Legislative Proposals, Draft Regulations and Explanatory Notes Relating to Income Tax

Published by
The Honourable Ralph Goodale, P.C., M.P.,
Minister of Finance

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Legislative Proposals

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1. (1) Clause 53(2)(*h*)(i.1)(B) of the *Income Tax Act* is amended by striking out the word "or" at the end of subclause (B)(I), by adding the word "or" at the end of subclause (B)(II) and by adding the following after subclause (II):

(III) that is an assessable distribution (as defined in subsection 218.3(1)) to the taxpayer,

(2) Subsection (1) applies after 2004.

2. (1) Section 64 of the Act is replaced by the following:

Disability supports deduction

64. If a taxpayer files with the taxpayer's return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(*d*) or 128(2)(*e*) or subsection 150(4)) for the taxation year a prescribed form containing prescribed information, there may be deducted in computing the taxpayer's income for the year the lesser of

(*a*) the amount determined by the formula

A - B

where

A is the total of all amounts each of which is an amount paid by the taxpayer in the year and that

(i) was paid to enable the taxpayer

(A) to perform the duties of an office or employment,

(B) to carry on a business either alone or as a partner actively engaged in the business,

(C) to attend a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, or

(D) to carry on research or any similar work in respect of which the taxpayer received a grant,

(ii) was paid

(A) where the taxpayer has a speech or hearing impairment, for the cost of sign-language interpretation services or real time captioning services and to a person engaged in the business of providing such services,

(B) where the taxpayer is deaf or mute, for the cost of a teletypewriter or similar device, including a telephone ringing indicator, prescribed by a medical practitioner, to enable the taxpayer to make and receive phone calls,

(C) where the taxpayer is blind, for the cost of a device or equipment, including synthetic speech systems, Braille printers, and large print on-screen devices, prescribed by a medical practitioner, and designed to be used by blind individuals in the operation of a computer,

(D) where the taxpayer is blind, for the cost of an optical scanner or similar device, prescribed by a medical practitioner, and designed to be used by blind individuals to enable them to read print,

(E) where the taxpayer is mute, for the cost of an electronic speech synthesizer, prescribed by a medical practitioner, and designed to be used by mute individuals to enable them to communicate by use of a portable keyboard,

(F) where the taxpayer has a mental or physical impairment, for the cost of note-taking services and to a person engaged in the business of providing such services, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires such services,

(G) where the taxpayer has a physical impairment, for the cost of voice recognition software, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that impairment, requires that software,

(H) where the taxpayer has a learning disability or a mental impairment, for the cost of tutoring services that are rendered to, and supplementary to the primary education of, the taxpayer and to a person ordinarily engaged in the business of providing such services to individuals who are not related to the person, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

(I) where the taxpayer has a perceptual disability, for the cost of talking textbooks used by the taxpayer in connection with the taxpayer's enrolment at a secondary school in Canada or at a designated educational institution, if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that disability, requires those textbooks, and

(J) where the taxpayer has a mental or physical infirmity, for the cost of attendant care services provided in Canada and to a person who is neither the taxpayer's spouse or common-law partner nor under 18 years of age, if the taxpayer is a taxpayer in respect of whom an amount may be deducted because of section 118.3, or if the taxpayer has been certified in writing by a medical practitioner to be a person who, because of that infirmity is, and is likely to be indefinitely, dependent on others for their personal needs and care and who as a result requires a full-time attendant,

(iii) is evidenced by one or more receipts filed with the Minister each of which was issued by the payee and contains, where the payee is an individual who is a person referred to in clause (ii)(J), that individual's Social Insurance Number, and

(iv) is not included in computing a deduction under section 118.2 for any taxpayer for any taxation year, and

B is the total of all amounts each of which is the amount of a reimbursement or any other form of assistance (other than prescribed assistance or an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) that any taxpayer is or was entitled to receive in respect of an amount included in computing the value of A; and

(*b*) the total of

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

(A) an amount included under section 5, 6 or 7 or paragraph 56(1)(*n*), (*o*) or (*r*) in computing the taxpayer's income for the year, or

(B) the taxpayer's income for the year from a business carried on either alone or as a partner actively engaged in the business, and

(ii) where the taxpayer is in attendance at a designated educational institution or a secondary school at which the taxpayer is enrolled in an educational program, the least of

(A) $15,000,

(B) $375 times the number of weeks in the year during which the taxpayer is in attendance at the institution or school, and

(C) the amount, if any, by which the amount that would, if this Act were read without reference to this section, be the taxpayer's income for the year exceeds the total determined under subparagraph (i) in respect of the taxpayer for the year.

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

3. (1) The Act is amended by adding the following after section 67.5:

Non-deductibility of fines and penalties

67.6 In computing income, no deduction shall be made in respect of any amount that is a fine or penalty (other than a prescribed fine or penalty) imposed under a law of a country or of a political subdivision of a country (including a state, province or territory) by any person or public body that has authority to impose the fine or penalty.

(2) Subsection (1) applies to fines and penalties imposed after March 22, 2004.

4. (1) The portion of subsection 104(21) of the Act before paragraph (*a*) is replaced by the following:

Designation in respect of taxable capital gains

(21) For the purposes of sections 3 and 111, except as they apply for the purposes of section 110.6, and subject to paragraph 132(5.1)(*b*), an amount in respect of a trust's net taxable capital gains for a particular taxation year of the trust is deemed to be a taxable capital gain, for the taxation year of a taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property if

(2) Subsection (1) applies after March 22, 2004.

5. (1) Paragraph 110(1)(*f*) of the Act is amended by striking out the word "or" at the end of subparagraph (iii), by adding the word "or" at the end of subparagraph (iv), and by adding the following after subparagraph (iv):

(v) the lesser of

(A) the employment income earned by the taxpayer as a member of the Canadian Forces, or as a police officer, while serving on

(I) a deployed operational mission (as determined by the Department of National Defence) that is assessed for risk allowance pay at level 3 or higher (as determined by the Department of National Defence),

(II) a prescribed mission that is assessed for risk allowance pay at level 2 (as determined by the Department of National Defence), or

(III) any other mission that is prescribed, and

(B) the employment income that would have been so earned by the taxpayer if the taxpayer had been paid at the maximum rate of pay that applied, from time to time during the mission, to a non-commissioned member of the Canadian Forces,

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

6. (1) Section 110.1 of the Act is amended by adding the following after subsection (1.1):

Where control acquired

(1.2) Notwithstanding paragraph 88(1)(*e*.6), if control of a particular corporation is acquired at any time by a person or group of persons,

(*a*) no amount is deductible under any of paragraphs (1)(*a*) to (*d*) in computing any corporation's taxable income for a taxation year that ends on or after that time in respect of a gift made by the particular corporation before that time; and

(*b*) no amount is deductible under any of paragraphs (1)(*a*) to (*d*) in computing any corporation's taxable income for a taxation year that ends on or after that time in respect of a gift made by any corporation on or after that time if the property that is the subject of

the gift was acquired by the particular corporation under an arrangement under which it was expected that control of the particular corporation would be so acquired by a person or group of persons, other than a qualified donee that received the gift, and the gift would be so made.

(2) Subsection (1) applies in respect of gifts made after March 22, 2004.

7. (1) Paragraph 111(1)(*a*) of the Act is replaced by the following:

Non-capital losses

(*a*) non-capital losses for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year;

(2) Subsection (1) applies in respect of losses that arise in taxation years that end after March 22, 2004.

8. (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, other than dispositions deemed under subsection 218.3(2), of taxable Canadian properties (other than treaty-protected properties), and

(2) Subsection (1) applies after 2004.

9. (1) The portion of subsection 117.1(1) of the Act before paragraph (*a*) is replaced by the following:

Annual adjustment

117.1 (1) Each of the amounts expressed in dollars in subsection 117(2), the description of B in subsection 118(1), subsection 118(2), the descriptions of C and F in subsection 118.2(1), subsections 118.3(1), 122.5(3) and 122.51(1) and (2) and Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

10. (1) Paragraph 118.1(5.2)(*a*) of the Act is replaced by the following:

(*a*) for the purpose of this section (other than subsection (5.1) and this paragraph) and section 149.1, the transfer described in subsection (5.1) is deemed to be a gift made, immediately before the individual's death, by the individual to the qualified donee referred to in subsection (5.1); and

(2) Paragraph 118.1(5.3)(*a*) of the Act is replaced by the following:

(*a*) for the purposes of this section (other than this paragraph) and section 149.1, the transfer is deemed to be a gift made, immediately before the individual's death, by the individual to the donee; and

(3) Subsections (1) and (2) apply in respect of deaths that occur after 1998.

11. (1) Subsection 118.2(1) of the Act is replaced by the following:

Medical expense credit

118.2 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted the amount determined by the formula

$$A \times [(B - C) + D]$$

where

A is the appropriate percentage for the taxation year;

B is the total of the individual's medical expenses in respect of the individual, the individual's spouse, the individual's common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year

(*a*) that are evidenced by receipts filed with the Minister,

(*b*) that were not included in determining an amount under this subsection, section 64 or subsection 122.51(2), for a preceding taxation year,

(*c*) that are not included in determining an amount under this subsection, section 64 or subsection 122.51(2), by any other taxpayer for any taxation year, and

(*d*) that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the taxation year or, if those expenses were in respect of a person (including the individual) who died in the taxation year, within any period of 24 months that includes the day of the person's death;

C is the lesser of $1,813 and 3% of the individual's income for the taxation year; and

D is the total of all amounts each of which is, in respect of a dependant of the individual (within the meaning assigned by subsection 118(6), other than a child of the individual who has not attained the age of 18 years before the end of the taxation year), the lesser of $5,000 and the amount determined by the formula

E - F

where

E is the total of the individual's medical expenses in respect of the dependant

(*a*) that are evidenced by receipts filed with the Minister,

(*b*) that were not included in determining an amount under this subsection, or subsection 122.51(2), in respect of the individual for a preceding taxation year,

(*c*) that are not included in determining an amount under this subsection, or subsection 122.51(2), by any other taxpayer for any taxation year, and

(*d*) that were paid by the individual or the individual's legal representative within the period referred to in paragraph (*d*) of the description of B, and

F is the lesser of $1,813 and 3% of the dependant's income for the taxation year.

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

(3) For the 2001 to 2003 taxation years, the description of B in subsection 118.2(1) of the Act is to be read as follows:

B is the total of the individual's medical expenses

(*a*) that are evidenced by receipts filed with the Minister,

(*b*) that were not included in determining an amount under this subsection, or subsection 122.51(2) for a preceding taxation year, and

(*c*) that were paid by the individual or the individual's legal representative within any period of 12 months that ends in the taxation year or, if those expenses were in respect of a person (including the individual) who died in the taxation year, within any period of 24 months that includes the day of the person's death;

12. (1) The definition "qualifying educational program" in subsection 118.6(1) is replaced by the following:

"qualifying educational program"
« ***programme de formation admissible*** **»**

"qualifying educational program" means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than ten hours per week on courses or work in the program and, in respect of a program at an institution described in the definition "designated educational institution" (other than an institution described in subparagraph (*a*)(ii) of that definition), that is a program at a post-secondary school level but, in relation to any particular student, does not include a program if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(*a*) an amount received by the student as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the student;

(*b*) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*; or

(*c*) an amount that is received by the student in the year under a program referred to in subparagraph 56(1)(*r*)(ii) or (iii), a program established under the authority of the *Department of Human Resources Development Act* or a prescribed program;

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

(3) For the 1998 to 2003 taxation years, subparagraph (*a*)(ii) of the definition "qualifying educational program" in subsection 118.6(1) of the Act is to be read as follows:

(ii) a benefit, if any, received by the student because of a loan made to the student in accordance with the requirements of the *Canada Student Loans Act* or *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3, or because of financial assistance given to the student in accordance with the requirements of the *Canada Student Financial Assistance Act*, or

13. (1) Paragraph (*b*) of the description of A in the formula in subsection 122.51(2) of the Act is replaced by the following:

(*b*) the total of

(i) 25/16 of the total of all amounts each of which is the amount determined by the formula in subsection 118.2(1) for the purpose of computing the individual's tax payable under this Part for a taxation year that ends in the calendar year, and

(ii) 25% of the total of all amounts each of which is the amount deductible under section 64 in computing the individual's income for a taxation year that ends in the calendar year; and

(2) Subsection (1) applies to the 2004 and subsequent taxation years.

