includes money, a security and a record;

229. (1) Subsection 231.5(1) of the Act is replaced by the following:

Copies

231.5 (1) Where any document is seized, inspected, audited, examined or provided under any of sections 231.1 to 231.4, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

230. The portion of subsection 232(3.1) of the Act before paragraph (a) is replaced by the following:

Examination of
certain
documents where
privilege
claimed

(3.1) Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

231. (1) Section 233.1 of the Act is replaced by the following:

Definitions

233.1 (1) The definitions in this subsection apply in this section.

"reportable
transaction"
« opération à
déclarer »

"reportable transaction" means

(a) in the case of

(i) a reporting person for a taxation year who is not resident in Canada at any time in the year, or

(ii) a reporting partnership for a fiscal period no member of which is resident in Canada in the period,

a transaction or series of transactions that relate in any manner whatever to a business carried on in Canada by the reporting person or partnership in the year or period or a preceding taxation year or period; and

(b) in any other case, a transaction or series of transactions that relate in any manner whatever to a business carried on by a reporting person (other than a business carried on by a reporting person as a member of

a partnership) or partnership in a taxation year or fiscal period.

"reporting
partnership"
« *société de
personnes
déclarante* »

"reporting partnership" for a fiscal period means a partnership

(a) a member of which is resident in Canada in the period; or

(b) that carries on a business in Canada in the period.

"reporting
person"
« *déclarant* »

"reporting person" for a taxation year means a person who, at any time in the year,

(a) is resident in Canada; or

(b) is non-resident and carries on a business (other than a business carried on as a member of a partnership) in Canada.

"transaction"
« *opération* »

"transaction" includes an arrangement or event.

Reporting
person's
information
return

(2) Subject to subsection (4), a reporting person for a taxation year shall, on or before the reporting person's filing-due date for the year, file with the Minister, in respect of each non-resident person with whom the reporting person does not deal at arm's length in the year and each partnership of which such a non-resident person is a member, an information return for the year in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting person and the non-resident person or the partnership, as the case may be, participated in the year.

Reporting
partnership's
information
return

(3) Subject to subsection (4), a reporting partnership for a fiscal period shall, on or before the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the reporting partnership, file with the Minister, in respect of each non-resident person with whom the reporting partnership, or a member of the reporting partnership, does not deal at arm's length in the period and each partnership of which such a non-resident person is a member, an information return for the period in prescribed form containing prescribed information in respect of the reportable transactions in which the reporting partnership and the non-resident person or the partnership, as the case may be, participated in the period.

De minimis
exception

(4) A reporting person or partnership that, but for this subsection, would be required under subsection (2) or (3) to file an information return for a taxation year or fiscal period is not required to file the return unless the total of all amounts, each of which is the total fair market value of the property or services that relate to a reportable transaction in which the reporting person or partnership and any non-resident person with whom the reporting person or partnership, or a member of the reporting partnership, does not deal at arm's length in the year or period, or a partnership of which such a non-resident person is a member, as the case may be, participated in the year or period, exceeds \$1,000,000.

Deemed member
of partnership

(5) For the purposes of this section, a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

(2) Subsection (1) applies to taxation years and fiscal periods that begin after 1997.

232. (1) Subparagraph (b)(iv) of the definition "exempt trust" in subsection 233.2(1) of the Act is replaced by the following:

(iv) is either

(A) maintained primarily for the benefit of non-resident individuals, or

(B) governed by an employees profit sharing plan; or

(2) The portion of paragraph (b) of the definition "specified foreign trust" in subsection 233.2(1) of the Act before subparagraph (ii) is replaced by the following:

(b) at that time the terms or conditions of the trust or any arrangement in respect of the trust

(i) permit persons (other than persons described in any of subparagraphs (a)(i) to (viii) of the definition "specified beneficiary") who are not beneficially interested in the trust at that time to become, because of the exercise of any discretion by any person or partnership, beneficially interested in the trust after that time, or

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

<[ip2n,2n]>(c) a non-arm's length indicator applied to the trust at the end of the trust's year in respect of the transfer or loan,

(4) Subsection (1) applies to returns in respect of trusts' taxation years that begin after 1995.

(5) Subsections (2) and (3) apply after November 1997.

233. (1) The portion of subsection 237(1) of the Act after paragraph (b) is replaced by the following:

<[ip0n,0n]>apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number.

(2) Subsection 237(2) of the Act is replaced by the following:

Production of
number

(1.1) Every person and partnership shall provide

(a) in the case of an individual (other than a trust), the individual's Social Insurance Number, and

(b) in any other case, the person's or partnership's business number

in any return filed under this Act or, at the request of any person required to make an information return pursuant to this Act or the regulations requiring either number, to that person.

Number required
in information
returns

(2) For the purposes of this Act and the regulations, a person required to make an information return requiring a Social Insurance Number or a business number of a person or partnership

(a) shall make a reasonable effort to obtain the number from the person or partnership; and

(b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required under this Act or a regulation, the number without the written consent of the person or partnership.

234. (1) The definition "tax shelter" in subsection 237.1(1) of the Act is replaced by the following:

"tax shelter"
« *abri fiscal* »

"tax shelter" means any property (including, for greater certainty, any right to income) in respect of which it can reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the property, that, if a person were to acquire an interest in the property, at the end of a particular taxation year that ends within 4 years after the day on which the interest is acquired,

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

(i) an amount, or a loss in the case of a partnership interest, represented to be deductible in computing income in respect of the interest in the property (including, where the property is a right to income, an amount or loss in respect of that right that is represented to be deductible) and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or

(ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i),

would equal or exceed

(b) the amount, if any, by which

(i) the cost to the person of the interest in the property at the end of the particular year, determined without reference to section 143.2,

would exceed

(ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed, directly or indirectly, in respect of the interest in the property by the person or another person with whom the person does not deal at arm's length,

but does not include property that is a flow-through share or a prescribed property.

(2) Paragraphs (a) and (b) of the definition "promoter" in subsection 237.1(1) of the Act are replaced by the following:

(a) sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter,

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of the tax shelter, or

(c) accepts, whether as a principal or agent, consideration in respect of the tax shelter,

(3) Subsection 237.1(1) of the Act is amended by adding the following in alphabetical order:

"person"
« *personne* »

"person" includes a partnership;

(4) Subsections 237.1(4) to (7) of the Act are replaced by the following:

Sales
prohibited

(4) No person shall, whether as a principal or an agent, sell or issue, or accept consideration in respect of, a tax shelter before the Minister has issued an identification number for the tax shelter.

Providing tax
shelter number

(5) Every promoter in respect of a tax shelter shall

(a) make reasonable efforts to ensure that all persons who acquire or otherwise invest in the tax shelter are provided with the identification number issued by the Minister for the tax shelter;

(b) prominently display on the upper right-hand corner of any statement of earnings prepared by or on behalf of the promoter in respect of the tax shelter the identification number issued for the tax shelter; and

(c) on every written statement made after 1995 by the promoter that refers either directly or indirectly and either expressly or impliedly to the issuance by the Department of National Revenue of an identification number for the tax shelter, as well as on the copies of the portion of the information return to be forwarded pursuant to subsection (7.3), prominently display

(i) where the statement or return is wholly or partly in English, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

(ii) where the statement or return is wholly or partly in French, the following:

"Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de

l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

and

(iii) where the statement includes neither English nor French, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter.

Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

Deductions and
claims
disallowed

(6) No amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter.

Deductions and
claims
disallowed

(6.1) No amount may be deducted or claimed by any person for any taxation year in respect of a tax shelter of the person where any person is liable to a penalty under subsection (7.4) or 162(9) in respect of the tax shelter or interest on the penalty and

(a) the penalty or interest has not been paid; or

(b) the penalty and interest have been paid, but an amount on account of the penalty or interest has been repaid under subsection 164(1.1) or applied under subsection 164(2).

Assessments

(6.2) Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to subsection (6.1).

Information
return

(7) Every promoter in respect of a tax shelter who accepts consideration in respect of the tax shelter or who acts as a principal or agent in respect of the tax shelter in a calendar year shall, in prescribed form and manner, file an information return for the year containing

(a) the name, address and either the Social Insurance Number or business number of each person who so acquires or otherwise invests in the tax shelter in the year,

(b) the amount paid by each of those persons in respect of the tax shelter, and

(c) such other information as is required by the prescribed form

unless an information return in respect of the tax shelter has previously been filed.

Time for filing
return

(7.1) An information return required under subsection (7) to be filed in respect of the acquisition of an interest in a tax shelter in a calendar year shall be filed with the Minister on or before the last day of February of the following calendar year.

Time for filing
- special case

(7.2) Notwithstanding subsection (7.1), where a person is required under subsection (7) to file an information return in respect of a business or activity and the person discontinues that business or activity, the return shall be filed on or before the earlier of

(a) the day referred to in subsection (7.1); and

(b) the day that is 30 days after the day of the discontinuance.

Copies to be
provided

(7.3) Every person required to file a return under subsection (7) shall, on or before the day on or before which the return is required to be filed with the Minister, forward to each person to whom the return relates 2 copies of the portion of the return relating to that person.

Penalty

(7.4) Every person who files false or misleading information with the Minister in respect of an application under subsection (2) or, whether as a principal or as an agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter is liable to a penalty equal to the greater of

(a) \$500, and

(b) 25% of the total of all amounts each of which is the consideration received or receivable from a person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

(5) Subsections (1) and (3) apply after November 1994.

(6) Subsections (2) and (4) apply after December 1, 1994 except that in applying subsection 237.1(7) of the Act, as enacted by subsection (4), before the day this Act is assented to the reference therein to "either the Social Insurance Number or business number" shall be read as "the Social Insurance Number".

235. (1) Section 239 of the Act is amended by adding the following after subsection (1):

Offenses re
refunds and
credits

(1.1) Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under this Act in an amount that is greater than the amount to which the person or other person is entitled

(a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under this Act or a regulation,

(b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person,

(c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person,

(d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person,

(e) wilfully in any manner, or

(f) by conspiring with any person to commit any offence under this subsection,

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(g) a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, or

(h) both the fine described in paragraph (g) and imprisonment for a term not exceeding 2 years.