14. (1) Paragraph 126(2)(*a*) of the Act is replaced by the following:

(*a*) such part of the total of the business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in that country and the taxpayer's unused foreign tax credits in respect of that country for the 10 taxation years immediately preceding and the 3 taxation years immediately following the year as the taxpayer may claim,

(2) Subsection (1) applies in respect of unused foreign tax credits computed for taxation years that end after March 22, 2004.

15. (1) Paragraph (*a*) of the definition "flow-through mining expenditure" in subsection 127(9) of the Act is replaced by the following:

(*a*) that is a Canadian exploration expense incurred after October 17, 2000 and before 2006 by a corporation in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (*a*) or (*d*) of the definition "mineral resource" in subsection 248(1),

(2) Section 127 of the Act is amended by adding after subsection (10.21) the following:

Expenditure Limits — associated CCPCs

(10.22) If a particular Canadian-controlled private corporation is associated with another corporation in circumstances where those corporations would not be associated if the Act were read without reference to paragraph 256(1.2)(*a*), the particular corporation has issued shares to one or more persons who have been issued shares by the other corporation and there is at least one shareholder of the particular corporation who is not a shareholder of the other corporation or one shareholder of the other corporation that is not a shareholder of the particular corporation, the particular corporation is not associated with the other corporation for the purpose of

(*a*) determining the particular corporation's expenditure limit under subsection (10.2); and

(*b*) determining the particular corporation's business limit under section 125, as applied for the purpose only of determining the particular corporation's expenditure limit under subsection (10.2).

Application of subsection (10.22)

(10.23) Subsection (10.22) applies to the particular corporation and the other corporation referred to in that subsection only if the Minister is satisfied that

(*a*) the particular corporation and the other corporation are not otherwise associated under this Act; and

(*b*) the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation, or the existence of one or more shareholders of the other corporation who is not a shareholder of the particular corporation, is not for the purpose of satisfying the requirements of subsection (10.22) or 127.1(2.2).

(3) Subsection (1) applies after March 23, 2004.

(4) Subsection (2) applies to taxation years that end after March 22, 2004.

16. (1) Section 127.1 of the Act is amended by adding after subsection (2.1) the following:

Refundable investment tax credit — associated CCPCs

(2.2) If a particular Canadian-controlled private corporation is associated with another corporation in circumstances where those corporations would not be associated if the Act were read without reference to paragraph 256(1.2)(*a*), the particular corporation has issued shares to one or more persons who have been issued shares by the other corporation and there is at least one shareholder of the particular corporation who is not a shareholder of the other corporation or one shareholder of the other corporation that is not a shareholder of the particular corporation, the particular corporation is not associated with the other corporation for the purpose of calculating that portion of the particular corporation's refundable investment tax credit that is in respect of qualified expenditures.

Application of subsection (2.2)

(2.3) Subsection (2.2) applies to the particular corporation and the other corporation referred to in that subsection only if the Minister is satisfied that

(*a*) the particular corporation and the other corporation are not otherwise associated under this Act; and

(*b*) the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation, or the existence of one or more shareholders of the other corporation who is not a shareholder of the particular corporation, is not for the purpose of satisfying the requirements of subsection (2.2) or 127(10.22).

(2) Subsection (1) applies to taxation years that end after March 22, 2004.

17. (1) The portion of paragraph 131(1)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) notwithstanding any other provision of this Act (other than paragraph (5.1)(*b*)), any amount received by a taxpayer in a taxation year as, on account of, in lieu of payment of or in satisfaction of, the dividend shall not be included in computing the taxpayer's income for the year as income from a share of the capital stock of the corporation, and

(2) Section 131 of the Act is amended by adding the following after subsection (5):

TCP gains distribution

(5.1) If a mutual fund corporation elects under subsection (1) to treat a dividend as a capital gains dividend, for the purposes of this Part and Part XIII

(*a*) each shareholder to whom the dividend is paid is deemed to receive from the corporation, at the time the dividend is paid, a TCP gains distribution equal to the lesser of the amount of the dividend and the shareholder's pro rata portion at that time of the mutual fund corporation's TCP gains balance; and

(*b*) where the dividend is paid to a shareholder who is a non-resident person or a partnership that is not a Canadian partnership,

(i) subparagraph (1)(*b*)(vii) does not apply to the dividend, to the extent of the TCP gains distribution, and

(ii) the TCP gains distribution is a taxable dividend that, except for the purpose of the definition of "capital gains dividend account" in subsection (6), is not a capital gains dividend.

Application of subsection (5.1)

(5.2) Subsection (5.1) applies to a dividend paid by a mutual fund corporation in a taxation year only if more than five per cent of the dividend is received by or on behalf of shareholders each of whom is a non-resident person or is a partnership that is not a Canadian partnership.

(3) Subsection 131(6) of the Act is amended by adding the following in alphabetical order:

"pro rata portion"
« *partie proportionelle* »

"pro rata portion", of a shareholder at any time, of a mutual fund corporation's TCP gains balance, in respect of a dividend paid by the mutual fund corporation on a class of shares of its capital stock, means the amount determined by the formula

A x B/C

where

A is the mutual fund corporation's TCP gains balance immediately before that time,

B is the amount received in respect of the dividend by the shareholder, and

C is the total amount of the dividend;

"TCP gains balance"
« *solde des gains provenant de BCI* »

"TCP gains balance", of a mutual fund corporation at any time, means the amount, if any, by which

(*a*) the total of

(i) the mutual fund corporation's capital gains from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties, and

(ii) the TCP gains distributions (including those defined in section 132) received by the mutual fund corporation at or before that time,

exceeds

(*b*) the total of

(i) the mutual fund corporation's capital losses from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties, and

(ii) the total of all amounts deemed, in respect of dividends paid by the mutual fund corporation before that time, to be TCP gains distributions received by shareholders from the mutual fund corporation;

"TCP gains distribution"
« *distribution de gains provenant de BCI* »

"TCP gains distribution" means a TCP gains distribution described in subsection (5.1);

(4) Subsection 131(8.1) of the Act is replaced by the following:

Loss of mutual fund corporation status

(8.1) If, at any particular time, the total of all amounts each of which is the fair market value, at the particular time, of an issued and outstanding share of the capital stock of a corporation held by a non-resident person or a partnership that is not a Canadian partnership is more than 50% of the total of all amounts each of which is the fair market value, at the particular time, of an issued and outstanding share of the corporation, the corporation is deemed not to be, after the particular time, a mutual fund corporation unless

(*a*) both

(i) throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time, the total of all amounts each of which is the fair market value of a specified property (as defined in subsection 132(4)) of the corporation was not more than 10% of the total of all amounts each of which is the fair market value of a property of the corporation, and

(ii) where the corporation was incorporated before 2005, throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the corporation was not more than 10% of the total of all amounts each of which is the fair market value of a property of the corporation; or

(*b*) it has

(i) not issued a share (other than a share issued as a stock dividend) of its capital stock after February 20, 1990 and before the particular time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the share was issued to that person under an agreement in writing entered into before February 21, 1990, and

(ii) not issued a share (other than a share issued as a stock dividend) of its capital stock after [the day before Announcement Date] and before the particular time to a partnership that, after reasonable inquiry, it had reason to believe was not a Canadian partnership, except where the share was issued to that partnership under an agreement in writing, between the corporation and the partnership, made before Announcement Date.

(5) Subsections (1) to (4) apply after March 22, 2004, except that

(*a*) the portion of subsection 131(8.1) of the *Income Tax Act*, as enacted by subsection (4), that is before its paragraph (*a*) in its application before 2005 to a corporation, is to, unless the corporation elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which this Act is assented to, be read as follows:

"(8.1) If at any particular time it can reasonably be considered that a corporation (having regard to all the circumstances, including the terms and conditions of the shares of its capital stock) was incorporated, or is maintained, primarily for the benefit of non-resident persons, the corporation is deemed not to be a mutual fund corporation after the particular time, unless**"; and**

(*b*) the reference to the expression "January 1, 2005" in paragraph 131(8.1)(*a*) of the *Income Tax Act*, as enacted by subsection (4), is to be read as a reference to the expression "January 1, 2007" and the reference to the expression "2004" in that paragraph is to be read as a reference to the expression "2006" in the application of that paragraph to a corporation that

(i) on March 23, 2004 would have ceased to be a mutual fund corporation if

(A) the reference to the expression "throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time" in that

paragraph were read as a reference to the expression "on March 23, 2004", and

(B) the reference to the expression "December 31, 2004" in that paragraph were read as a reference to "March 22, 2004", and

(ii) on March 24, 2004 was a mutual fund corporation.

18. (1) Subsection 132(4) is amended by adding the following in alphabetical order:

"pro rata portion"
« *partie proportionelle* »

"pro rata portion", of a beneficiary, of a mutual fund trust's TCP gains balance for a taxation year, in respect of an amount designated under subsection 104(21) by the mutual fund trust for the taxation year, means the amount determined by the formula

A x B/C

where

A is the mutual fund trust's TCP gains balance for the taxation year,

B is the amount the mutual fund trust has designated under that subsection in respect of the beneficiary for the taxation year; and

C is the total of all amounts designated under that subsection by the mutual fund trust for the taxation year;

"specified property"
« *bien déterminé* »

"specified property" means property that is any of

(*a*) taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1));

(*b*) Canadian resource property; and

(*c*) timber resource property.

"TCP gains balance"
« *solde des gains provenant de BCI* »

"TCP gains balance", of a mutual fund trust for a particular taxation year, means the amount, if any, by which

(*a*) the total of

(i) the mutual fund trust's capital gains from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties, and

(ii) the TCP gains distributions (including those defined in section 131) received by the mutual fund trust at or before the end of the particular taxation year,

exceeds

(*b*) the total of

(i) the mutual fund trust's capital losses from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties, and

(ii) the total of all amounts deemed, in respect of amounts designated by the mutual fund trust under subsection 104(21) for taxation years that preceded the particular taxation year, to be TCP gains distributions received by beneficiaries under the mutual fund trust;

"TCP gains distribution"
« *distribution de gains provenant de BCI* »

"TCP gains distribution" means a TCP gains distribution described in subsection (5.1);

(2) Section 132 of the Act is amended by adding the following after subsection (5):

TCP gains distribution

(5.1) If a mutual fund trust designates an amount under subsection 104(21) for a taxation year of the trust in respect of a beneficiary under the trust, for the purposes of this Part and Part XIII,

(*a*) the beneficiary is deemed to have received from the mutual fund trust a TCP gains distribution equal to the lesser of

(i) twice the amount designated, and

(ii) the beneficiary's pro rata portion of the mutual fund trust's TCP gains balance for the taxation year; and

(*b*) where the beneficiary is a non-resident person or a partnership that is not a Canadian partnership,

(i) the amount designated is deemed by subsection 104(21) to be a taxable capital gain of the beneficiary only to the extent that it exceeds the amount of the TCP gains distribution, and

(ii) one-half of the TCP gains distribution is to be added to the amount otherwise included under subsection 104(13) in computing the income of the beneficiary, and is deemed to be an amount to which paragraph 212(1)(c) applies.

Application of subsection (5.1)

(5.2) Subsection (5.1) applies to an amount designated under subsection 104(21) by a mutual fund trust for a taxation year only if more than five per cent of the total of all amounts each of which is an amount designated under that subsection by the mutual fund trust for the taxation year was designated in respect of beneficiaries under the mutual fund trust each of whom is a non-resident person or is a partnership that is not a Canadian partnership.

(3) Subsection 132(7) of the Act is replaced by the following:

Loss of mutual fund trust status

(7) If, at any particular time, the total of all amounts each of which is the fair market value, at the particular time, of a unit issued by a trust and held by a non-resident person or a partnership that is not a Canadian partnership is more than 50% of the total of all amounts each of which is the fair market value, at the particular time, of a unit issued by the trust, the trust is deemed not to be, after the particular time, a mutual fund trust unless

(*a*) both

(i) throughout the period that begins on the later of January 1, 2005 and the day on which the trust was created and ends at the particular time, the total of all amounts each of which is the fair market value of a specified property of the trust was not more than 10% of the total of all amounts each of which is the fair market value of a property of the trust, and

(ii) where the trust was created before 2005, throughout the period that began on the later of February 21, 1990 and the day of its creation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the total of all amounts each of which is the fair market value of a property of the trust; or

(*b*) it has

(i) not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after February 20, 1990 and before the particular time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990, and

(ii) not issued any unit (other than a unit issued to a partnership as a payment, or in satisfaction of the partnership's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after [the day before Announcement Date] and before the particular time to a

partnership that, after reasonable enquiry, it had reason to believe was not a Canadian partnership, except where the unit was issued to that partnership under an agreement in writing, between the trust and the partnership, entered into before Announcement Date.

(4) Subsections (1) to (3) apply after March 22, 2004 except that

(*a*) the portion of subsection 132(7) of the *Income Tax Act*, as enacted by subsection (3), that is before its paragraph (*a*) in its application before 2005 to a trust, is to, unless the trust elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which this Act is assented to, be read as follows:

"(7) If at any particular time it can reasonably be considered that a trust (having regard to all the circumstances, including the terms and conditions of the units of the trust) was created, or is maintained, primarily for the benefit of non-resident persons, the trust is deemed not to be a mutual fund trust after the particular time, unless**"; and**

(*b*) the reference to "January 1, 2005", in paragraph 132(7)(*a*) of the *Income Tax Act*, as enacted by subsection (3), is to be read as a reference to the expression "January 1, 2007" and the reference to the expression "2004" in that paragraph is to be read as a reference to the expression "2006" in the application of that paragraph to a trust that

(i) on March 23, 2004 would have ceased to be a mutual fund trust if

(A) the reference to the expression "throughout the period that begins on the later of January 1, 2005 and the day on which the trust was created and ends at the particular time" in that paragraph were read as a reference to the expression "on March 23, 2004", and

(B) the reference to the expression "December 31, 2004" in that paragraph were read as a reference to the expression "March 22, 2004", and

(ii) was on March 24, 2004 a mutual fund trust.

19. (1) The portion of subsection 135(1) of the Act before paragraph (*a*) is replaced by the following:

Deduction in computing income

135. (1) Notwithstanding anything in this Part, other than subsections (1.1) to (2.1), there may be deducted, in computing the income of a taxpayer for a taxation year, the total of the payments made, pursuant to allocations in proportion to patronage, by the taxpayer

(2) Section 135 of the Act is amended by adding the following after subsection (1):

Limitation where non-arm's length customer

(1.1) Subsection (1) does not apply to any payment made by a taxpayer (other than a co-operative corporation described in subsection 136(2) or a credit union) to a customer with whom the taxpayer does not deal at arm's length.

(3) The portion of subsection 135(2) of the Act before paragraph (*a*) is replaced by the following:

Limitation where non-member customer

(2) If a taxpayer has not made allocations in proportion to patronage in respect of all of the taxpayer's customers of the year, at the same rate, with appropriate differences for different types, classes, grades or qualities of goods, products or services, the amount that may be deducted by the taxpayer under subsection (1) is an amount equal to the lesser of

(4) Subsections (1) and (3) apply to taxation years that end after March 22, 2004.

(5) Subsection (2) applies in respect of payments made after March 22, 2004.

20. (1) The definition "disbursement quota" in subsection 149.1(1) of the Act is replaced by the following:

"disbursement quota"
« *contingent des versements* »

"disbursement quota", for a taxation year of a registered charity, means the amount determined by the formula

$$A + A.1 + A.2 + B + \{C \times 0.035[D - (E + F)]\}/365$$

where

A is 80% of the total of all amounts each of which is the eligible amount of a gift for which the charity issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than a gift that is,

(*a*) an enduring property, or

(*b*) received from another registered charity,

A.1 is 80% of the amount, if any, by which

(*a*) the total of all amounts, each of which is the amount of an enduring property of the charity (other than an enduring property described in variable A.2, an enduring property that was received by the charity as a specified gift, or a bequest or an inheritance received by the charity in a taxation year that included any time before 1994) to the extent that it is expended in the year

exceeds

(*b*) the lesser of

(i) 4.375 per cent of the amount determined for variable D, and

(ii) the capital gains pool of the charity for the taxation year,

A.2 is the total of all amounts, each of which is the fair market value, when transferred, of an enduring property (other than an enduring property that was received by the charity as a specified gift) transferred by the charity in the taxation year by way of gift to a qualified donee,

B is

(*a*) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift or an enduring property, or

(*b*) in the case of a charitable organization or a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift or an enduring property,

C is the number of days in the taxation year,

D is the prescribed amount for the year in respect of all or a portion of a property (other than a prescribed property) owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration,

E is the total of the amount determined for variable A.2, and 5/4 of the total of the amounts determined for variables A and A.1, for the year in respect of the charity, and

F is the amount equal to

(*a*) in the case of a private foundation, the amount determined for variable B for the year in respect of the charity in accordance with paragraph (*a*) of the description of variable B, or

(*b*) in the case of a charitable organization or a public foundation, 5/4 of the amount determined for variable B for the year in respect of the charity in accordance with paragraph (*b*) of the description of variable B;

(2) Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:

"capital gains pool"
« ***compte de gains en capital*** **»**

"capital gains pool", of a registered charity for a taxation year, means the amount by which

(*a*) the total of all amounts, each of which is the amount of a capital gain of the charity from the disposition of an enduring property after March 22, 2004 and before the end of the taxation year (other than a capital gain from a disposition of a bequest or an inheritance received by the charity in a taxation year that included any time before 1994),

exceeds

(*b*) the total of all amounts, each of which is the amount determined under paragraph (*b*) of variable A.1 of the definition "disbursement quota" for a preceding taxation year, that began after March 22, 2004, of the charity;

"enduring property"
« ***bien durable*** **»**

"enduring property" means property of a registered charity that is

(*a*) a gift received by the charity by way of bequest or inheritance, including a gift deemed by subsection 118.1(5.2) or (5.3),

(*b*) a gift received by the registered charity (referred to in this definition as the "original recipient charity") that is subject to a trust or direction to the effect that the property given, or property substituted for the gift, is to be held by the original recipient charity or by another registered charity (referred to in this definition as a "transferee") for a period of not less than 10 years from the date that the gift was received by the original recipient charity, except that the trust or direction may allow the original recipient charity or the transferee to expend the property before the end of that period to the extent of the amount determined for a taxation year (for the charity or the transferee, as the case may be) by the quotient "{C x 0.035 [D - (E + F)]}/365" in the formula in the definition "disbursement quota", or

(*c*) a gift received by the registered charity as a transferee from an original recipient charity or another transferee of a property that was, before that gift was so received, an enduring property of the original recipient charity or of the other transferee because

of paragraph (*a*) or (*b*) or this paragraph, or property substituted for the gift, if, in the case of a property that was an enduring property of an original recipient charity because of paragraph (*b*), the gift is subject to the same terms and conditions under the trust or direction as applied to the gift to the original recipient charity;

(3) Subsection 149.1(1.1) of the Act is amended by striking 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*) a transfer that has, because of paragraph (*c*) of the description of B in subsection 188(1.1), paragraph 189(6.2)(*b*) or subsection 189(6.3), reduced the amount of a liability under Part V.

(4) Paragraph 149.1(2)(*b*) of the Act is replaced by the following:

(*b*) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

(5) Section 149.1 of the Act is amended by adding the following after subsection (21):

Refusal to register

(22) The Minister may, by registered mail, give notice to a person that the application of the person for registration as a registered charity is refused.

Annulment of registration

(23) The Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity.

Receipts issued before annulment

(24) An official receipt referred to in Part XXXV of the *Income Tax Regulations* issued, by a person whose registration has been annulled under subsection (23), before that annulment is, if the receipt would have been valid were the person a registered charity at the time the receipt was issued, deemed to be a valid receipt under that Part.

(6) Subsections (1), (2) and (4) apply to taxation years that begin after March 22, 2004, except that, in its application to a taxation year that begins before 2009 of a charitable organization registered by the Minister of National Revenue before March 23, 2004, paragraph 149.1(2)(*b*) of the Act, as enacted by subsection (4), is to be read as follows:

"(*b*) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of the amounts determined for variables A, A.1, A.2 and B in the definition "disbursement quota" in subsection (1) for the year in respect of the charity; or**".**

(7) Subsections (3) and (5) apply in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

21. (1) Subsection 152(4.2) of the Act is replaced by the following:

Reassessment with taxpayer's consent

(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year, the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is ten calendar years after the end of that taxation year,

(*a*) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(*b*) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

(2) Subsection (1) applies to applications made after 2004.

22. (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, for any purpose of the definition "refundable investment tax credit" (as defined in subsection 127.1(2)), a qualifying corporation (as defined in that subsection) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (*f*) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (*g*) of that definition in respect of the taxpayer for the year,

(2) Paragraph 164(1.5)(*a*) of the Act is replaced by the following:

(*a*) if the taxpayer is an individual (other than a trust) or is a testamentary trust and the taxpayer's return of income under this Part for the year was filed on or before the day that is ten calendar years after the end of the taxation year; or

(3) Subsection (1) applies to taxation years that end after March 22, 2004.

(4) Subsection (2) applies in respect of returns filed after 2004.

23. (1) Subsection 168(3) of the Act is replaced by the following:

Charities Registration (Security Information) Act

(3) Notwithstanding subsections (1), (2) and (4), if a registered charity is the subject of a certificate that is determined to be reasonable under subsection 7(1) of the *Charities Registration (Security Information) Act*, the registration of the charity is revoked as of the making of that determination.

Objection to proposal or designation

(4) A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1) to (1.2) and (2.1) to (6) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

(2) Subsection (1) applies in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

24. (1) Paragraphs 172(3)(*a*) and (*a*.1) of the Act are replaced by the following:

(*a*) refuses to register an applicant for registration as a Canadian amateur athletic association,

(*a*.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person, that is or was registered as a registered charity or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) or (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days of service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(2) Paragraphs 172(4)(*a*) and (*a*.1) of the Act are replaced by the following:

(*a*) to register an applicant for registration as a Canadian amateur athletic association,

(3) Subsections (1) and (2) apply in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

25. (1) Paragraphs 180(1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(*b*) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),

(2) Subsection (1) applies in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

26. (1) Subparagraph 186(1)(*d*)(i) of the Act is replaced by the following:

(i) non-capital loss for any of its 10 taxation years immediately preceding or 3 taxation years immediately following the year, and

(2) Subsection (1) applies in respect of losses that arise in taxation years that end after March 22, 2004.

27. (1) The heading to Part V of the Act is replaced by the following:

TAX AND PENALTIES IN RESPECT OF
REGISTERED CHARITIES

(2) Subsection (1) is deemed to have come into force on March 23, 2004.