(2) Subsection 239(2) of the Act is replaced by the following:

Prosecution on
indictment

(2) Every person who is charged with an offence described in subsection (1) or (1.1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100% and not more than 200% of

(i) where the offence is described in subsection (1), the amount of the tax that was sought to be evaded, and

(ii) where the offence is described in subsection (1.1), the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled; and

(b) imprisonment for a term not exceeding 5 years.

(3) Subsection 239(2.3) of the Act is replaced by the following:

Offence with
respect to an
identification
number

(2.3) Every person to whom the Social Insurance Number of an individual or to whom the business number of a taxpayer or partnership has been provided under this Act or a regulation, and every officer, employee and agent of such a person, who without written consent of the individual, taxpayer or partnership, as the case may be, knowingly uses, communicates or allows to be communicated the number (otherwise than as required or authorized by law, in the course of duties in connection with the administration or enforcement of this Act or for a purpose for which it was provided by the individual, taxpayer or partnership, as the case may be) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both.

(4) Subsection 239(3) of the Act is replaced by the following:

Penalty on
conviction

(3) Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162 or 163 for the same contravention unless the penalty was assessed before the information or complaint giving rise to the conviction was laid or made.

236. (1) Paragraph 241(1)(c) of the Act is replaced by the following:

(c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

(2) Paragraph 241(3)(b) of the Act is replaced by the following:

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

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

(a) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, solely for that purpose;

(4) Subparagraph 241(4)(d)(x) of the Act is replaced by the following:

(x) to an official of the Canada Employment Insurance Commission or the Department of Employment and Immigration solely for the purpose of the administration or enforcement of, or the evaluation or formation of policy for the purposes of, the *Unemployment Insurance Act*, the *Employment Insurance Act* or an employment program of the Government of Canada,

(5) Clause 241(4)(d)(xiii)(B) of the Act is replaced by the following:

(B) Her Majesty in right of a province, or

(6) Subparagraph 241(4)(e)(vii) of the Act is replaced by the following:

(vii) section 79 of the *Family Orders and Agreements Enforcement Assistance Act*,

(7) Paragraph 241(4)(h) of the Act is replaced by the following:

(h) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty in right of Canada to assist in the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, to the extent that the information is relevant for the purpose;

(8) Subsection 241(4) of the Act is amended by striking out the word "or" at the end of paragraph (k), by adding the word "or" at the end of paragraph (l) and by adding the following after paragraph (l):

(m) provide taxpayer information to an official of the government of a province solely for use in the management or

administration by that government of a program relating to payments under subsection 164(1.8).

(9) The definition "business number" in subsection 241(10) of the Act is repealed.

(10) The definition "authorized person" in subsection 241(10) of the Act is replaced by the following:

"authorized
person"
« *personne
autorisée* »

"authorized person" means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*;

(11) Subsections (1) to (4), (7) and (10) are deemed to have come into force on June 30, 1996.

(12) Subsection (6) is deemed to have come into force on May 1, 1997.

237. (1) Subsection 244(9) of the Act is replaced by the following:

Proof of
documents

(9) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising a power of the Minister or by or on behalf of a taxpayer, is evidence of the nature and contents of the document.

(2) Subsections 244(13) to (15) of the Act are replaced by the following:

Proof of
documents

(13) Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or an officer authorized to exercise a power or

perform a duty of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

Mailing date

(14) For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, it shall be presumed to be mailed on the date of that notice or notification.

Date when
assessment made

(15) Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of mailing of the notice of the assessment or determination.

238. (1) The Act is amended by adding the following after section 246:

PART XVI.1

TRANSFER PRICING

Definitions

247. (1) The definitions in this subsection apply in this section.

"arm's length
allocation"
« *attribution
de pleine
concurrence* »

"arm's length allocation" means, in respect of a transaction, an allocation of profit or loss that would have occurred between the participants in the transaction if they had been dealing at arm's length with each other.

"arm's length
transfer price"
« *prix de
transfert de
pleine
concurrence* »

"arm's length transfer price" means, in respect of a transaction, an amount that would have been a transfer price in respect of the transaction if the participants in the transaction had been dealing at arm's length with each other.

"documentation-
due date"
« *date limite
de production* »

"documentation-due date" for a taxation year or fiscal period of a person or partnership means

(a) in the case of a person, the person's filing-due date for the year; or

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

"qualifying
cost
contribution
arrangement"
« *arrangement
admissible de
participation
au coût* »

"qualifying cost contribution arrangement" means an arrangement under which reasonable efforts are made by the participants in the arrangement to establish a basis for contributing to, and to contribute on that basis to, the cost of producing, developing or acquiring any property, or acquiring or performing any services, in proportion to the benefits which each participant is reasonably expected to derive from the property or services, as the case may be, as a result of the arrangement.

"tax benefit"
« *avantage
fiscal* »

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act.

"transaction"
« *opération* »

"transaction" includes an arrangement or event.

"transfer
price"
« *prix de
transfert* »

"transfer price" means, in respect of a transaction, an amount paid or payable or an amount received or receivable, as the case may be, by a participant in the transaction as a price, a rental, a royalty, a premium or other payment for, or for the use, production or reproduction of, property or as consideration for services (including services provided as an employee and the insurance or reinsurance of risks) as part of the transaction.

"transfer
pricing capital
adjustment"
« *redressement
de capital* »

"transfer pricing capital adjustment" of a taxpayer for a taxation year means the total of

(a) all amounts each of which is

(i) 3/4 of the amount, if any, by which the adjusted cost base to the taxpayer of a capital property (other than a depreciable property) or an eligible capital expenditure of the taxpayer in respect of a business is reduced in the year because of an adjustment made under subsection (2), or

(ii) the amount, if any, by which the capital cost to the taxpayer of a depreciable property is reduced in the year because of an adjustment made under subsection (2); and

(b) all amounts each of which is that proportion of the total of

(i) 3/4 of the amount, if any, by which the adjusted cost base to a partnership of a capital property (other than a depreciable property) or an eligible capital expenditure of a partnership in respect of a business is reduced in a fiscal period that ends in the year because of an adjustment made under subsection (2), and

(ii) the amount, if any, by which the capital cost to a partnership of a depreciable property is reduced in the period because of an adjustment made under subsection (2),

that

(iii) the taxpayer's share of the income or loss of the partnership for the period

is of

(iv) the income or loss of the partnership for the period,

and where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be \$1,000,000 for the purpose of determining a taxpayer's share of the partnership's income for the purpose of this definition.

"transfer
pricing capital
setoff
adjustment"
« *redressement
compensatoire
de capital* »

"transfer pricing capital setoff adjustment" of a taxpayer for a taxation year means the amount, if any, that would be the taxpayer's transfer pricing capital adjustment for the year if the references, in the definition "transfer pricing capital adjustment", to "reduced" were read as "increased".

"transfer
pricing income
adjustment"
« *redressement
de revenu* »

"transfer pricing income adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year) would result in an increase in the taxpayer's income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

"transfer
pricing income
setoff
adjustment"
« *redressement
compensatoire
de revenu* »

"transfer pricing income setoff adjustment" of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2) (other than an adjustment included in determining a transfer pricing capital setoff adjustment of the taxpayer for a taxation year) would result in a decrease in the taxpayer's income for the year or an increase in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2).

Transfer
pricing
adjustment

(2) Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions and

(a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or

(b) the transaction or series

(i) would not have been entered into between persons dealing at arm's length, and

(ii) can reasonably be considered not to have been entered into primarily for *bona fide* purposes other than to obtain a tax benefit,

any amounts that, but for this section and section 245, would be determined for the purposes of this Act in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted (in this section referred to as an "adjustment") to the quantum or nature of the amounts that would have been determined if,

(c) where only paragraph (a) applies, the terms and conditions made or imposed, in respect of the transaction or series,

between the participants in the transaction or series had been those that would have been made between persons dealing at arm's length, or

(d) where paragraph (b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm's length, under terms and conditions that would have been made between persons dealing at arm's length.

Penalty

(3) A taxpayer (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) is liable to a penalty for a taxation year equal to 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year, where

(a) the amount, if any, by which

(i) the total of

(A) the taxpayer's transfer pricing capital adjustment for the year, and

(B) the taxpayer's transfer pricing income adjustment for the year

exceeds the total of

(ii) the total of all amounts each of which is the portion of the taxpayer's transfer pricing capital adjustment or transfer pricing income adjustment for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act, and

(iii) the total of all amounts, each of which is the portion of the taxpayer's transfer pricing capital setoff adjustment or transfer pricing income setoff adjustment

for the year that can reasonably be considered to relate to a particular transaction, where

(A) the transaction is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine arm's length transfer prices or arm's length allocations in respect of the transaction, and to use those prices or allocations for the purposes of this Act,

is greater than

(b) the lesser of

(i) 10% of the amount that would be the taxpayer's gross revenue for the year if this Act were read without reference to subsection (2), subsections 69(1) and (1.2) and section 245, and

(ii) \$5,000,000.

Contemporaneous
documentation

(4) For the purposes of subsection (3) and the definition "qualifying cost contribution arrangement" in subsection (1), a taxpayer or a partnership is deemed not to have made reasonable efforts to determine and use arm's length transfer prices or arm's length allocations in respect of a transaction or not to have participated in a transaction that is a qualifying cost contribution arrangement, unless the taxpayer or the partnership, as the case may be,

(a) makes or obtains, on or before the taxpayer's or partnership's documentation-due date for the taxation year or fiscal period, as the case may be, in which the transaction is entered into, records or documents that provide a description that is complete and accurate in all material respects of

(i) the property or services to which the transaction relates,

(ii) the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction,

(iii) the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into,

(iv) the functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction,

(v) the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction, and

(vi) the assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction;

(b) for each subsequent taxation year or fiscal period, if any, in which the transaction continues, makes or obtains, on or before the taxpayer's or partnership's documentation-due date for that year or period, as the case may be, records or documents that completely and accurately describe each material change in the year or period to the matters referred to in any of subparagraphs (a)(i) to (vi) in respect of the transaction; and

(c) provides the records or documents described in paragraphs (a) and (b) to the Minister within 3 months after service, made personally or by registered or certified mail, of a written request therefor.

Partner's gross
revenue

(5) For the purpose of subparagraph (3)(b)(i), where a taxpayer is a member of a partnership in a taxation year, the taxpayer's gross revenue for the year as a member of the partnership from any activities carried on by means of the partnership is deemed to be that proportion of the amount that would be the partnership's gross revenue from the activities if it were a taxpayer (to the extent that amount does not include amounts received or receivable from other partnerships of which the taxpayer is a member in the year), for a fiscal period of the partnership that ends in the year, that

(a) the taxpayer's share of the income or loss of the partnership from its activities for the period

is of

(b) the income or loss of the partnership from its activities for the period,

and where the income and loss of the partnership from its activities are nil for the period, the income of the partnership from its activities for the period is deemed to be \$1,000,000 for the purpose of determining a taxpayer's share of the partnership's income from its activities for the purpose of this subsection.

Deemed member
of partnership

(6) For the purposes of this section, where a person is a member of a partnership that is a member of another partnership,

(a) the person is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

Exclusion for
loans to
subsidiary

(7) Subsection (2) does not apply to a transaction that is a loan referred to in subsection 17(3).

Provisions not
applicable

(8) Where subsection (2) would, if this Act were read without reference to sections 67 and 68 and subsections 69(1) and (1.2), apply to adjust an amount under this Act, sections 67 and 68 and subsections 69(1) and (1.2) shall not apply to determine the amount if subsection (2) is applied to adjust the amount.

Anti-avoidance

(9) For the purposes of determining a taxpayer's gross revenue under subparagraph (3)(b)(i) and subsection (5), a transaction or series of transactions is deemed not to have occurred, if one of the purposes of the transaction or series was to increase the taxpayer's gross revenue for the purpose of subsection (3).

No adjustment
unless
appropriate

(10) An adjustment (other than an adjustment that results in or increases a transfer pricing capital adjustment or a transfer pricing income adjustment of a taxpayer for a taxation year) shall not be made under subsection (2) unless, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

Provisions
applicable to
Part

(11) Sections 152, 158, 159, 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

(2) Subsections 247(1), (2), (6), (7), (8), (10) and (11) of the Act, as enacted by subsection (1), apply to taxation years and fiscal periods that begin after 1997.

(3) Subsections 247(3), (4), (5) and (9) of the Act, as enacted by subsection (1), apply with respect to adjustments made under subsection 247(2) of the Act, as enacted by subsection (1), for taxation years and fiscal periods that begin after 1998, except that

(a) subsections 247(3) to (5) and (9) of the Act, as enacted by subsection (1), do not apply to transactions completed before September 11, 1997; and

(b) a record or document made or obtained or provided to the Minister of National Revenue by a taxpayer or a partnership on or before the taxpayer's or partnership's documentation-due date for the taxpayer's or partnership's first taxation year or fiscal period, as the case may be, that begins after 1998 is deemed for the purpose of subsection 247(4) of the Act, as enacted by subsection (1), to have been so made, obtained or provided on a timely basis.

239. (1) The definitions "lending asset", "mineral" and "scientific research and experimental development" in subsection 248(1) of the Act are replaced by the following:

"lending asset"
« titre de
crédit »

"lending asset" means a bond, debenture, mortgage, note, agreement of sale or any other indebtedness or a prescribed share, but does not include a prescribed property;

"mineral"

« *minéral* »

"mineral" includes ammonite gemstone, bituminous sands, calcium chloride, coal, kaolin, oil shale and silica, but does not include petroleum, natural gas or a related hydrocarbon not expressly referred to in this definition;

"scientific
research and
experimental
development"
« *activités de
recherche
scientifique et
de
développement
expérimental* »

"scientific research and experimental development" means systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is

(a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,

(b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, or

(c) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto,

and, in applying this definition in respect of a taxpayer, includes

(d) work undertaken by or on behalf of the taxpayer with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with the needs, and directly in support, of work described in paragraph (a), (b), or (c) that is undertaken in Canada by or on behalf of the taxpayer,

but does not include work with respect to

(e) market research or sales promotion,

(f) quality control or routine testing of materials, devices, products or processes,

(g) research in the social sciences or the humanities,

(h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,

(i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process,

(j) style changes, or

(k) routine data collection;

(2) Paragraph (g) of the definition "Canadian field processing" in subsection 248(1) of the Act is replaced by the following:

(g) gas is not considered to cease to be raw natural gas solely because of its processing at a field separation and dehydration facility until it is received by a common carrier of natural gas, and

(3) Paragraph (e) of the definition "cost amount" in subsection 248(1) of the Act is amended by striking out the word "or" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) a right to receive production (as defined in subsection 18.1(1)) to which a matchable expenditure (as defined in subsection 18.1(1)) relates,

(4) Subparagraph (d)(ii) of the definition "mineral resource" in subsection 248(1) of the Act is replaced by the following:

(ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or

(5) Paragraph (d.1) of the definition "term preferred share" in subsection 248(1) of the Act is replaced by the following:

(d.1) that is listed on a prescribed stock exchange in Canada and was issued before April 22, 1980 by

(i) a corporation referred to in any of paragraphs (a) to (d) of the definition "specified financial institution" in this subsection,

(ii) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(iii) an issuing corporation associated with a corporation described in subparagraph (i) or (ii),

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

"business
number"
« *numéro
d'entreprise* »

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

(a) a corporation or partnership, or

(b) any other association or taxpayer that carries on a business or is required by this Act to deduct or withhold an amount from an amount paid or credited or deemed to be paid or credited under this Act

and of which the Minister has notified the corporation, partnership, association or taxpayer;

"cemetery care
trust"
« *fiducie pour
l'entretien
d'un
cimetière* »

"cemetery care trust" has the meaning assigned by subsection 148.1(1);

"flow-through
share"
« *action
accréditive* »

"flow-through share" has the meaning assigned by subsection 66(15);

"legal
representative"
« *représentant
légal* »

"legal representative" of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate;

"licensed annuities provider"
« *fournisseur de rentes autorisé* »

"licensed annuities provider" has the meaning assigned by subsection 147(1);

"majority interest partner"
« *associé détenant une participation majoritaire* »

"majority interest partner" of a particular partnership at any time means a person or partnership (in this definition referred to as the "taxpayer")

(a) whose share of the particular partnership's income from all sources for the last fiscal period of the particular partnership that ended before that time (or, if the particular partnership's first fiscal period includes that time, for that period) would have exceeded 1/2 of the particular partnership's income from all sources for that period if the taxpayer had held throughout that period each interest in the partnership that the taxpayer or a person affiliated with the taxpayer held at that time, or

(b) whose share, if any, together with the shares of every person with whom the taxpayer is affiliated, of the total amount that would be paid to all members of the particular partnership (otherwise than as a share of any income of the partnership) if it were wound up at that time exceeds 1/2 of that amount;

"record" « *registre* »

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form;

(7) Subsection 248(25) of the Act is replaced by the following:

Beneficially
interested

(25) For the purposes of this Act,

(a) a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any person or partnership) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more trusts or partnerships;

(b) except for the purpose of this paragraph, a particular person or partnership is deemed to be beneficially interested in a particular trust at a particular time where

(i) the particular person or partnership is not beneficially interested in the particular trust at the particular time,

(ii) because of the terms or conditions of the particular trust or any arrangement in respect of the particular trust at the particular time, the particular person or partnership might, because of the exercise of any discretion by any person or partnership, become beneficially interested in the particular trust at the particular time or at a later time, and

(iii) at or before the particular time, either

(A) the particular trust has acquired property, directly or indirectly in any manner whatever, from

(I) the particular person or partnership,

(II) another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length,

(III) a person or partnership with whom the other person referred to in subclause (II) does not deal at arm's length,

(IV) a controlled foreign affiliate of the particular person or of another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length, or

(V) a non-resident corporation that would, if the particular partnership were a corporation resident in Canada, be a controlled foreign affiliate of the particular partnership, or

(B) a person or partnership described in any of subclauses (A)(I) to (V) has given a guarantee on behalf of the particular trust or provided any other financial assistance whatever to the particular trust; and

(c) a member of a partnership that is beneficially interested in a trust is deemed to be beneficially interested in the trust.

(8) The definition "lending asset" in subsection 248(1) of the Act, as enacted by subsection (1), applies

(a) to taxation years that end after September 1997; and

(b) to a taxpayer's taxation years that end after 1995 and before October 1997 where the taxpayer files an election in accordance with paragraph 81(11)(b).

(9) The definition "mineral" in subsection 248(1) of the Act, as enacted by subsection (1), and subsection (2) apply to taxation years and fiscal periods that begin after 1996 except that,

(a) for greater certainty, that definition and subsection (2) shall not result in a characterization of expenditures made or costs incurred in a taxation year or fiscal period that began before 1997 as a Canadian exploration expense, Canadian development expense, Canadian exploration and development expense or foreign exploration and development expense or an increase in any amount deductible under section 65 of the Act as a consequence of an expenditure made or cost incurred before 1997; and

(b) where, as a consequence of the application of that definition and that subsection, a person's property would, but for this paragraph, be recharacterized as Canadian resource property or foreign resource property at the beginning of the person's first taxation year or fiscal period that begins after 1996, for the purposes of the Act the property is deemed

(i) to have been disposed of by the person immediately before that time for proceeds equal to its cost amount to the person at that time, and

(ii) to have been reacquired at that time by the person for the same amount.

(10) The definition "scientific research and experimental development" in subsection 248(1) of the Act, as enacted by subsection (1), applies to work performed by a taxpayer after February 27, 1995 except that, for the purposes of paragraphs 149(1)(j) and (8)(b) of the Act, that definition does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995.

(11) Subsection (2) and the definition "licensed annuities provider" in subsection 248(1) of the Act, as enacted by subsection (6), apply after 1996.

(12) Subsection (3) applies after November 17, 1996.

(13) Subsection (5) applies after February 22, 1994.

(14) The definition "cemetery care trust" in subsection 248(1) of the Act, as enacted by subsection (6), applies after 1992.

(15) The definition "flow-through share" in subsection 248(1) of the Act, as enacted by subsection (6), applies after November 1994.

(16) The definition "majority interest partner" in subsection 248(1) of the Act, as enacted by subsection (6), applies after April 26, 1995.

(17) Subsection (7) applies after November 1997.

240. (1) Subsection 249.1(5) of the Act is replaced by the following:

Alternative
method not
applicable to
tax shelter
investments

(5) Subsection (4) does not apply to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)).

(2) Subsection (1) applies to fiscal periods that begin after 1994.