28. (1) Subsections 188(1) and (2) are replaced by the following:

Deemed year-end on notice of revocation

188. (1) If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(*a*) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(*b*) a new taxation year of the charity is deemed to begin immediately after that day; and

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

Revocation tax

(1.1) A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

A - B

where

A is the total of all amounts, each of which is

(*a*) the fair market value of a property of the charity at the end of that taxation year,

(*b*) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(*c*) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year, and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (*c*) of the description of A), each of which is

(*a*) a debt of the charity that is outstanding at the end of that taxation year,

(*b*) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, and

(*c*) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(*c*), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

Winding-up period

(1.2) In this Part, the winding-up period of a charity is the period, that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) or 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

(*a*) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return;

(*b*) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity; and

(*c*) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

Eligible donee

(1.3) In this Part, a registered charity is an eligible donee in respect of a particular charity if

(*a*) more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(*b*) the registered charity is not the subject of a suspension under subsection 188.2(1);

(*c*) the registered charity has no unpaid liabilities under this Act or under the *Excise Tax Act*;

(*d*) the registered charity has filed all information returns required by subsection 149.1(14); and

(*e*) the registered charity is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

Shared liability – revocation tax

(2) A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

Non-application of revocation tax

(2.1) Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

(*a*) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(*b*) the charity has, before the time that the Minister has so registered the charity

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

(2) Section 188 of the Act is amended by adding the following after subsection (3):

Non-application of subsection (3)

(3.1) Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

(3) Subsection (1) applies in respect of notices issued and certificates served by the Minister of National Revenue after the

later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

(4) Subsection (2) applies in respect of taxation years that begin after March 22, 2004.

29. (1) The Act is amended by adding the following after section 188:

Penalties for charities — carrying on business

188.1 (1) Subject to subsection (2), a registered charity is liable to a penalty under this Part equal to five per cent of its gross revenue for a taxation year from any business that it carries on in the taxation year, if the registered charity

(*a*) is a private foundation; or

(*b*) is not a private foundation and the business is not a related business in relation to the charity.

Increased penalty for subsequent assessment

(2) A registered charity that, less than 10 years before a particular time, was assessed a liability under subsection (1) or this subsection, for a taxation year, is liable to a penalty under this Part equal to its gross revenue for a subsequent taxation year from any business that, after that assessment and in the subsequent taxation year, it carries on at the particular time if the registered charity

(*a*) is a private foundation; or

(*b*) is not a private foundation and the business is not a related business in relation to the charity.

Control of corporation by a charitable foundation

(3) If at a particular time a charitable foundation has acquired control (within the meaning of subsection 149.1(12)) of a particular corporation, the foundation is liable to a penalty under this Part for a taxation year equal to

(*a*) five per cent of the total of all amounts, each of which is a dividend received by the foundation from the particular corporation in the taxation year and at a time when the foundation so controlled the particular corporation, except if the foundation is liable under paragraph (*b*) for a penalty in respect of the dividend; or

(*b*) if the Minister has, less than ten years before the particular time, assessed a liability under paragraph (*a*) or this paragraph for a preceding taxation year of the foundation in respect of a dividend received from any corporation, the total of all amounts, each of which is a dividend received, after the particular time, by the foundation, from the particular corporation, in the taxation year and at a time when the foundation so controlled the particular corporation.

Undue benefits

(4) A registered charity that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to

(*a*) 105% of the amount of the benefit, except if the charity is liable under paragraph (*b*) for a penalty in respect of the benefit; or

(*b*) if the Minister has, less than ten years before the particular time, assessed a liability under paragraph (*a*) or this paragraph for a preceding taxation year of the charity and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.

Meaning of Undue Benefit

(5) For the purposes of this Part, an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity, who has contributed or otherwise paid into the charity more than 50% of the capital of the charity, or who deals not at arm's length with such a person or with the charity, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity would have a right, but does not include a disbursement or benefit to the extent that it is

(*a*) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity;

(*b*) a gift made, or a benefit conferred, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity; or

(*c*) a gift to a qualified donee.

Failure to file information returns

(6) Every registered charity that fails to file a return for a taxation year as and when required by subsection 149.1(14) is liable to a penalty equal to $500.

Incorrect information

(7) Except where subsection (8) or (9) applies, every registered charity that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to five per cent of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Increased penalty for subsequent assessment

(8) Except where subsection (9) applies, if the Minister has, less than ten years before a particular time, assessed a penalty under subsection (7) or this subsection for a taxation year of a registered charity and, after that assessment and in a subsequent taxation year, the charity issues, at the particular time, a receipt for a gift otherwise than in accordance with this Act and the regulations, the charity is liable for the subsequent taxation year to a penalty equal to ten per cent of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

False information

(9) If at any time a person makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct (within the meaning assigned by subsection 163.2(1)), is a false statement (within the meaning assigned by subsection 163.2(1)) on a receipt issued by, on behalf of or in the name of another person for the purposes of subsection 110.1(2) or 118.1(2), the person (or, where the person is an officer, employee, official or agent of a registered charity, the registered charity) is liable for their taxation year that includes that time to a penalty equal to 125% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Maximum amount

(10) A person who is liable at any time to penalties under both section 163.2 and subsection (9) in respect of the same false statement is liable to pay only the greater of those penalties.

Delay of expenditure

(11) If, in a taxation year, a registered charity has made a gift of property to another registered charity and it may reasonably be considered that one of the main purposes for the making of the gift was to unduly delay the expenditure of amounts on charitable activities, each of those charities is jointly and severally, or solidarily, liable to a penalty under this Act for its respective taxation year equal to 110% of the fair market value of the property.

Notice of suspension with assessment

188.2 (1) The Minister shall, with an assessment referred to in this subsection, give notice by registered mail to a registered charity that the authority of the charity to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the notice is mailed, if the Minister has assessed the charity for a taxation year for

(*a*) a penalty under subsection 188.1(2);

(*b*) a penalty under paragraph 188.1(4)(*b*) in respect of an undue benefit, other than an undue benefit conferred by the charity by way of a gift; or

(*c*) a penalty under subsection 188.1(9) if the total of all such penalties for the taxation year exceeds $25,000.

Notice of suspension – general

(2) The Minister may give notice by registered mail to a registered charity that the authority of the charity to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the notice is mailed,

(*a*) if the charity contravenes any of sections 230 to 231.5; or

(*b*) if it may reasonably be considered that the charity has acted, in concert with another charity that is the subject of a suspension under this section, to accept a gift or transfer of property on behalf of that other charity.

Effect of suspension

(3) If the Minister has issued a notice to a registered charity under subsection (1) or (2), subject to subsection (4),

(*a*) the charity is deemed, in respect of gifts made and property transferred to the charity within the one-year period that begins on the day that is seven days after the notice is mailed, not to be a donee, described in paragraph 110.1(1)(*a*) or in the definition "total charitable gifts" in subsection 118.1(1), for the purposes of

(i) subsections 110.1(1) and 118.1(1),

(ii) the definitions "qualified donee" and "registered charity" in subsection 248(1), and

(iii) Part XXXV of the *Income Tax Regulations*; and

(*b*) if the charity is, during that period, offered a gift from any person, the charity shall, before accepting the gift, inform that person that

(i) it has received the notice,

(ii) no deduction under subsection 110.1(1) or credit under subsection 118.1(3) may be claimed in respect of a gift made to it in the period, and

(iii) a gift made in the period is not a gift to a qualified donee.

Application for postponement

(4) If a notice of objection to a suspension under subsection (1) or (2) has been filed by a registered charity, the charity may file an application to the Tax Court of Canada for a postponement of that portion of the period of suspension that has not elapsed until the time determined by the Court.

Grounds for postponement

(5) The Tax Court of Canada may grant an application for postponement only if it would be just and equitable to do so.

(2) Subsection (1) applies to taxation years that begin after March 22, 2004.

30. (1) Subsections 189(7) and (8) of the Act are replaced by the following:

Revoked charity to file returns

(6.1) Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(*a*) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(*b*) estimate in the return referred to in subparagraph (*a*)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(*c*) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

Reduction of revocation tax liability

(6.2) If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of

(*a*) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period,

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year; and

(*b*) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

Reduction of liability for penalties

(6.3) If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(*a*) the consideration given by the person for the transfer, and

(*b*) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

Minister may assess

(7) Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.

Provisions applicable to Part

(8) Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I apply in respect of an amount assessed under this Part and of a notice of suspension under subsection 188.2(1) or (2) as if the notice were a notice of assessment made under section 152, with any modifications that the circumstances require including, for greater certainty, that a notice of suspension that is reconsidered or reassessed may be confirmed or vacated, but not varied, except that

(*a*) section 162 does not apply in respect of a return required to be filed under paragraph (6.1)(*b*); and

(*b*) the reference in subsection 165(2) to the expression "Chief of Appeals in a District Office or a Taxation Centre" is to be read as a reference to the expression "Assistant Commissioner, Appeals Branch".

Clarification re objections under subsection 168(4)

(8.1) For greater certainty, in applying the provisions referred to in subsection (8) with any modifications that the circumstances require

(*a*) a notice of objection referred to in subsection 168(4) does not constitute a notice of objection to a tax assessed under subsection 188(1.1); and

(*b*) an issue that could have been the subject of a notice of objection referred to in subsection 168(4) may not be appealed to the Tax Court of Canada under subsection 169(1).

Interest

(9) Subsection 161(11) does not apply to a liability of a taxpayer for a taxation year

(*a*) under subsection 188(1.1) to the extent that the liability is reduced by subsection (6.2), or paid, before the end of the one-year period that begins immediately after the end of the taxation year deemed to have ended by paragraph 188(1)(*a*); or

(*b*) under section 188.1 to the extent that the liability is reduced by subsection (6.3), or paid, before the end of the one-year period that begins immediately after the liability was first assessed.

(2) Subsection (1) applies in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

31. (1) Subsection 211.1(2) of the Act is replaced by the following:

Taxable Canadian life investment income

(2) For the purposes of this Part, the taxable Canadian life investment income of a life insurer for a taxation year is the amount, if any, by which its Canadian life investment income for the year exceeds the total of its Canadian life investment losses for the ten taxation years immediately preceding the year, to the extent that those losses were not deducted in computing its taxable Canadian life investment income for any preceding taxation year.

(2) Subsection (1) applies in respect of losses that arise in taxation years that end after March 22, 2004.

32. (1) The Act is amended by adding the following after section 218.2:

PART XIII.2

NON-RESIDENT INVESTORS IN CANADIAN MUTUAL FUNDS

Definitions

218.3 (1) The following definitions apply in this Part.

"assessable distribution"
« *distribution déterminée* »

"assessable distribution", in respect of a Canadian property mutual fund investment, means the portion of any amount that is paid or credited, by the mutual fund that issued the investment, to a non-resident investor who holds the investment, and that is not otherwise subject to tax under Part I or Part XIII.

"Canadian property mutual fund investment"
« *placement collectif en biens canadiens* »

"Canadian property mutual fund investment" means a share of the capital stock of a mutual fund corporation, or a unit of a mutual fund trust, if

(*a*) the share or unit is listed on a prescribed stock exchange; and

(*b*) more than 50% of the fair market value of the share or unit is attributable to one or more properties each of which is real property in Canada, a Canadian resource property, or a timber resource property.

"Canadian property mutual fund loss"
« *perte collective en biens canadiens* »

"Canadian property mutual fund loss" — of a non-resident investor for a taxation year for which the non-resident investor has filed, on or before their filing-due date for the taxation year, a return of income under this Part in prescribed form, in respect of a Canadian property mutual fund investment — means the lesser of

(*a*) the non-resident investor's loss (for greater certainty as determined under section 40) for the taxation year from the disposition of the Canadian property mutual fund investment, and

(*b*) the total of all assessable distributions that were paid or credited on the Canadian property mutual fund investment after the non-resident investor last acquired the investment and at or before the time of the disposition.

"non-resident investor"
« *investisseur non résident* »

"non-resident investor" means a non-resident person or a partnership other than a Canadian partnership.