241. (1) Paragraphs 250(6)(a) and (b) of the Act are replaced by the following:

(a) the corporation

(i) has as its principal business in the year the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada), or

(ii) holds throughout the year shares of one or more other corporations, each of which

(A) is a subsidiary wholly-owned corporation of the corporation as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout the year,

and at no time in the year is the total of the cost amounts to the corporation of all those shares less than 50% of the total of the cost amounts to it of all its property;

(b) all or substantially all of the corporation's gross revenue for the year consists of

(i) gross revenue from the operation of ships in transporting passengers or goods in that international traffic,

(ii) dividends from one or more other corporations each of which

(A) is a subsidiary wholly-owned corporation of the corporation, as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout each of its taxation years that began after February 1991 and before the last time at which it paid any of those dividends, or

(iii) a combination of amounts described in subparagraph (i) or (ii); and

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

242. (1) Section 251 of the Act is amended by adding the following after subsection (3.1):

Amalgamation of
related
corporations

(3.2) Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph (5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is deemed to have been related to each other.

(2) The portion of paragraph 251(5)(b) of the Act before subparagraph (i) is replaced by the following:

(b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,

(3) Paragraph 251(5)(b) of the Act is amended by striking out the word "or" at the end of subparagraph (i) and the word "and" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or

(iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and

(4) Subsection (1) applies to amalgamations and mergers that occur after 1996.

(5) Subsections (2) and (3) apply after April 26, 1995.

243. (1) The Act is amended by adding the following after section 251:

Definition of
"affiliated
persons"

251.1 (1) For the purposes of this Act, "affiliated persons", or persons affiliated with each other, are

(a) an individual and a spouse of the individual;

(b) a corporation and

(i) a person by whom the corporation is controlled,

(ii) each member of an affiliated group of persons by which the corporation is controlled, and

(iii) a spouse of a person described in subparagraph (i) or (ii);

(c) two corporations, if

(i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,

(ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or

(iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;

(d) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;

(e) a partnership and a majority interest partner of the partnership; and

(f) two partnerships, if

(i) the same person is a majority-interest partner of both partnerships,

(ii) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or

(iii) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership.

Affiliation
where
amalgamation or
merger

(2) Where at any time 2 or more corporations (in this subsection referred to as the "predecessors") amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been affiliated with each other where they would have been affiliated with each other immediately before that time if

(a) the new corporation had existed immediately before that time; and

(b) the persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

Definitions

(3) The definitions in this subsection apply in this section.

"affiliated
group of
persons"
« *groupe de
personnes
affiliées* »

"affiliated group of persons" means a group of persons each member of which is affiliated with every other member.

"controlled"
« *contrôlé* »

"controlled" means controlled, directly or indirectly in any manner whatever.

"majority-
interest group
of partners"
« *groupe
d'associés
détenant une
participation
majoritaire* »

"majority-interest group of partners" of a partnership means a group of persons each of whom has an interest in the partnership such that

(a) if one person held the interests of all members of the group, that person would be a majority interest partner of the partnership; and

(b) if any member of the group were not a member, the test described in paragraph (a) would not be met.

Interpretation

(4) For the purposes of this section,

(a) persons are affiliated with themselves; and

(b) a person includes a partnership.

(2) Subsection (1) applies after April 26, 1995.

244. (1) Subparagraph 252(4)(a)(ii) of the Act is replaced by the following:

(ii) would be a parent of a child of whom the taxpayer would be a parent, if this Act were read without reference to paragraph (1)(e) and subparagraph (2)(a)(iii)

(2) Subsection (1) applies after 1992.

245. (1) The portion of section 254 of the Act before paragraph (b) is replaced by the following:

Contract under
pension plan

254. Where a document has been issued or a contract has been entered into before July 31, 1997 purporting to create, to establish, to extinguish or to be in substitution for, a taxpayer's right to an amount or amounts, immediately or in the future, out of or under a superannuation or pension fund or plan,

(a) if the rights provided for in the document or contract are rights provided for by the superannuation or pension plan or are rights to a payment or payments out of the superannuation or pension fund, and the taxpayer acquired an interest under the document or in the contract before that day, any payment under the document or contract is deemed to be a payment out of or under the superannuation or pension fund or plan and the taxpayer is deemed not to have received, by the issuance of the document or entering into the contract, an amount out of or under the superannuation or pension fund or plan; and

(2) Subsection (1) applies after July 30, 1997.

246. (1) The portion of subsection 256(6) of the English version of the Act after paragraph (b) is replaced by the following:

the controlled corporation is deemed not to have been controlled by the controller at the particular time.

(2) The portion of subsection 256(7) of the Act before paragraph (a) is replaced by the following:

Acquiring
control

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

(3) Subparagraph 256(7)(a)(ii) of the Act is replaced by the following:

(ii) the redemption or cancellation at any particular time of, or a change at any particular time in the rights, privileges, restrictions or conditions attaching to, shares of the particular corporation or of a corporation controlling the particular corporation, where each person and each member of each group of persons that controls the particular corporation immediately after the particular time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation

(A) immediately before the particular time, or

(B) immediately before the death of a person, where the shares were held immediately before the particular time by an estate that acquired the shares because of the person's death; and

(4) Subsection 256(7) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) where at any time 2 or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have amalgamated to form one corporate entity (in this paragraph referred to as the "new corporation"),

(i) control of a corporation is deemed not to have been acquired by any person or group of persons solely because of

the amalgamation unless it is deemed by subparagraph (ii) or (iii) to have been so acquired,

(ii) a person or group of persons that controls the new corporation immediately after the amalgamation and did not control a predecessor corporation immediately before the amalgamation is deemed to have acquired immediately before the amalgamation control of the predecessor corporation and of each corporation it controlled immediately before the amalgamation (unless the person or group of persons would not have acquired control of the predecessor corporation if the person or group of persons had acquired all the shares of the predecessor corporation immediately before the amalgamation), and

(iii) control of a predecessor corporation and of each corporation it controlled immediately before the amalgamation is deemed to have been acquired immediately before the amalgamation by a person or group of persons

(A) unless the predecessor corporation was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before the amalgamation to each other predecessor corporation,

(B) unless, if one person had immediately after the amalgamation acquired all the shares of the new corporation's capital stock that the shareholders of the predecessor corporation, or of another predecessor corporation that controlled the predecessor corporation, acquired on the amalgamation in consideration for their shares of the predecessor corporation or of the other predecessor corporation, as the case may be, the person would have acquired control of the new corporation as a result of the acquisition of those shares, or

(C) unless this subparagraph would, but for this clause, deem control of each predecessor corporation to have been acquired on the amalgamation where the amalgamation is an amalgamation of

(I) two corporations, or

(II) two corporations (in this subclause referred to as the "parents") and one or more other corporations (each of which is in this subclause referred to as a "subsidiary") that would, if all the shares of each subsidiary's capital stock that were held immediately before the amalgamation by the parents had been held by one person, have been controlled by that person;

(c) subject to paragraph (a), where 2 or more persons (in this paragraph referred to as the "transferors") dispose of shares of the capital stock of a particular corporation in exchange for shares of the capital stock of another corporation (in this paragraph referred to as the "acquiring corporation"), control of the acquiring corporation and of each corporation controlled by it immediately before the exchange is deemed to have been acquired at the time of the exchange by a person or group of persons unless

(i) the particular corporation and the acquiring corporation were related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the exchange, or

(ii) if all the shares of the acquiring corporation's capital stock that were acquired by the transferors on the exchange were acquired at the time of the exchange by one person, the person would not control the acquiring corporation;

(d) where at any time shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that includes shares of the acquiring corporation's capital stock and, immediately after that time, the acquiring corporation and the particular corporation are controlled by a person or group of persons who

(i) controlled the particular corporation immediately before that time, and

(ii) did not, as part of the series of transactions or events that includes the disposition, cease to control the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition; and

(e) where at any time all the shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that consists solely of shares of the acquiring corporation's capital stock and, immediately after that time,

(i) the acquiring corporation is not controlled by any person or group of persons, and

(ii) the fair market value of the shares of the capital stock of the particular corporation is not less than 95% of the fair market value of all the assets of the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition.

(5) Subsection 256(8) of the Act is replaced by the following:

Deemed exercise
of right

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of a share and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 10(10) or 13(24), paragraph 37(1)(h) or subsection 55(2) or 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3), 181.1(7) or 190.1(6),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9),

(d) to avoid the application of section 251.1, or

(e) to affect the application of section 80,

the taxpayer is deemed to be in the same position in relation to the control of the corporation as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time for the purpose of determining whether control of a corporation has been acquired for the purposes of subsections 10(10) and 13(24), section 37, subsections 55(2), 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsections 181.1(7), 190.1(6) and 249(4), and in determining for the purpose of section 251.1 whether a corporation is controlled by any person or group of persons.

Corporations
without share
capital

(8.1) For the purposes of subsections (7) and (8),

(a) a corporation incorporated without share capital is deemed to have a capital stock of a single class;

(b) each member, policyholder and other participant in the corporation is deemed to be a shareholder of the corporation; and

(c) the membership, policy or other interest in the corporation of each of those participants is deemed to be the number of shares of the corporation's capital stock that the Minister considers reasonable in the circumstances, having regard to the total number of participants in the corporation and the nature of their participation.

(6) Subsection (1) applies to taxation years that begin after 1988.

(7) Subsection (2) and subsection 256(8.1) of the Act, as enacted by subsection (5), apply after April 26, 1995 except that, before November 18, 1996, the reference in subsection 256(7) of the Act, as amended by subsection (2), to "sections 18.1 and 37" shall be read as "section 37".

(8) Subsection 256(8) of the Act, as enacted by subsection (5), applies after February 21, 1994 except that,

(a) in its application after February 21, 1994 and before June 24, 1994, subsection 256(8) of the Act, as enacted by subsection (5), shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

and

(b) in its application after June 23, 1994 and before April 27, 1995, subsection 256(8) of the Act, as enacted by subsection (5), shall be read as follows:

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) in respect of shares and it can reasonably be concluded that one of the main purposes of the acquisition is

(a) to avoid any limitation on the deductibility of any non-capital loss, net capital loss, farm loss or any expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) to avoid the application of subsection 13(24), paragraph 37(1)(h), subsection 55(2), 66(11.4) or (11.5), paragraph 88(1)(c.3) or subsection 111(4), (5.1), (5.2) or (5.3),

(c) to avoid the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) to affect the application of section 80,

the taxpayer is deemed to have acquired the shares at that time for the purpose of determining whether control of the corporation has been acquired for the purposes of subsection 13(24), sections 37 and 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h) subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), sections 111 and 127 and subsection 249(4).

(9) Subsection (3) applies to the 1994 and subsequent taxation years.

(10) Paragraph 256(7)(b) of the Act, as enacted by subsection (4), applies

(a) to mergers that occur after April 26, 1995, other than a merger that occurs pursuant to a written agreement made before that day where the corporate entity formed by the merger so elects before the end of the sixth month after the month in which this Act is assented to; and

(b) to a merger that occurred after 1992 and before April 26, 1995 where the corporate entity formed by the merger so elects before the end of the sixth month after the month in which this Act is assented to.

(11) Paragraph 256(7)(c) of the Act, as enacted by subsection (4), applies to exchanges that occur after April 26, 1995, other than an exchange that occurs pursuant to a written agreement made before that day.

(12) Paragraphs 256(7)(d) and (e) of the Act, as enacted by subsection (4), apply after April 26, 1995 except that, with respect to acquisitions of shares that occur before June 20, 1996 or pursuant to a written agreement made before June 20, 1996, subparagraph 256(7)(e)(ii) of the Act, as enacted by subsection (4), shall be read as follows:

(ii) all or substantially all of the fair market value of the shares of the acquiring corporation's capital stock is attributable to the shares acquired by it at that time,

Exception to
coming-into-
force

247. (1) Subsections 73(4), 74(5), subsection 18(13) of the Act, as enacted by subsection 79(2) and subsections 89(1), (2) and (6), 94(1) and (2), 95(1), 116(3) to (5), 120(1) and 124(1) and (2) do not apply to the disposition of property by a person or partnership (in this subsection and subsection (2) referred to as the "transferor") that occurred before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before April 27, 1995, other than a transaction or series a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or

(ii) any balance of undeducted outlays, expenses or other amounts.

Election

(2) Notwithstanding subsection (1), subsection 18(13) of the Act, as enacted by subsection 79(2), and the other subsections of this Act referred to in subsection (1) apply to a disposition in respect of which the transferor has filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to an election in writing to have those subsections apply.

Interpretation

(3) For the purpose of subsection (1),

(a) a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act;

(b) an "unrelated person" means any person who was not, or a partnership any member of which was not, related (otherwise than because of paragraph 251(5)(b) of the Act) to the transferor at the time of the disposition; and

(c) a person is deemed to be related to a partnership of which that person is a majority interest partner.

PART II

R.S., c. 2 (5th
Supp.); 1994,
cc. 7, 21;
1995, cc. 3,
21; 1997, c. 25

INCOME TAX APPLICATION RULES

248. (1) The portion of paragraph 20(1)(c) of the *Income Tax Application Rules* before subparagraph (ii) is replaced by the following:

(c) where the disposition occurred because of an election under subsection 110.6(19) of the amended Act,

(i) for the purposes of that Act (other than paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), the taxpayer is deemed to have reacquired the property at a capital cost equal to

(A) where the amount designated in respect of the property in the election did not exceed 110% of the fair market value of the property at the end of February 22, 1994, the

taxpayer's proceeds of disposition determined under paragraph (a) in respect of the disposition of the property that immediately preceded the reacquisition minus the amount, if any, by which the amount designated in respect of the property in the election exceeded that fair market value, and

(B) in any other case, the amount otherwise determined under subsection 110.6(19) of that Act to be the cost to the taxpayer of the property immediately after the reacquisition referred to in that subsection minus the amount by which the fair market value of the property on valuation day exceeded the capital cost of the property at the time it was last acquired before 1972, and

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

249. (1) Clause 26(5)(c)(ii)(A) of the Rules is replaced by the following:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) and subsection 85(4) of the amended Act (as that Act read in its application to property disposed of on or before April 26, 1995) and paragraphs 40(2)(e.1) and (e.2) and subsection 40(3.3) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by a person who owned the property before it became vested in the subsequent owner, or

(2) The portion of subsection 26(25) of the Rules before paragraph (a) is replaced by the following:

Bond conversion

(25) Where, after May 6, 1974, there has been an exchange to which section 51.1 of the amended Act applies on which a taxpayer has acquired a bond of a debtor (in this subsection referred to as the "new bond") in exchange for another bond of the same debtor (in this subsection referred to as the "old bond") owned by the taxpayer on December 31, 1971 and thereafter without interruption until immediately before the exchange, notwithstanding any other provision of this Act or of the amended Act, for the purposes of subsection 88(2.1) of the amended Act and of determining the cost to the taxpayer and the adjusted cost base to the taxpayer of the new bond,

(3) Section 26 of the Rules is amended by adding the following after subsection (29):

Additions to
taxable
Canadian
property

(30) Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a taxable Canadian property that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995.

(4) Subsections (1) and (3) apply to dispositions that occur after April 26, 1995.

(5) Subsection (2) applies to exchanges that occur after October 1994.

PART III

R.S., c. B-3;
R.S., cc. 27,
31 (1st Supp.),
cc. 3, 27 (2nd
Supp.); 1990,
c. 17; 1991, c.
46; 1992, cc.
1, 27; 1993,
cc. 28, 34;
1994, c. 26;
1995, c. 1;
1996, cc. 6,
23; 1997, c. 12

BANKRUPTCY AND INSOLVENCY ACT

1992, c. 27, s.
33; 1996, c.
23, s. 168

250. (1) Subsection 67(3) of the *Bankruptcy and Insolvency Act* is replaced by the following:

Exceptions

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law

of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

(2) Subsection (1) is deemed to have come into force on June 15, 1994 except that, in the application after June 14, 1994 and before June 30, 1996 of subsection 67(3) of the Act, as enacted by subsection (1), the reference to "subsections 86(2) or (2.1) of the *Employment Insurance Act*" shall be read as a reference to "subsections 57(2) or (3) of the *Unemployment Insurance Act*".

PART IV

R.S., c. C-8;
R.S., cc. 6, 41
(1st Supp.),
cc. 5, 13, 27,
30 (2nd Supp.),
cc. 18, 38 (3rd
Supp.), cc. 1,
46, 51 (4th
Supp.); 1990,
c. 8; 1991, cc.
14, 44, 49;
1992, cc. 1, 2,
27, 48; 1993,
cc. 24, 27, 28;
1994, cc. 13,
21; 1995, c.

33; 1996, cc.
11, 16, 23

CANADA PENSION PLAN

251. (1) Section 5 of the *Canada Pension Plan* is renumbered as subsection 5(1) and is amended by adding the following:

Delegation

(2) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Part.

(2) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under subsection 40(2) of the Act before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 5(2) of the Act, as enacted by subsection (1), changes the delegation of that power or duty.

1994, c. 21, s.
123

252. (1) Subsection 23(3) of the Act is replaced by the following:

Where amount
deducted not
remitted

(3) Where an employer has deducted an amount from the remuneration of an employee as or on account of any contribution required to be made by the employee but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of
trust

(4) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an

amount deemed by subsection (3) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of
"security
interest"

(4.1) For the purposes of subsections (3) and (4), a security interest does not include a prescribed security interest.

(2) Subsection (1) is deemed to have come into force on June 15, 1994.

253. Section 24 of the Act is amended by adding the following after subsection (2):

Electronic
records

(2.1) Every employer required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (2).

Exemption

(2.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt an employer or a class of employers from the requirement in subsection (2.1).

R.S., c. 5 (2nd
Supp.), s. 2

254. (1) Subsection 25(7) of the Act is amended by adding the word "and" at the end of paragraph (a) and by repealing paragraphs (c) and (d).

R.S., c. 5 (2nd
Supp.), s. 2

(2) Subsection 25(10) of the Act is replaced by the following:

Powers on
review

(10) On hearing an application under subsection (9), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (7)(a) and (b) have been met and the judge may confirm or vary the authorization if satisfied that those conditions have been met.

R.S., c. 5 (2nd
Supp.), s. 2;
1994, c. 13,
par. 8(1)(a)

(3) Subsection 25(12) of the Act is replaced by the following:

Copies as
evidence

(12) Where any document is inspected, audited, examined or provided under this section, the person by whom it is inspected, audited or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this subsection is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(4) Subsection (3) applies to copies and print-outs made after this Act is assented to.

R.S., c. 51
(4th Supp.), s.
9

255. (1) Subsection 28(1) of the Act is replaced by the following:

Appeal to Tax
Court of Canada

28. (1) A person affected by a decision on an appeal to the Minister under section 27 or 27.1, or the person's representative, may, within 90 days after the decision is communicated to the person, or within any longer time that the Tax Court of Canada on application made to it within 90 days after the expiration of those 90 days allows, appeal from the decision to that Court in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder.

(2) Section 28 of the Act is amended by adding the following after subsection (1.1):

Extension of
time to appeal

(1.2) Section 167, except paragraph 167(5)(a), of the *Income Tax Act* applies, with such modifications as the circumstances require, in respect of applications made under subsection (1).

(3) Subsection (1) applies to appeals instituted after the fourth month after the month in which this Act is assented to.

256. Subsection 40(2) of the Act is repealed.

PART V

1992, c. 48,
Sch.; 1995, c.
33; 1996, c. 11

CHILDREN'S SPECIAL ALLOWANCES ACT

1996, c. 11,
par. 95(d)

257. (1) The definition "Minister" in section 2 of the *Children's Special Allowances Act* is replaced by the following:

"Minister"
« ministre »

"Minister" means the Minister of National Revenue;

(2) Subsection (1) applies after August 27, 1995.

1996, c. 11,
paras. 97(1)(c)
and (2)(a) and
101(b)

258. (1) Subsection 10(2) of the Act is replaced by the following:

Release of
information

(2) Any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations or the carrying out of an agreement entered into under section 11 may be communicated to any person where it can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act or the *Income Tax Act*.

(2) Subsection (1) applies after August 27, 1995.

1996, c. 11,
par. 97(1)(c)

259. (1) Section 11 of the Act is replaced by the following:

Agreements with
provinces for
exchange of
information

11. The Minister may enter into an agreement with the government of any province for the purpose of obtaining information in connection with the administration or enforcement of this Act or the regulations and of furnishing to that government, under prescribed conditions, any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations, if the Minister is satisfied that the information to be furnished to that government under the agreement is to be used for the purpose of the administration of a social program, income assistance program or health insurance program in the province.