"unused Canadian property mutual fund loss"
« *perte collective en biens canadiens inutilisée* »

"unused Canadian property mutual fund loss", of a non-resident investor for a taxation year, means the portion of the total of the non-resident investor's Canadian mutual fund property losses for preceding taxation years that has neither reduced under subsection (3) the amount of tax payable, nor increased under subsection (5) the amount of a refund of tax paid, under this Part for any preceding taxation year.

Tax payable

(2) If at any time a person (referred to in this section as the "payer") pays or credits, to a non-resident investor who holds a Canadian property mutual fund investment, an amount as, on account of, in lieu of payment of or in satisfaction of, an assessable distribution,

(*a*) the non-resident investor is deemed for the purposes of this Act, other than section 150, to have disposed at that time, for proceeds equal to the amount of the assessable distribution, of a property

(i) that is a taxable Canadian property the adjusted cost base of which to the non-resident investor immediately before that time is nil, and

(ii) that is in all other respects identical to the Canadian property mutual fund investment;

(*b*) the non-resident investor is liable to pay an income tax of 15% on the amount of any gain (for greater certainty as determined under section 40) from the disposition; and

(*c*) the payer shall, notwithstanding any agreement or law to the contrary,

(i) deduct or withhold 15% from the amount paid or credited,

(ii) forthwith remit that amount to the Receiver General on behalf of the non-resident investor on account of the tax, and

(iii) submit with the remittance a statement in prescribed form.

Use of losses

(3) If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, the non-resident investor is liable, instead of paying tax under paragraph (2)(*b*) in respect of any amount paid or credited in the taxation year, to pay an income tax of 15% for the taxation year on the amount, if any, by which

(*a*) the total of the non-resident investor's gains under subsection (2) for the taxation year

exceeds

(*b*) the total of the non-resident investor's Canadian property mutual fund losses for the year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year.

Deemed tax paid

(4) If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, any amount that is remitted to the Receiver General in respect of an assessable distribution paid or credited to the non-resident investor in the taxation year is deemed to have been paid on account of the non-resident investor's tax under subsection (3) for the taxation year.

Refund

(5) The amount, if any, by which the total of all amounts paid on account of a non-resident investor's tax under subsection (3) for a taxation year exceeds the non-resident investor's liability for tax under this Part for the taxation year shall be refunded to the non-resident investor.

Excess loss — carryback

(6) If a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under this Part in prescribed form for the taxation year, the Minister shall refund to the non-resident investor an amount equal to the lesser of

(*a*) the total amount of tax under this Part paid by the non-resident investor in each of the three preceding taxation years, to the extent that the Minister has not previously refunded that tax, and

(*b*) 15% of the amount, if any, by which

(i) the total of the non-resident investor's Canadian property mutual fund losses for the taxation year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year

exceeds

(ii) the total of all assessable distributions paid or credited to the non-resident investor in the taxation year.

Ordering

(7) In applying subsection (6), amounts of tax are to be considered to be refunded in the order in which they were paid.

Partnership filing-due date

(8) For the purposes of this Part the taxation year of a partnership is its fiscal period and the filing-due date for the taxation year is to be determined as if the partnership were a corporation.

Partnership — member resident in Canada

(9) If a non-resident investor is a partnership a member of which is resident in Canada, the portion of the tax paid by the partnership under this Part in respect of an assessable distribution paid or credited to the partnership in a particular taxation year of the partnership (or, if the partnership files a return of income for the particular taxation year in accordance with subsection (3), the portion of the tax paid by the partnership under that subsection for the taxation year) that can reasonably be considered to be the member's share is deemed

(*a*) to be an amount paid on account of that member's liability for tax under Part I for that member's taxation year in which the particular taxation year of the partnership ends; and

(*b*) except for the purposes of this subsection, to be neither a tax paid on account of the partnership's tax under this Part nor a tax paid by the partnership.

Provisions applicable

(10) Subsections 161(1), (7) and (11), sections 162 to 167, Division J of Part I and paragraph 214(3)(*f*), subsections 215(2), (3) and (6) and sections 227 and 227.1 apply to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies to distributions paid or credited after 2004.

33. (1) Subsections 220(3.1) and (3.2) of the Act are replaced by the following:

Waiver of penalty or interest

(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

Late, amended or revoked elections

(3.2) The Minister may extend the time for making an election or grant permission to amend or revoke an election if

(*a*) the election was otherwise required to be made by a taxpayer or by a partnership, under a prescribed provision, on or before a day in a taxation year of the taxpayer (or in the case of a partnership, a fiscal period of the partnership); and

(*b*) the taxpayer or the partnership applies, on or before the day that is ten calendar years after the end of the taxation year or the fiscal period, to the Minister for that extension or permission.

(2) Subsection 220(3.1) of the Act, as enacted by subsection (1), applies after 2004.

(3) Subsection 220(3.2) of the Act, as enacted by subsection (1), applies in respect of applications made after 2004.

34. (1) The portion of subsection 225.1(1) of the Act before paragraph (*a*) is replaced by the following:

Collection restrictions

225.1 (1) If 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, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

(2) The portion of subsection 225.1(1) of the English version of the Act that is after paragraph (*g*) is repealed.

(3) Section 225.1 of the Act is amended by adding the following after subsection (1):

Collection-commencement day

(1.1) The collection-commencement day in respect of an amount is

(*a*) in the case of an amount assessed under subsection 188(1.1) in respect of a notice of intention to revoke given under subsection 168(1) or any of subsections 149.1(2) to (4.1), one year after the day on which the notice was mailed;

(*b*) in the case of an amount assessed under section 188.1, one year after the day on which the notice of assessment was mailed; and

(*c*) in any other case, 90 days after the day on which the notice of assessment was mailed.

(4) Subsections (1) to (3) apply in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and the day that is 30 days after the day on which this Act is assented to.

35. (1) Subsection 241(3.2) of the Act is amended by striking out the word "and" at the end of paragraph (*d*) and by replacing paragraph (*e*) with the following:

(*e*) if the registration of the charity has been revoked or annulled, a copy of the entirety of or any part of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation or the annulment;

(*f*) financial statements required to be filed with an information return referred to in subsection 149.1(14);

(*g*) a copy of the entirety of or any part of any letter or notice by the Minister to the charity relating to a suspension under section 188.2 or an assessment of tax or penalty under this Act (other than the amount of a liability under subsection 188(1.1)); and

(*h*) an application by the charity, and information filed in support of the application, for a designation, determination or decision by the Minister under subsection 149.1(6.3), (7), (8) or (13).

(2) Subsection (1) applies to documents that are sent by the Minister of National Revenue, or that are filed or required to be filed with that Minister, after the later of December 31, 2004 and the day on which this Act is assented to.

36. (1) The definition of "tax benefit" in subsection 245(1) of the Act is replaced by the following:

"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, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty;

(2) Subsection 245(4) of the Act is replaced by the following:

Application of subsection (2)

(4) Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

(*a*) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

(i) this Act,

(ii) the *Income Tax Regulations*,

(iii) the *Income Tax Application Rules*,

(iv) a tax treaty, or

(v) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(*b*) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

(3) The portion of subsection 245(5) of the Act before paragraph (*c*) is replaced by the following:

Determination of tax consequences

(5) Without restricting the generality of subsection (2), and notwithstanding any other enactment,

(*a*) any deduction, exemption or exclusion in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,

(*b*) any such deduction, exemption or exclusion, any income, loss or other amount or part thereof may be allocated to any person,

(4) The definition "tax treaty" in subsection 248(1) of the Act is deemed, for the purpose of section 245 of the Act, to have come into force on September 13, 1988.

(5) Subsections (1) to (3) apply with respect to transactions entered into after September 12, 1988.

37. (1) The definition "tax benefit" in subsection 247(1) of the Act is replaced by the following:

"tax benefit"
« *avantage fiscal* »

"tax benefit" has the meaning assigned by subsection 245(1).

(2) Subsection (1) applies to taxation years and fiscal periods that begin after 1997.

38. (1) Subsection 251.1(1) of the Act is amended by striking out the word "and" at the end of paragraph (*e*) and by adding the following after paragraph (*f*):

(*g*) a person and a trust, if the person

(i) is a majority-interest beneficiary of the trust, or

(ii) would, if this subsection were read without reference to this paragraph, be affiliated with a majority-interest beneficiary of the trust; and

(*h*) two trusts, if a contributor to one of the trusts is affiliated with a contributor to the other trust and

(i) a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest beneficiary of the other trust,

(ii) a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority-interest group of beneficiaries of the other trust, or

(iii) each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

(2) Subsection 251.1(3) of the Act is amended by adding the following in alphabetical order:

"beneficiary"
« *bénéficiaire* »

"beneficiary", under a trust, includes a person beneficially interested in the trust.

"contributor"
« *cotisant* »

"contributor", to a trust, means a person who has at any time made a loan or transfer of property, either directly or indirectly, in any manner whatever, to or for the benefit of the trust other than, if the person deals at arm's length with the trust at that time and is not immediately after that time a majority-interest beneficiary of the trust,

(*a*) a loan made at a reasonable rate of interest; or

(*b*) a transfer made for fair market value consideration.

"majority-interest beneficiary"
« *bénéficiaire détenant une participation majoritaire* »

"majority-interest beneficiary", of a trust at any time, means a person whose interest as a beneficiary, if any, at that time

(*a*) in the income of the trust has, together with the interests as a beneficiary in the income of the trust of all persons with whom the person is affiliated, a fair market value that is greater than 50% of the fair market value of all the interests as a beneficiary in the income of the trust; or

(*b*) in the capital of the trust has, together with the interests as a beneficiary in the capital of the trust of all persons with whom the person is affiliated, a fair market value that is greater than 50% of the fair market value of all the interests as a beneficiary in the capital of the trust.

"majority-interest group of beneficiaries"
« *groupe de bénéficiaires détenant une participation majoritaire* »

"majority-interest group of beneficiaries", of a trust at any time, means a group of persons each of whom is a beneficiary under the trust at that time such that

(*a*) if one person held the interests as a beneficiary of all of the members of the group, that person would be a majority-interest beneficiary of the trust; and

(*b*) if any member of the group were not a member, the test described in paragraph (*a*) would not be met.

(3) Subsection 251.1(4) 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*) in determining whether a person is affiliated with a trust,

(i) if the amount of income or capital of the trust that a person may receive as a beneficiary under the trust depends on the exercise by any person of, or the failure by any person to exercise, a discretionary power, that person is deemed to have fully exercised, or to have failed to exercise, the power, as the case may be,

(ii) the interest of a person in a trust as a beneficiary is disregarded in determining whether the person deals at arm's length with the trust if the person would, in the absence of the interest as a beneficiary, be considered to deal at arm's length with the trust,

(iii) notwithstanding subsection 104(1), a reference to a trust does not include a reference to the trustee or other persons who own or control the trust property,

(iv) a trust is not a majority interest beneficiary of another trust unless the trust has an interest as a beneficiary in the income or capital, as the case may be, of the other trust, and

(v) in determining whether a contributor to one trust is affiliated with a contributor to another trust, individuals connected by blood, marriage, common-law partnership or adoption are deemed to be affiliated with one another.

(4) Subsections (1) to (3) apply in determining whether persons are, at any time after March 22, 2004, affiliated, except that paragraph 251.1(4)(c) of the Act, as enacted by subsection (3), is to be read without reference to subparagraph (v) in determining whether persons are, before Announcement Date, affiliated.

39. (1) The portion of subsection 256(7) of the Act that is 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), 88(1.1) and (1.2) and 110.1(1.2), sections 111 and 127, subsection 249(4) and this subsection,

(2) Subsection (1) applies in respect of gifts made after March 22, 2004.