(2) Subsection (1) applies after August 27, 1995.

PART VI

R.S., c. C-36;
R.S., c. 27
(2nd Supp.);
1990, c. 17;

1992, c. 27;
1993, cc. 28,
34; 1996, c. 6;
1997, c. 12

COMPANIES' CREDITORS ARRANGEMENT ACT

1997, c. 12, s.
125

260. (1) Subsection 18.3(2) of the *Companies' Creditors Arrangement Act* is replaced by the following:

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

(2) Subsection (1) is deemed to have come into force on September 30, 1997.

R.S., c. C-51;
R.S., c. 1 (2nd
Supp.); 1991,
c. 49; 1994, c.
13; 1995, cc.
5, 11, 29, 38

CULTURAL PROPERTY EXPORT AND IMPORT ACT

261. Paragraph 39(a) of the *Cultural Property Export and Import Act* is replaced by the following:

(a) prescribing the information, documentation and undertakings to be furnished by applicants for permits and certificates under this Act, the procedures to be followed in applying for and in issuing those permits and certificates, the terms and conditions applicable to them and the duration of the permits;

PART VIII

R.S., c. 1 (2nd
Supp.); R.S.,
c. 7 (2nd
Supp.), cc. 26,
41 (3rd Supp.),
cc. 1, 47 (4th
Supp.); 1988,
c. 65; 1990,
cc. 8, 16, 17,
36, 45; 1992,
cc. 1, 28, 31,
51; 1993, cc.
25, 27, 28, 44;
1994, cc. 13,
37, 47; 1995,
cc. 15, 39, 41;
1996, cc. 16,
31, 33; 1997,
cc. 14, 18

CUSTOMS ACT

262. (1) Section 2 of the *Customs Act* is amended by adding the following after subsection (3):

Delegation

(4) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any

judicial or quasi-judicial powers or duties of the Minister, under this Act.

(2) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by an order made under section 134 of the Act, or by a regulation made under paragraph 164(1)(a) of the Act, before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 2(4) of the Act, as enacted by subsection (1), changes the delegation of that power or duty.

263. Section 134 of the Act is repealed.

264. Paragraph 164(1)(a) of the Act is repealed.

PART IX

R.S., c. 41
(3rd Supp.);
R.S., cc. 9,
18, 47 (4th
Supp.); 1988,
c. 65; 1989, c.
18; 1990, c.
45; 1991, c.
40; 1992, cc.
1, 28; 1993,
cc. 25, 39, 44,
46; 1994, cc.
3, 13, 47;
1995, cc. 5,
39, 41; 1996,
cc. 31, 33;
1997, cc. 14,
26

CUSTOMS TARIFF

265. (1) Schedule II to the *Customs Tariff*, chapter 41 of the 3rd Supplement to the Revised Statutes of Canada 1985, is amended by adding the following after code 2530:

<?[cn]>

<?[bkp]><?[cp9,10]><?[lr16.,.1][q1]>
<?[sp9.6]>Most-<?[qf1][lz][sp13.]>General
<?[sp9.6]>Favoured-<?[qf1][lz][sp13.]>Prefer-
<?[sp9.6]>Nation<?[qf1][lz][sp13.]>ential

Code<?[qfl][lz][sp2.6]>Provision<?[qfl][lz][sp9.6]>Tariff<?[qfl][lz][sp13.]>Tariff
<?[lr16.,.1,.6][q1]>

<?[cp9,10]>2531<?[qfl][lz][sp2.6]>Goods specifically
<?[sp2.6]>designed to assist
<?[sp2.6]>persons with
<?[sp2.6]>disabilities in
<?[sp2.6]>alleviating the
<?[sp2.6]>effects of those
<?[sp2.6]>disabilities, and
<?[sp2.6]>articles and
<?[sp2.6]>materials for use
< ? [s p 2 . 6] > i n s u c h
goods.....<?[qfl][lz][sp9.6]>Free<?[qfl][lz][sp13.]>Free
<?[lr16.,.1,.6][q1]><?[ekp]>

(2) Subsection (1) is deemed to have come into force on February 18, 1997 and applies to all goods imported on or after that day and to all goods imported but not released under section 32 or 33 of the *Customs Act* before that day but, if Bill C-11, introduced in the first session of the thirty-sixth Parliament and entitled *An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof*, is assented to, then subsection (1) does not apply to goods imported on or after the day on which Bill C-11 comes into force or to goods imported but not released under section 32 or 33 of the *Customs Act* before the day on which Bill C-11 comes into force.

PART X

1996, c. 23;
1997, c. 26

EMPLOYMENT INSURANCE ACT

266. (1) Subsection 86(2) of the *Employment Insurance Act* is replaced by the following:

Amounts
deducted and
not remitted

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but

has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of
trust

(2.1) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of
security
interest

(2.2) For the purposes of subsections (2) and (2.1), a security interest does not include a prescribed security interest.

(2) Subsection (1) applies after June 29, 1996.

267. Section 87 of the Act is amended by adding the following after subsection (3):

Electronic
records

(3.1) Every employer required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (3).

Exemption

(3.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt an employer or a class of employers from the requirement in subsection (3.1).

268. (1) Subsection 103(1) of the Act is replaced by the following:

Appeal to the
Tax Court of
Canada

103. (1) The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the *Tax Court of Canada Act* and the applicable rules of court made thereunder within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court allows on application made to it within 90 days after the expiration of those 90 days.

Extension of
time to appeal

(1.1) Section 167, except paragraph 167(5)(a), of the *Income Tax Act* applies, with such modifications as the circumstances require, in respect of applications made under subsection (1).

(2) Subsection 103(3) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by replacing paragraph (c) with the following:

(c) shall notify in writing the parties to the appeal of its decision; and

(d) give reasons for its decision but, except where the Court deems it advisable in a particular case to give reasons in writing, the reasons given by it need not be in writing.

(3) Subsection (1) applies in respect of appeals instituted after the fourth month after the month in which this Act is assented to.

269. (1) Section 108 of the Act is amended by adding the following after subsection (1):

Delegation

(1.1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Part.

(2) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under subsection 75(2) of the *Unemployment Insurance Act* before June 30, 1996 continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 108(1.1) of the *Employment Insurance Act*, as enacted by subsection (1), changes the delegation of that power or duty.

270. Subsection 112(2) of the Act is replaced by the following:

Judges acting
as umpires

(2) Subject to subsection (4), a judge or former judge of a superior court or a judge or former judge appointed under an Act of Parliament or the legislature of a province may, at the request of the chief umpire made with the approval of the Governor in Council, act as an umpire and, while so acting, the judge or former judge has all the powers of an umpire.

271. (1) Subsection 126(16) of the Act is amended by adding the word "and" at the end of paragraph (a) and by repealing paragraphs (c) and (d).

(2) Subsection 126(19) of the Act is replaced by the following:

Powers on
review

(19) On hearing the application, the judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (16)(a) and (b) have been met and the judge may confirm or vary the authorization if satisfied that those conditions have been met.

272. (1) Subsection 145(7) of the Act is replaced by the following:

Time for
repayment

(7) A repayment must be made

(a) 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; and

(b) in any other case, on or before April 30 in the next year.

(2) Subsection (1) is deemed to have come into force on June 30, 1996.

273. (1) Paragraph 146(b) of the Act is replaced by the following:

(b) in the case of any other claimant, on or before the claimant's filing-due date (as defined in subsection 248(1) of the *Income Tax Act*) for the year, by that claimant or, if for any reason the claimant is unable to file the return, by their guardian, curator, tutor, committee or other legal representative; or

(2) Subsection (1) is deemed to have come into force on June 30, 1996.

274. Section 159 of the Act is amended by adding the following after subsection (1):

Appeals -
written reasons
not required

(1.01) Subsection 70(2) of the former Act applies in respect of appeals under that Act except that the Tax Court of Canada need not give reasons in writing for its decision but may give reasons in writing where, in a particular case, the Court deems it advisable.

PART XI

R.S., c. E-15;
R.S., c. 15
(1st Supp.),
cc. 1, 7, 42
(2nd Supp.),
cc. 18, 28, 41,
42 (3rd Supp.),
cc. 12, 47 (4th
Supp.); 1988,

c. 65; 1989, c.
22; 1990, c.
45; 1991, c.
42; 1992, cc.
1, 27, 28, 29;
1993, cc. 25,
27, 28, 38;
1994, cc. 9,
13, 21, 29, 41;
1995, cc. 5,
36, 41, 46;
1996, cc. 10,
20, 21, 23, 31;
1997, cc. 10,
26

EXCISE TAX ACT

275. Subsection 2(1) of the *Excise Tax Act* is amended by adding the following in alphabetical order:

"document" «
document »

"document" includes money, a security and a record;

"record" «
registre »

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form;

R.S., c. 12
(4th Supp.), s.
6(1)

276. Subsection 20.2(2) of the Act is replaced by the following:

Records and
books of
account

(2) Each licensed air carrier that is required to make a return of the amounts described in paragraph 20(1)(b) shall keep records and books of account in such form and containing such information as will enable the amount of tax or other sums that have been paid to or collected by the carrier or the carrier's agent to be determined and, for the purposes of this subsection, subsections

98(2.01), (2.1) and (3) and 100(2) apply, with such modifications as the circumstances require, as if the records and books of account were required to be kept by the carrier pursuant to subsection 98(1).

277. (1) The Act is amended by adding the following after section 38:

Exception –
first split-run
edition

38.1 Section 36 does not impose a tax on an edition of an issue of a periodical that is the first split-run edition of the periodical if the responsible person in respect of the edition is

- (a) the distributor of the periodical;
- (b) the person who printed the edition or part of it; or
- (c) the wholesaler of the periodical.

(2) Subsection (1) is deemed to have come into force on March 7, 1996.

278. Section 98 of the Act is amended by adding the following after subsection (2):

Electronic
records

(2.01) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period set out in subsection (2).

Exemption

(2.02) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (2.01).

R.S., c. 7 (2nd
Supp.), s.
47(1)

279. (1) Subsection 100(1.1) of the Act is replaced by the following:

Copies

(1.1) Where any record or other document is inspected or provided under sections 98 and 99, the person by whom it is inspected, or to whom it is provided or any officer of the Department may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

R.S., c. 7 (2nd
Supp.), s.
50(1)

280. Subsection 105(5) of the Act is replaced by the following:

Proof of
documents

(5) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out

(a) that the officer has charge of the appropriate records, and

(b) that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person,

is evidence of the nature and contents of the document.

1990, c. 45, s.
12(1)

281. The definition "record" in subsection 123(1) of the Act is replaced by the following:

"record"
« *registre* »

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a

voucher, and any other thing containing information, whether in writing or in any other form;

282. Section 286 of the Act is amended by adding the following after subsection (3):

Electronic records

(3.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period set out in subsection (3).

Exemptions

(3.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (3.1).

1990, c. 45, s.
12(1)

283. (1) Subsection 291(1) of the Act is replaced by the following:

Copies

291. (1) Where any document is seized, inspected, examined or provided under any of sections 276 and 288 to 290, the person by whom it is seized, inspected or examined or to whom it is provided or any officer of the Department may make, or cause to be made, one or more copies thereof and, in the case of an electronic document, make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

1993, c. 27, s.
128(3); 1996,
c. 23, par.
187(b)

284. (1) Paragraph 295(4)(b) of the Act is replaced by the following:

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition of a tax or duty.

1997, c. 10, s.
236

(2) Subparagraph 295(5)(d)(ii) of the Act is replaced by the following:

(ii) to an official solely for the purpose of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or an Act of Parliament that provides for the imposition or collection of a tax or duty or that provides that displays or indications of the price or consideration for property or services include tax under this Act,

(3) Subsections (1) and (2) shall be deemed to have come into force on June 30, 1996.

1990, c. 45, s.
12(1)

285. Subsection 335(5) of the Act is replaced by the following:

Proof of
documents

(5) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

PART XI.1

R.S., c. F-8;
R.S., cc. 22,
39, 44 (1st
Supp.), cc. 7,
15, 26, 28 (2nd
Supp.), cc. 9,
11, 31 (3rd

Supp.), cc. 7,
33, 35, 46 (4th
Supp.); 1990,
c. 39; 1991,
cc. 9, 10, 38,
51; 1992, cc.
1, 10; 1993,
cc. 28, 34;
1994, c. 2;
1995, cc. 17,
24, 28, 29;
1996, cc. 8,
11, 18; 1997,
c. 10

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

1996, c. 18, s.
49

285.1 (1) Subsection 15(3) of the *Federal-Provincial Fiscal Arrangements Act* is replaced by the following:

Floor for cash
portion of
total
entitlement

(3) Where in any of the 1997-98 to 2002-03 fiscal years the sum of \$12.5 billion and the total of all equalized tax transfers applicable to all provinces calculated under section 16 for that fiscal year exceeds the total entitlement determined under subsection (1) or (2) for that fiscal year, the total entitlement in respect of the Canada Health and Social Transfer applicable to the whole of Canada for that fiscal year shall be increased by the amount of that excess.

(2) Subsection (1) applies to the 1997-98 and subsequent fiscal years.

PART XII

R.S., c. I-4;
R.S., c. 48
(1st Supp.);
1991, c. 49;
1993, c. 24

INCOME TAX CONVENTIONS INTERPRETATION ACT

1993, c. 24, s.
147(1)

286. (1) Paragraph (c) of the definition "periodic pension payment" in section 5 of the *Income Tax Conventions Interpretation Act* is replaced by the following:

(c) a payment at any time in a calendar year under a registered retirement income fund, where the total of all payments (other than the specified portion of each such payment) made under the fund at or before that time and in the year exceeds the total of

(i) the amount that would be the greater of

(A) twice the amount that, if the value of C in the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* were nil, would be the minimum amount under the fund for the year, and

(B) 10% of the fair market value of the property (other than annuity contracts that, at the beginning of the year, are not described in paragraph (b.1) of the definition "qualified investment" in subsection 146.3(1) of the *Income Tax Act*) held in connection with the fund at the beginning of the year

if all property transferred in the year and before that time to the carrier of the fund as consideration for the carrier's undertaking to make payments under the fund had been so transferred immediately before the beginning of the year and if the definition "minimum amount" in subsection 146.3(1) of the *Income Tax Act* applied with respect to all registered retirement income funds, and

(ii) the total of all amounts each of which is an annual or more frequent periodic payment under an annuity contract that is a qualified investment, as defined in subsection 146.3(1) of the *Income Tax Act*, (other than an annuity contract the fair market value of which is taken into account under clause (i)(B)) held by a trust governed by the fund that was paid into the trust in the year and before that time, or

(2) Subsection (1) applies to amounts paid after 1997.

287. (1) Section 5.1 of the Act is renumbered as subsection 5.1(1) and is amended by adding the following:

Definition of
"specified
portion"

(2) For the purpose of the definition "periodic pension payment" in section 5, the "specified portion" of a payment means the total of

(a) the portion of the payment that is not required by section 146.3 of the *Income Tax Act* to be included in computing the income of any person and that is not included under paragraph 212(1)(q) of that Act in respect of any person; and

(b) the portion of the payment in respect of which a deduction is available under paragraph 60(1) of the *Income Tax Act* in computing the income of any person.

(2) Subsection (1) applies to amounts paid after 1997.

PART XIII

R.S., c. O-9;
R.S., c. 34
(1st Supp.),
cc. 1, 51 (4th
Supp.); 1990,
c. 39; 1991, c.
44; 1992, cc.
24, 48; 1995,
c. 33; 1996,
cc. 11, 18, 21,
23

OLD AGE SECURITY ACT

1992, c. 48, s.
29(1); 1996, c.
11, par.
97(1)(f)

288. Paragraph 33(2)(c) of the *Old Age Security Act* is replaced by the following:

(c) the Department of Human Resources Development solely for the purposes of administering the *Canada Pension Plan* or the *Family Allowances Act*; and

PART XIV

R.S., c. T-2;
R.S., c. 48
(1st Supp.), c.
16 (3rd Supp.),
cc. 1, 51 (4th
Supp.); 1990,
c. 45; 1991, c.
49; 1992, c.
24; 1993, c.
27; 1994, c.
26, 1995, cc.
18, 38; 1996,
cc. 22, 23

TAX COURT OF CANADA ACT

289. Subsection 9(1) of the *Tax Court of Canada Act* is replaced by the following:

Deputy judges
of the Court

9. (1) Subject to subsection (3), any former judge of the Court, any judge or former judge of a superior, county or district court in Canada or any judge or former judge of any other court who was appointed pursuant to an Act of the legislature of a province may, at the request of the Chief Judge made with the approval of the Governor in Council, act as a judge of the Court and, while so acting, has all the powers of a judge of the Court and shall be referred to as a deputy judge of the Court.

1995, c. 38, s.
6(2)

290. Subsection 12(4) of the Act is replaced by the following:

Extensions of
time

(4) The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, subsection 103((1) of the *Employment Insurance Act*, section 304 or 305 of the *Excise Tax Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*.

R.S., c. 51
(4th Supp.), s.
5

291. (1) Subsections 17.2(1) to (3) of the *Tax Court of Canada Act* are replaced by the following:

How proceeding
instituted

17.2 (1) Unless the Act under which the proceeding arises provides otherwise, a proceeding in respect of which this section applies shall be instituted by filing an originating document in the form set out in the rules of Court and by paying the filing fee in accordance with those rules.

Procedure for
filing

(2) The originating document shall be filed

(a) by depositing the original and two copies of the document in the Registry of the Court;

(b) by forwarding by mail the original and two copies of the document to the Registry of the Court; or

(c) by any other means, including electronic means, in the form and manner provided for in the rules of Court.

Filing date

(2.1) The date of filing of an originating document in the Registry of the Court is deemed to be the day on which the document is received by the Registry.

Electronic
filing

(2.2) Where an originating document is filed in accordance with paragraph (2)(c), the party who instituted the proceeding or that party's counsel shall forthwith send the original and two copies of the document to the Registry of the Court.

Service of
originating
document

(3) Where the original and two copies of the originating document have been received by the Registry of the Court and the filing fee has been paid as required by this section, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith, on behalf of the party who instituted the proceeding, serve the originating document on Her Majesty in right

of Canada by transmitting the copies to the office of the Deputy Attorney General of Canada.

(2) Subsection (1) applies to appeals instituted after the fourth month after the month in which this Act is assented to.

R.S., c. 51
(4th Supp.), s.
5

292. (1) Subsection 18.15(3) of the Act is replaced by the following:

How appeal
instituted

(3) An appeal referred to in section 18 shall be instituted by

(a) filing the original of the written appeal referred to in subsection (1); and

(b) paying \$100 as a filing fee.

Procedure for
filing

(3.1) The written appeal referred to in subsection (1) shall be filed

(a) by depositing the original of the written appeal in the Registry of the Court;

(b) by mailing the original of the written appeal to the Registry of the Court; or

(c) by using any other means, including electronic means, in the form and manner provided for in the rules of Court.

Filing date

(3.2) The date of filing of a written appeal in the Registry of the Court is deemed to be the day on which the written appeal is received by the Registry.

Electronic
filing

(3.3) Where a written appeal is filed in accordance with paragraph (3.1)(c), the party who instituted the proceeding or that party's counsel or agent shall forthwith send the original of the written appeal to the Registry of the Court.

Powers of Court
re filing fee

(3.4) The Court may, on application made by an individual in the written appeal referred to in subsection (1), waive the payment of the filing fee where the Court is satisfied that its payment would cause severe financial hardship to the individual.

Consideration
re filing fee

(3.5) The Court shall decide whether to grant an application made under subsection (3.4) solely on the basis of the information contained in the written appeal referred to in subsection (1).

(2) Paragraph 18.15(3)(b) and subsections 18.15(3.1) to (3.5) of the Act, as enacted by subsection (1), apply to appeals instituted after the fourth month after the month in which this Act is assented to.

R.S., c. 51
(4th Supp.), s.
5

293. Subsection 18.26(1) of the Act is replaced by the following:

Filing fee and
costs

18.26 (1) Where an appeal referred to in section 18 is allowed, the Court

(a) shall reimburse to the appellant the filing fee paid by the appellant under paragraph 18.15(3)(b); and

(b) where the judgment reduces the aggregate of all amounts in issue or the amount of interest in issue, or increases the amount of loss in issue, as the case may be, by more than one-half, may award costs to the appellant in accordance with the rules of Court.

294. Section 18.27 of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) varying the amount of \$100 referred to in paragraph 18.15(3)(b).