RELATED AMENDMENTS

Budget Implementation Act, 2003

40. (1) The portion of subsection 79(3) of the *Budget Implementation Act, 2003* before paragraph (*a*) is replaced by the following:

(3) Subsection (1) applies to the 2003 and subsequent taxation years except that for taxation years that begin before 2005.

(2) Paragraph 79(3)(*a*) of the Act is amended by adding the word "and" at the end of subparagraph (iii) and by replacing subparagraphs (iv) and (v) with the following:

> **(iv) that proportion of $300,000 that the number of days in the taxation year that are after 2004 is of the number of days in the taxation year; and**

(3) The portion of subsection 79(4) of the Act before paragraph (*a*) is replaced by the following:

(4) Subsection (2) applies to the 2003 and subsequent taxation years except that, for taxation years that begin before 2005, the references in the description of M in the definition "specified partnership income" in subsection 125(7) of the Act, as enacted by subsection (2), to "$300,000" and "$822", are to be read

(4) Subsection 79(4) of the Act is amended by adding the word "and" at the end of paragraph (*a*), by striking out the word "and" at the end of paragraph (*b*) and by repealing paragraph (*c*).

(5) Subsections (1) to (4) are deemed to have come into force on June 19, 2003.

41. Section 462 of the *Bank Act* is amended by adding the following after subsection (2):

Notices: Minister of National Revenue

(2.1) Despite subsections (1) and (2), a notice, demand, order or other document issued with respect to a customer of a bank constitutes notice to the bank and fixes the bank with knowledge of its contents and, where applicable, is binding on property belonging to the customer and in the possession of the bank or on money owing to the customer by reason of an account in the bank, if it is sent to the branch of the bank referred to in subsection (1) or (2), an office of the bank referred to in paragraph (3)(*a*) or any other office agreed to by the bank and the Minister of National Revenue and it relates to

(*a*) the administration of an Act of Parliament by the Minister of National Revenue; or

(*b*) the administration of an Act of the legislature of a province or legislation made by an aboriginal government, where the Minister or the Minister of National Revenue has entered into a tax collection agreement under an Act of Parliament with the government of the province or the aboriginal government.

42. Section 579 of the Act is amended by adding the following after subsection (2):

Notices: Minister of National Revenue

(2.1) Despite subsections (1) and (2), a notice, demand, order or other document issued with respect to a customer of an authorized foreign bank constitutes notice to the authorized foreign bank and fixes the authorized foreign bank with knowledge of its contents and, where applicable, is binding on property belonging to the customer and in the possession of the authorized foreign bank or on money owing to the customer by reason of an account in the authorized foreign bank, if it is sent to the branch of the authorized foreign bank referred to in subsection (1) or (2), an office of the authorized foreign bank referred to in paragraph (3)(*a*) or any other office agreed to by the authorized foreign bank and the Minister of National Revenue and it relates to

(*a*) the administration of an Act of Parliament by the Minister of National Revenue; or

(*b*) the administration of an Act of the legislature of a province or legislation made by an aboriginal government, where the Minister or the Minister of National Revenue has entered into a tax collection agreement under an Act of Parliament with the government of the province or the aboriginal government.

Cooperative Credit Associations Act

43. Section 385.32 of the *Cooperative Credit Associations Act* is amended by adding the following after subsection (2):

Notices: Minister of National Revenue

(2.1) Despite subsections (1) and (2), a notice, demand, order or other document issued with respect to a customer of an association constitutes notice to the association and fixes the association with knowledge of its contents and, where applicable, is binding on property belonging to the customer and in the possession of the association or on money owing to the customer by reason of an account in the association, if it is sent to the branch of the association referred to in subsection (1) or (2), an office of the association referred to in paragraph (3)(*a*) or any other office agreed to by the association and the Minister of National Revenue and it relates to

(*a*) the administration of an Act of Parliament by the Minister of National Revenue; or

(*b*) the administration of an Act of the legislature of a province or legislation made by an aboriginal government, where the Minister or the Minister of National Revenue has entered into a tax collection agreement under an Act of Parliament with the government of the province or the aboriginal government.

Income Tax Conventions Interpretations Act

44. (1) The *Income Tax Conventions Interpretation Act* is amended by adding the following after section 4:

Application of section 245 of the *Income Tax Act*

4.1 Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the

law of Canada is that section 245 of the *Income Tax Act* applies to any benefit provided under the convention.

(2) Subsection (1) applies with respect to transactions entered into after September 12, 1988.

Tax Court of Canada Act

45. Section 12 of the *Tax Court of Canada Act* is amended by adding the following after subsection (4):

Postponements of suspensions to issue tax receipts

(5) The Court has the exclusive original jurisdiction to hear and determine applications referred to in subsection 188.2(4) of the *Income Tax Act* by a registered charity for a postponement of a period of suspension of the authority of the charity to issue official receipts referred to in Part XXXV of the *Income Tax Regulations*.

46. The Act is amended by adding the following after section 17:

Appeals re suspensions of authority to issue tax receipts under the *Income Tax Act*

17.01 (1) In applying section 17.3 to an appeal in respect of a notice of suspension under subsection 188.2(1) or (2) of the *Income Tax Act*, the aggregate of all amounts in issue in the appeal is deemed, notwithstanding section 2.1, to be less than $25,000.

Combined appeals

(2) If an appeal in respect of a notice of suspension under subsection 188.2(1) of the *Income Tax Act* is combined with an appeal in respect of an amount of assessed penalties referred to in that subsection, the aggregate of all amounts in issue in the combined appeal is the aggregate of all amounts in issue in the appeal in respect of the amount of those assessed penalties.

47. Subsections 18.29(3) and (4) of the Act are replaced by the following:

Extension of time and postponements of suspensions

(3) The provisions referred to in subsection (1) also apply, with any modifications that the circumstances require, in respect of applications for

(*a*) an extension of time under

(i) subsection 28(1) of the *Canada Pension Plan*,

(ii) section 33.2 of the *Cultural Property Export and Import Act*,

(iii) section 97.51 or 97.52 of the *Customs Act*,

(iv) subsection 103(1) of the *Employment Insurance Act*,

(v) section 197 or 199 of the *Excise Act, 2001*,

(vi) section 304 or 305 of the *Excise Tax Act*, or

(vii) section 166.2 or 167 of the *Income Tax Act*; and

(*b*) a postponement of a portion of a period of suspension of authority to issue tax receipts under subsection 188.2(4) of the *Income Tax Act*.

Reasons for judgment — extensions of time and postponements

(4) In respect of an application for an extension of time under the provisions referred to in paragraph (3)(*a*) or for a postponement referred in paragraph (3)(*b*), if either party to the application makes a request to the Court for reasons for its judgment, the Court shall give such reasons but those reasons need not be in writing.

Trust and Loan Companies Act

48. Section 448 of the *Trust and Loan Companies Act* is amended by adding the following after subsection (2):

Notices: Minister of National Revenue

(2.1) Despite subsections (1) and (2), a notice, demand, order or other document issued with respect to a customer of a company constitutes notice to the company and fixes the company with knowledge of its contents and, where applicable, is binding on property belonging to the customer and in the possession of the company or on money owing to the customer by reason of an account in the company, if it is sent to the branch of the company referred to in subsection (1) or (2), an office of the company referred to in paragraph (3)(*a*) or any other office agreed to by the company and the Minister of National Revenue and it and it relates to

(*a*) the administration of an Act of Parliament by the Minister of National Revenue; or

(*b*) the administration of an Act of the legislature of a province or legislation made by an aboriginal government, where the Minister or the Minister of National Revenue has entered into a tax collection agreement under an Act of Parliament with the government of the province or the aboriginal government.

Explanatory Notes

PREFACE

These explanatory notes describe proposed amendments to the *Income Tax Act* and related Acts. Draft amendments to the Income Tax Regulations, with corresponding explanatory notes, are also included. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Ralph Goodale, P.C., M.P.,
Minister of Finance

These explanatory notes are provided to assist in an understanding of proposed amendments to the *Income Tax Act*. These notes are intended for information purposes and should not be construed as an official interpretation of the provisions they describe.

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Income Tax Act

Clause 1

Amounts to be Deducted in Computing ACB

ITA
53(2)(*h*)(i.1)

Under paragraph 53(2)(*h*) of the Act, certain amounts are generally deducted in computing the adjusted cost base (ACB) to a beneficiary of the beneficiary's capital interest in a trust. Subparagraph 53(2)(*h*)(i.1) is amended, as a consequence of the addition of new Part XIII.2, to ensure that the ACB to a non-resident investor of the non-resident investor's Canadian property mutual fund investment is not reduced by the amount of an assessable distribution.

This amendment applies after 2004.

Clause 2

Disability Supports Deduction

ITA
64

Section 64 of the Act permits the deduction, in computing the income of an individual who has a severe and prolonged mental or physical impairment, of expenses (subject to certain limits) paid to an attendant (other than the individual's spouse or common-law partner) who is at least 18 years of age that are incurred to enable the individual to work, or to attend a designated educational institution.

Section 64 is amended to replace the attendant care deduction with a disability supports deduction which includes attendant care expenses as well as other disability supports expenses incurred to enable the taxpayer to work, to attend secondary school or to attend a designated educational institution, unless they have been reimbursed by a non-taxable payment.

Amounts paid for sign-language interpretation services and real-time captioning services used by individuals who have a speech or hearing impairment (and paid to persons engaged in the business of providing such services) are eligible for the disability supports deduction. In addition, where a medical practitioner certifies that the taxpayer is an individual who requires the particular service or device, amounts paid for the following services and devices will be eligible for this deduction:

- Teletypewriters or similar devices that enable deaf or mute individuals to make and receive phone calls.

- Devices or equipment designed exclusively to be used by blind individuals in the operation of a computer (e.g. a Braille printer or a large-print on-screen device).

- Optical scanners or similar devices designed to be used by blind individuals to enable them to read print.

- Electronic speech synthesizers that enable mute individuals to communicate by use of a portable keyboard.

- Note-taking services used by individuals with mental or physical impairments (and paid to persons engaged in the business of providing such services).

- Voice-recognition software used by individuals with a physical impairment.

- Tutoring services used by individuals with a learning disability or a mental impairment (and paid to persons engaged in the business of providing such services) that are supplementary to the primary education of the taxpayer.

- Talking textbooks used by individuals with a perceptual disability in connection with the individual's enrolment at a secondary school in Canada or designated educational institution.

- Attendant care services provided in Canada used by individuals with a mental or physical infirmity (and paid to persons who are not the taxpayer's spouse or common-law partner or under 18 years of age). Individuals in respect of whom an amount may be deducted under section 118.3 of the Act continue to be eligible for this deduction.

The maximum amount of the deduction allowed for the year to such an individual for all eligible expenses is the lesser of:

(a) the eligible disability supports expenses paid in the year minus any reimbursements or any form of assistance received in respect of those eligible expenses, and

(b) the total of

(i) the individual's earned income for the year, and

(ii) where the individual is a student at a designated educational institution or a secondary school, the least of

(A) the amount by which the individual's income otherwise determined for the year exceeds the individual's earned income for the year,

(B) $15,000, and

(C) $375 multiplied by the number of weeks in the year during which the individual attends the institution or school.

Expenses claimed under this provision may not be claimed for the medical expense tax credit.

This amendment applies to the 2004 and subsequent taxation years.

Clause 3

Non-Deductibility of Fines and Penalties

ITA
67.6

In calculating the income of a taxpayer from a business or property, the *Income Tax Act* generally permits the deduction of reasonable expenses incurred in the ordinary course of earning that income. This includes fines and penalties incurred in respect of business activities, unless the underlying action or omission by the taxpayer is so egregious or repulsive that the resulting fine or penalty could not reasonably be considered to have had an income-earning purpose.

New section 67.6 of the Act prohibits the deduction of any amount that is in respect of a fine or penalty imposed under the law of a country or a political subdivision of a country (including a state, province or territory) by any person or public body that has authority to impose the fine or penalty.