1993, c. 27, s.
221(1)

295. (1) The portion of subsection 18.29(1) of the Act before paragraph (a) is replaced by the following:

Other
applications

18.29 (1) The provisions of section 18.14, subsections 18.15(1) and (2), paragraph 18.15(3)(a), subsections 18.15(3.1) to (3.3) and (4), paragraph 18.18(1)(a), section 18.19, subsection 18.22(3) and sections 18.23 and 18.24 apply, with such modifications as the circumstances require, in respect of appeals arising under

1995, c. 38, s.
7

(2) Subsection 18.29(3) of the Act is replaced by the following:

Extensions of
time

(3) The provisions referred to in subsection (1) also apply, with such modifications as the circumstances require, in respect of applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, section 304 or 305 of the *Excise Tax Act*, subsection 103(1) of the *Employment Insurance Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*.

(3) Subsections (1) and (2) apply in respect of appeals instituted after the fourth month after the month in which this Act is assented to.

1990, c. 45, s.
61

296. (1) Section 18.3001 of the Act is replaced by the following:

Application -
Excise Tax Act

18.3001 Subject to section 18.3002, where a person has so elected in the notice of appeal for an appeal under Part IX of the *Excise Tax Act* or at such later time as is provided in the rules of Court, this section and sections 18.3003 to 18.302 apply, with such modifications as the circumstances require, in respect of the appeal.

(2) Subsection (1) is deemed to have come into force on June 10, 1993.

1990, c. 45, s.
61

297. (1) Subsection 18.3002(1) of the Act is replaced by the following:

General
procedure to
apply

18.3002 (1) Where the Attorney General of Canada so requests, the Court shall order that sections 17.1, 17.2 and 17.4 to 17.8 apply in respect of an appeal in respect of which sections 18.3003 and 18.3007 to 18.302 would otherwise apply.

(2) Subsection (1) is deemed to have come into force on June 10, 1993.

1990, c. 45, s.
61

298. Subsection 18.3009(1) of the Act is replaced by the following:

Filing fee and
costs

18.3009 (1) Where an appeal referred to in section 18.3001 is allowed, the Court

(a) shall reimburse to the person who brought the appeal the filing fee paid under paragraph 18.15(3)(b) by that person; and

(b) where the judgment reduces the amount of tax, net tax, rebate, interest and penalties in issue in the appeal by more than one-half, may award costs, in accordance with the rules of Court, to the person who brought the appeal where

(i) the amount in dispute was equal to or less than \$7,000, and

(ii) the aggregate of supplies for the prior fiscal year of that person was equal to or less than \$1,000,000.

PART XV

R.S., c. T-3;
R.S., c. 53
(1st Supp.);
1992, c. 1;

1993, cc. 24,
27, 34; 1995,
cc. 1, 17;
1996, c. 23

TAX REBATE DISCOUNTING ACT

1995, c. 1,
par. 62(1)(t)

299. (1) The definition "Minister" in subsection 2(1) of the *Tax Rebate Discounting Act* is replaced by the following:

"Minister"
« *ministre* »

"Minister" means the Minister of National Revenue;

R.S., c. 53
(1st Supp.), s.
1(1)

(2) The definition "prescribed" in subsection 2(1) of the English version of the Act is replaced by the following:

"prescribed"
Version
anglaise
seulement

"prescribed" means

(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister, and

(b) in any other case, prescribed by regulation;

R.S., c. 53
(1st Supp.), s.
2

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

(i) a statement in prescribed form describing the discounting transaction, and

R.S., c. 53
(1st Supp.), s.
2

301. Paragraph 5(b) of the French version of the Act is replaced by the following:

b) un avis du montant du remboursement d'impôt réel qu'il a reçu et auquel le client aurait par ailleurs eu droit; l'avis doit être présenté en la forme autorisée par le ministre et contenir les renseignements qu'il requiert.

PART XVI

R.S., c. U-1;
R.S., cc. 26,
27 (1st Supp.),
cc. 5, 43 (2nd
Supp.), cc. 14,
36, 38 (3rd
Supp.), cc. 1,
4, 46, 51, 53
(4th Supp.);
1990, cc. 8,
40; 1991, cc.
49, 51; 1992,
cc. 1, 27;
1993, cc. 1,
13, 24, 27, 34;
1994, cc. 13,
18, 21; 1995,
cc. 7, 33;
1996, cc. 11,
18, 23

UNEMPLOYMENT INSURANCE ACT

1994, c. 21, s.
130

302. (1) Subsection 57(2) of the *Unemployment Insurance Act* is replaced by the following:

Amounts
deducted and
not remitted

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) in the amount so deducted, to hold the amount separate and apart from the property

of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of
trust

(3) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer that is equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of
"security
interest"

(3.1) For the purposes of subsections (2) and (3), a security interest does not include a prescribed security interest.

(2) Subsection (1) is deemed to have come into force on June 15, 1994.

1995, c. 17,
Sch. II

WESTERN GRAIN TRANSITION PAYMENTS ACT

303. (1) Paragraphs 4(4)(b) and (c) of the *Western Grain Transition Payments Act* are replaced by the following:

(b) a transition payment received in respect of farmland that was, immediately before its disposition by the applicant, capital property of the applicant shall, where the farmland is disposed of before the payment is received, be considered to be an amount required by subsection 53(2) of that Act to be deducted in computing the adjusted cost base of the farmland to the applicant immediately before the disposition;

(c) a transition payment to which neither paragraph (a) nor (b) applies, received by the applicant, shall be considered to be assistance received in the course of earning income from a business or property in respect of the cost of the property or in respect of an outlay or an expense; and

(d) where, pursuant to an equitable arrangement referred to in paragraph 6(c), a portion of a transition payment received by an applicant is paid to a person or partnership that is leasing farmland from the applicant, that portion paid to the person or partnership is required to be included in computing the income of the person or partnership from a business for the taxation year of the person or partnership in which it is received and the amount so paid is deemed not to be a transition payment received by the applicant for the purposes of paragraphs (a) to (c).

(2) Subsection (1) applies in respect of payments made after June 22, 1995.

PART XVIII

1988, c. 55

AN ACT TO AMEND THE INCOME TAX ACT, THE CANADA PENSION PLAN, THE UNEMPLOYMENT INSURANCE ACT, 1971, THE FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS AND FEDERAL POST-SECONDARY EDUCATION AND HEALTH CONTRIBUTIONS ACT, 1977 AND CERTAIN RELATED ACTS

304. (1) Subsection 102(1) of *An Act to amend the Income Tax Act, the Canada Pension Plan, the Unemployment Insurance Act, 1971, the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977 and certain related*

Acts, being chapter 55 of the Statutes of Canada, 1988, is repealed.

(2) Subsection 102(5) of the Act is repealed.

(3) Subsections (1) and (2) are deemed to have come into force on September 13, 1988.

PART XIX

1995, c. 21

AN ACT TO AMEND THE INCOME TAX ACT, THE INCOME TAX APPLICATION
RULES AND RELATED ACTS

305. (1) Subsection 46(8) of *An Act to amend the Income Tax Act, the Income Tax Application Rules and related Acts*, being chapter 21 of the Statutes of Canada, 1995, is replaced by the following:

(8) Subsections (1) to (6) apply to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, subsections (1) to (6) apply to taxation years of the foreign affiliate that end after 1994, unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred.

(9) Subsection (7) applies to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, subsection (7) applies to rights acquired and shares acquired or disposed of in taxation years of the foreign affiliate that end after 1994, unless

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred.

(2) Subsection (1) is deemed to have come into force on June 22, 1995.

PART XX

1996, c. 21

INCOME TAX BUDGET AMENDMENT ACT

306. (1) Subsection 30(26) of the *Income Tax Act Budget Amendment Act*, being chapter 21 of the Statutes of Canada 1996, is replaced by the following:

(26) Subject to subsection (26.1), subsections (1) to (3) and (5) to (23), subsections 127(11.4) and (11.5) of the Act, as enacted by subsection (24), and subsections 127(13) to (25) of the Act, as enacted by subsection (25), apply to taxation years that begin after 1995.

(26.1) Where, because of the application of subsection (26), an amount paid or payable by a person or partnership to a taxpayer with whom the person or partnership does not deal at arm's length otherwise

(a) would be a qualified expenditure of the person or partnership but would not be a contract payment received or receivable by the taxpayer, or

(b) would not be a qualified expenditure of the person or partnership but would be a contract payment received or receivable by the taxpayer,

the amount is deemed not to be a qualified expenditure of the person or partnership and not to be a contract payment received or receivable by the taxpayer.

(2) Subsection (1) is deemed to have come into force on June 20, 1996.

PART XXI

1997, c. 25

INCOME TAX BUDGET AMENDMENTS ACT, 1996

307. (1) Subsection 9(8) of the *Income Tax Budget Amendments Act, 1996*, being chapter 25 of the Statutes of Canada, 1997, is replaced by the following:

(8) Subsection (6) applies after 1996, except that

(a) a support amount, as defined in subsection 56.1(4) of the Act, as enacted by subsection (6), does not include an amount

(i) that was received under a decree, order or judgment of a competent tribunal, or under a written agreement, that does not have a commencement day (within the meaning assigned by that subsection 56.1(4)), and

(ii) that if paid and received would, but for this Act, not be included in computing the income of the recipient of the amount; and

(b) with respect to an amount payable or receivable under a decree, order or judgment of a competent tribunal, or under a written agreement, made after March 27, 1986 and before 1988, the portion of the definition "support amount" in subsection 56.1(4) of the Act, as enacted by subsection (6), before paragraph (a) shall be read without reference to "the recipient has discretion as to the use of the amount, and".

(2) Subsection (1) is deemed to have come into force on April 25, 1997.

308. (1) Subsection 18(10) of the Act is replaced by the following:

(10) Subsection (5) applies to amalgamations that occur after 1995, except that the expression "subsection 66(12.6), (12.601) or (12.62) in respect of Canadian exploration expenses or Canadian development expenses" in subsection 87(4.4) of the Act, as enacted by subsection (5), shall be read as "subsection 66(12.6), (12.601), (12.62) or (12.64) in respect of Canadian exploration expenses, Canadian development expenses or Canadian oil and gas property expenses" in respect of amalgamations that occur before 1999.

(2) Subsection (1) is deemed to have come into force on April 25, 1997.