This prohibition on deductibility does not extend to prescribed fines or penalties. Draft section 7309 of the *Income Tax Regulations* lists such prescribed fines or penalties. This list includes penalty interest imposed under any of paragraphs 280(1)(*a*), 280 (1.1)(*a*) and 280(2)(*a*) of the *Excise Tax Act*, paragraph 110.1(a) of the *Excise Act* and subsection 53(1) of the *Air Travellers Security Charge Act*. Draft section 7309 of the *Income Tax Regulations* is set out in Appendix C.

New section 67.6 applies in respect of fines and penalties imposed after March 22, 2004.

Clause 4

Designation in Respect of Taxable Capital Gains

ITA
104(21)

Subsection 104(21) of the Act permits a trust to designate, in respect of a beneficiary under the trust, a portion of its net taxable capital gains. Where the designation is made, the amount designated is deemed, for the purposes of sections 3 and 111 (except as they apply for the purposes of determining whether a beneficiary is entitled to claim a capital gains exemption under 110.6), to be a taxable capital gain for the year of the beneficiary from the disposition of capital property.

Subsection 104(21) is amended as a consequence of the addition of new subsection 132(5.1) to ensure that the designation is subject to new paragraph 132(5.1)(*b*). Paragraph 132(5.1)(*b*) provides that if a mutual fund trust designates an amount under subsection 104(21) for a taxation year of the trust in respect of a trust beneficiary who is a non-resident person or a partnership that is not a Canadian partnership, for the purposes of Part I and Part XIII, the amount designated is deemed by subsection 104(21) to be a taxable capital gain of the beneficiary only to the extent that it exceeds the amount of the TCP gains distribution. In addition, one-half of the TCP gains distribution is to be added to the amount otherwise included under subsection 104(13) in computing the income of the beneficiary, and is deemed to be an amount to which paragraph 212(1)(*c*) applies.

For ease of reference, this amendment includes the changes announced in the February 27, 2004 release of Legislative Proposals relating to income tax as if they were law.

This amendment applies after March 22, 2004.

Clause 5

Canadian Forces Personnel and Police

ITA
110(1)(*f*)

Paragraph 110(1)(*f*) of the Act allows the deduction of certain amounts in computing taxable income. The result is that such amounts are not taxed, but because they are included in income, they are relevant in calculating family net income for purposes of the Canada Child Tax Benefit and the Goods and Services Tax Credit, as

well as in determining whether the recipient may be claimed as a dependant by another taxpayer.

New subparagraph 110(1)(*f*)(v) extends this taxable income deduction to employment income earned by members of the Canadian Forces or a police force serving on a deployed operational mission that is assessed for risk allowance 3 or higher (as determined by the Department of National Defence) or a prescribed mission. The deduction will be limited to the lesser of the employment income earned while serving on the mission and the maximum rate of pay earned by a non-commissioned member of the Canadian Forces to the extent that the employment income is included in computing the taxpayer's income for the year.

Two types of missions will be prescribed. Selected Canadian Forces missions assessed for risk allowance 2 (as determined by the Department of National Defence) will be prescribed missions. Provision is also made to extend this deduction to income earned by members of a police force serving on a prescribed mission that is not conducted by the Canadian Forces and, thus, may not have a current DND risk assessment. A draft of the proposed regulation is set out in Annex D.

This deduction is applicable to the 2004 and subsequent taxation years.

Clause 6

Charitable Donations Deduction Where Control Acquired

ITA
110.1(1.2)

Section 110.1 of the Act provides a deduction in computing taxable income in respect of gifts made by corporations to registered charities and to certain other entities. It is not intended that the tax benefit from this deduction be made available, indirectly, to a person who could not otherwise use the resulting deduction. New subsection 110.1(1.2) of the Act provides that unused charitable donation deductions of a corporation are deductible only for taxation years that end before the time that control of the corporation is acquired by a person or group of persons.

New subsection 110.1(1.2) also denies a charitable donations deduction in respect of a gift in circumstances where control of a corporation is acquired before a donation of property by the corporation, but in contemplation of that gift being made. This rule

does not apply where the person who acquires control is a registered charity or other qualified donee.

New subsection 110.1(1.2) applies in respect of gifts made after March 22, 2004.

Clause 7

Carry-Forward Period for Business Losses

ITA
111(1)(*a*)

Under existing paragraph 111(1)(*a*) of the Act, taxpayers may carry forward non-capital losses seven taxation years. This paragraph is amended to allow losses that arise in taxation years that end after March 22, 2004 to be carried forward ten taxation years.

Clause 8

Non-Resident's Taxable Income in Canada

ITA
115(1)(*b*)

Paragraph 115(1)(*b*) of the Act describes the taxable capital gains and allowable capital losses of a non-resident that are included in computing the non-resident's taxable income earned in Canada. Paragraph 115(1)(*b*) is amended, as a consequence of the addition of new Part XIII.2, to ensure that any gain or loss realized by a non-resident investor on a Canadian property mutual fund investment (as defined in new subsection 218.3(1)) is not included in computing the non-resident investor's taxable income earned in Canada.

This amendment applies after 2004.

Clause 9

Indexation – Annual Adjustment

ITA
117.1(1)

Subsection 117.1 of the Act provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index.

Subsection 117.1 is amended as a consequence of the amendment to subsection 118.2(1) that provides for a transfer of medical expenses from a dependant to a maximum of $5,000 in excess of the dependant's medical expense threshold. The amendment ensures that the medical expense threshold continues to be indexed, however, the amount available for transfer from a dependant is not indexed.

This amendment applies to the 2004 and subsequent taxation years.

Clause 10

Direct Designations – Insurance Proceeds, RRSPs and RRIFs

ITA
118.1(5.2) and (5.3)

Under certain conditions, subsection 118.1(5.2) of the Act extends the charitable donations tax credit to a transfer made under a life insurance policy to a qualified donee on an individual's death. Similarly, subsection 118.1(5.3) of the Act allows the charitable donations tax credit to a transfer of money from a registered retirement savings plan or registered retirement income fund under certain conditions, where the transfer is made as a consequence of a qualified donee being named a beneficiary under the plan or fund.

Subsections 118.1(5.2) and (5.3) are amended consequential to the addition of the definition "enduring property", and the amendment of the definition "disbursement quota", in subsection 149.1(1) of the Act, applicable in respect of deaths of individuals that occur after 1998.

Clause 11

Medical Expense Credit

ITA
118.2

Section 118.2 of the Act provides rules for determining the amount that may be claimed as a tax credit in respect of an individual's medical expenses.

Subsection 118.2(1) provides the calculation of an individual's medical expense tax credit. Where an individual claims medical expenses in respect of a dependant (other than an individual's spouse or common-law partner) whose income is in excess of the basic personal amount ($8,012 for 2004), the amount of eligible medical expenses is reduced by 68% of the excess. This constraint is

removed, and replaced with a new factor “D” in the formula in subsection 118.2(1) for calculating an individual’s medical expense tax credit as described below.

The description of B in that subsection is also amended to include in the individual’s medical expenses amounts paid on behalf of the individual’s child who has not reached the age of 18 years before the end of the taxation year. These expenses will be included in the pool of family medical expenses without reference to the child’s income.

As indicated above, the formula in subsection 118.2(1) and the description of D in that subsection are also amended to include in the individual’s medical expenses amounts paid by the individual in respect of a dependant (other than an individual’s spouse, the individual’s common-law partner or child of the individual who has not attained the age of 18 years) to the lesser of $5,000 and the amount by which the expenses paid by the individual on behalf of the dependant exceed the dependant’s medical expense threshold (maximum $1,813 for 2004, indexed) or 3% of net income.

These amendments apply to the 2004 and subsequent taxation years.

Clause 12

Education Tax Credit

ITA
118.6(1)

Subsection 118.6 of the Act contains rules governing the education tax credit.

Subsection 118.6(1) of the Act provides for various education-related definitions for the purposes of the child care expenses deduction, the new disability supports deduction (formerly the attendant care deduction) and the tuition and education tax credits. The education tax credit cannot currently be claimed by students who pursue post-secondary education that is related to their current employment. The definition “qualifying educational program” in subsection 118.6(1) is amended to remove this restriction, provided that no part of the cost of education is reimbursed by the employer.

This amendment applies to the 2004 and subsequent taxation years.

Clause 13

Refundable Medical Expense Supplement

ITA
122.51

Section 122.51 of the Act provides a refundable medical expense supplement equal to the lesser of $562 (for 2004) and 25% of allowable expenses claimed under the medical expense tax credit by an eligible individual for the year. The supplement is reduced by 5% of the individual's "adjusted income" in excess of an indexed threshold ($21,301 for 2004).

Section 122.51 is amended, consequential to the introduction of the disability supports deduction in section 64, to include 25 per cent of the new disability supports deduction, in addition to 25 per cent of allowable expenses claimed under the medical expense tax credit. This ensures that individuals who previously claimed the cost of disability supports under the medical expense tax credit will not see the amount of their refundable medical expense supplement reduced if they claim the expenses under the new disability supports deduction.

This amendment applies to the 2004 and subsequent tax years.

Clause 14

Carry-Forward Period for Unused Foreign Tax Credits

ITA
126(2)(*a*)

Under existing paragraph 126(2)(*a*) of the Act, taxpayers may carry forward unused foreign tax credits seven taxation years. This paragraph is amended to allow unused foreign credits that are computed for taxation years that end after March 22, 2004 to be carried forward ten taxation years.

Clause 15

Flow-Through Mining Expenditure

ITA
127(9)

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines expenditures that qualify for the 15% investment tax credit in respect of specified surface "grass-roots" mineral exploration expenses.

Paragraph (*a*) of the definition "flow-through mining expenditure" requires that qualifying expenses be incurred by a corporation after October 17, 2000 and before 2005. The amendment provides that the expense may be incurred by a corporation after October 17, 2000 and before 2006.

Expenditure Limits – Associated CCPCs

ITA
127(10.22)

Scientific research and experimental development (SR&ED) investment tax credits (ITCs) are available at an enhanced rate of 35% in the case of certain SR&ED expenditures made by small Canadian-controlled private corporations (CCPCs). This is in contrast to the general 20% ITC rate for SR&ED expenditures. This result is accomplished by subsection 127(10.1) of the Act, which provides an addition to a CCPC's ITC at the end of a taxation year of 15% of the least of three amounts, of which the third amount is the corporation's "expenditure limit" for the year. A CCPC's expenditure limit for a taxation year is calculated under subsection 127(10.2) of the Act, and is generally $2 million, subject to certain reductions.

CCPCs that are controlled (in law or in fact) by the same person or group of persons are considered to be associated corporations. Associated corporations must share the annual $2 million expenditure limit for the purposes of computing the 15% addition to their ITCs. The phase out of the expenditure limit is also based on the combined taxable income and taxable capital of a group of associated corporations.

Common investors in a CCPC that do not form a "group of persons" under the jurisprudence may nevertheless be considered to be a group of persons under the extended definition of that phrase in paragraph 256(1.2)(*a*) of the Act, which provides that a group of persons in

respect of a corporation means any two or more persons each of whom own shares of the capital stock of a corporation.

New subsection 127(10.22) provides a special relieving rule that can apply for the purpose of calculating a corporation's expenditure limit for a particular taxation year under subsection 127(10.2). New subsection 127(10.22) will apply to a particular corporation if the following three conditions are met:

- The particular corporation is associated with another corporation, but would not be so associated if the Act were read without reference to paragraph 256(1.2)(*a*).

- The particular corporation has issued shares to one or more persons who were also issued shares by the other corporation.

- There is at least one shareholder of the particular corporation who is not a shareholder of the other corporation, or one shareholder of the other corporation that is not a shareholder of the particular corporation.

If new subsection 127(10.22) applies to a particular corporation in respect of another corporation, the particular corporation will not be considered to be associated with the other corporation for the purpose of determining the particular corporation's expenditure limit under subsection 127(10.2), and for the purpose of determining the particular corporation's business limit under section 125 (as applied for the purpose only of determining the particular corporation's expenditure limit under subsection 127(10.2)). This relief from the application of paragraph 256(1.2)(*a*) for the particular corporation vis-à-vis its association with another corporation for these purposes is to be determined on a corporation-by-corporation basis.

The purpose underlying new subsection 127(10.22) does not extend to shareholding structures that are intended to multiply the expenditure limit of corporations. Consequently, the application of subsection 127(10.22) is reserved for those cases where the Minister of National Revenue is satisfied of certain matters more fully described in the explanatory notes to new subsections 127(10.23) and 127.1(2.3).

New subsection 127(10.22) applies to taxation years that end after March 22, 2004.

Application of Subsection 127(10.22)

ITA
127(10.23)

New subsection 127(10.23) of the Act provides that the relieving rule in subsection 127(10.22) applies only if the following two conditions are met:

- The Minister of National Revenue is satisfied that the particular corporation and the other corporation are not otherwise associated under the Act. In general, the Minister must be satisfied that the corporations seeking relief under subsection 127(10.22) are not otherwise associated because of the application of other provisions in section 256 (determined on a corporation-by-corporation basis). For example, the Minister must be satisfied that paragraph 256(1)(*b*) of the associated corporations rules does not apply. That paragraph provides, in general, that a particular corporation is associated with another corporation if the same person or group of persons controls them both, in law or in fact. In the absence of subsection 256(2.1)(*a*), the reference in section 256 to a "group of persons" would take its meaning from the jurisprudence and other applicable provisions of the *Income Tax Act.* Therefore, in the context of applying paragraph 256(1)(*b*), the Minister must be satisfied that there is no person or group of persons that controls in law or in fact the particular corporation and the other corporation. For a different Ministerial consideration, see the note to the analogous rule in new subsection 127.1(2.3) of the Act.

- The Minister is satisfied that the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation is not for the purpose of satisfying the requirements of subsection 127(10.22) or the refundable investment tax credit rule in new subsection 127.1(2.2).

New subsection 127(10.23) applies to taxation years that end after March 22, 2004.

Clause 16

Refundable Investment Tax Credit – Associated CCPCs

ITA
127.1(2.2)

New subsection 127.1(2.2) of the Act provides a special relieving rule that can apply for the purpose of calculating a corporation's refundable investment tax credits (ITCs). New subsection 127.1(2.2) will apply to a particular corporation if the following three conditions are met:

- The particular corporation is associated with another corporation, but would not be so associated if the Act were read without reference to paragraph 256(1.2)(*a*).

- The particular corporation has issued shares to one or more persons who were also issued shares by the other corporation.

- There is at least one shareholder of the particular corporation who is not a shareholder of the other corporation, or one shareholder of the other corporation that is not a shareholder of the particular corporation.

If new subsection 127.1(2.2) applies to a particular corporation, it will not be considered to be associated with the other corporation for the purpose of applying the definitions "qualifying corporation" and "refundable investment tax credit" in subsection 127.1(2) of the Act in respect of the particular corporation's "qualified expenditures".

The purpose underlying new subsection 127.1(2.2) does not extend to shareholding structures that are intended to multiply the expenditure limit of corporations. Consequently, the application of subsection 127.1(2.2) is reserved for those cases where the Minister on National Revenue is satisfied of certain matters more fully described in the explanatory notes to new subsections 127(10.23) and 127.1(2.3).

New subsection 127.1(2.2) applies to taxation years that end after March 22, 2004.

Application of Subsection 127.1(2.2)

ITA
127.1(2.3)

New subsection 127.1(2.3) of the Act provides that the relieving rule in subsection 127.1(2.2) will apply only if the following two conditions are met:

- The Minister of National Revenue is satisfied that the particular corporation and the other corporation are not otherwise associated under the Act. In general, the Minister must be satisfied that the particular corporation seeking relief under subsection 127.1(2.2) is not otherwise associated with the other corporation because of the application of other provisions in section 256 (determined on a corporation-by corporation basis). For example, the Minister must be satisfied that paragraph 256(1)(*e*) of the associated corporations rules does not apply. That paragraph provides, in general, that a particular corporation is associated with another corporation if each of those corporations is controlled, in law or in fact, by a related group, each of the members of one of the related groups is related to each member of the other related group, and one or more persons who are members of both related groups own (either alone or together), in respect of each corporation, not less than 25% of its issued shares. For a different Ministerial consideration, see the note accompanying the analogous rule in new subsection 127(10.23).

  It should also be noted that a "related group" is defined in subsection 251(4) to be a group of persons each member of which is related to every other member.

- The Minister is satisfied that the existence of one or more shareholders of the particular corporation who is not a shareholder of the other corporation is not for the purpose of satisfying the requirements of subsection 127(10.22) or the refundable investment tax credit rule in new subsection 127.1(2.2).

New subsection 127.1(2.3) applies to taxation years that end after March 22, 2004.

Clause 17

Mutual Fund Corporations

ITA
131

Section 131 of the Act sets out rules relating to the taxation of mutual fund corporations and their shareholders.

Election re Capital Gains Dividend

ITA
131(1)(*b*)

Subsection 131(1) of the Act deems an election made by a mutual fund corporation in respect of a dividend to be a capital gains dividend to the extent that it does not exceed the corporation's capital gains dividend account. Further, the dividend recipient is deemed to have a capital gain, for the taxation year in which the dividend is received, from the disposition of property in the year.

Paragraph 131(1)(*b*) is amended, as a consequence of the addition of new subsection 131(5.1) to ensure that paragraph 131(1)(*b*) is subject to new paragraph 131(5.1)(*b*). As a result, the portion of a capital gains dividend that is a TCP gains distribution (as defined in subsection 131(6)) is not deemed to be a capital gain of the recipient.

This amendment applies after March 22, 2004.

TCP Gains Distribution

ITA
131(5.1)

New subsection 131(5.1) of the Act treats a distribution that a Canadian mutual fund corporation pays out of its gains on taxable Canadian property as a taxable dividend (not a capital gains dividend), and thus ensures that it is subject to non-resident withholding tax under subsection 212(2).

New paragraph 131(5.1)(*a*) provides that if a mutual fund corporation elects under subsection 131(1) to treat a dividend as a capital gains dividend, for the purposes of Part I and Part XIII, each shareholder to whom the dividend is paid is deemed to receive, from the corporation, a TCP gains distribution equal to the lesser of the amount of the dividend and the shareholder's *pro rata* portion of the mutual fund corporation's TCP gains balance.

The tax consequences of this characterization depend on the residence and status of the shareholder. If the shareholder is not resident in Canada, the tax consequences are described in paragraph 131(5.1)(*b*). In general, a shareholder resident in Canada will be unaffected: the shareholder will continue to be taxed on the amount as a capital gains dividend. If the shareholder is another mutual fund corporation or a mutual fund trust, the amount of the TCP gains distribution must be added to its own TCP gains balance.

New paragraph 131(5.1)(*b*) provides that if a mutual fund corporation elects under subsection 131(1) to treat a dividend as a capital gains dividend, for the purposes of Part I and Part XIII, where the dividend is paid to a shareholder who is a non-resident person or a partnership that is not a Canadian partnership, subparagraph 131(1)(*b*)(vii) does not apply to the dividend, to the extent of the TCP gains distribution. In addition, the TCP gains distribution is treated as a taxable dividend that, except for the purpose of the definition of "capital gains dividend account" in subsection (6), is not a capital gains dividend.

As a result, the portion of a capital gains dividend that is a TCP gains distribution (as defined in subsection 131(6)) is not deemed to be a capital gain for most purposes. Instead, the TCP gains distribution will be treated as a taxable dividend (not a capital gains dividend) and therefore be subject to non-resident withholding tax under subsection 212(2). The TCP gains distribution is still considered to be a capital gains dividend for the purpose of the definition of "capital gains dividend account" so that the balance in the capital gains dividend account is decreased by the capital gains dividend that became payable by the corporation.

This amendment applies after March 22, 2004.

Application of Subsection 131(5.1)

ITA
131(5.2)

New subsection 131(5.2) of the Act provides that new subsection 131(5.1) applies to a dividend paid by a mutual fund corporation in a taxation year only if more than five per cent of the dividend is received by or on behalf of shareholders each of whom is a non-resident person or is a partnership that is not a Canadian partnership.

This amendment applies after March 22, 2004.

Definitions

ITA
131(6)

Subsection 131(6) of the Act sets out a number of definitions that apply in section 131. Three additional definitions are added to the subsection.

"pro rata portion"

A shareholder's "*pro rata* portion", at any time, of a mutual fund corporation's TCP gains balance, is defined in respect of a dividend paid by the mutual fund corporation on a class of shares, to mean the amount determined by the formula A x B/C. For this purpose, A is the mutual fund corporation's TCP gains balance immediately before that time; B is the amount received in respect of the dividend by the shareholder; and C is the total amount of the dividend.

The definition of "*pro rata* portion" ensures that, if a mutual fund corporation's "TCP gains balance" is less than the total amount of a dividend paid by the corporation on a class of shares, each shareholder that is deemed under paragraph 131(5.1)(*a*) to have received a TCP gains distribution in respect of the dividend will be considered to receive only a proportionate share of the dividend as a TCP gains distribution.

"TCP gains balance"

"TCP gains balance" of a mutual fund corporation at any time, is defined to mean the amount, if any, by which

- the total of the mutual fund corporation's capital gains from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties and any TCP gains distributions (including those defined in section 132) received by the mutual fund corporation at or before that time, exceeds

- the total of the mutual fund corporation's capital losses from dispositions, after March 22, 2004 and at or before that time, of taxable Canadian properties and the total of all amounts deemed, in respect of dividends paid by the mutual fund corporation before that time, to be TCP gains distributions received by shareholders from the mutual fund corporation.

"TCP gains distribution"

"TCP gains distribution" is defined in subsection 131(6) to mean a TCP gains distribution described in subsection 131(5.1).

These new definitions apply after March 22, 2004.

Loss of Mutual Fund Corporation Status

ITA
131(8.1)

Subsection 131(8.1) of the Act provides that a corporation is not a mutual fund corporation after a particular time if, at the particular time, it is reasonable to conclude that the corporation was established or maintained primarily for the benefit of non-resident persons. There are two exceptions to this rule. The first, which is set out in paragraph 131(8.1)(*a*), applies if, throughout the period that started on February 21, 1990 (or if later, the date of incorporation) and that ends at the particular time, all or substantially all of the corporation's property consisted of property other than taxable Canadian property. The second, which is set out in paragraph 131(8.1)(*b*), applies if the corporation did not issue a share of its capital stock, other than a stock dividend, after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was not resident in Canada, except where the share was issued pursuant to an agreement in writing entered into before February 21, 1990.

The preamble to subsection 131(8.1) is amended to provide that a corporation is not a mutual fund corporation after a particular time if, at that time, more than 50% of the fair market value of the issued and outstanding shares of the capital stock of the corporation is attributable to the fair market value of shares that are held by one or any combination of non-resident persons or partnerships that are not "Canadian partnerships" (as defined in section 102 of the Act).

This amendment applies

- after March 22, 2004 to a corporation that so elects in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amendment receives Royal Assent; and

- after 2004 to a corporation that does not so elect. Where a corporation does not so elect, subsection 131(8.1) will continue to provide, until December 31, 2004, that the corporation is not a mutual fund corporation after a particular time if, at that time, it can reasonably be considered that the corporation (having regard to

all the circumstances, including the terms and conditions of the shares of its capital stock) was incorporated, or is maintained, primarily for the benefit of non-resident persons.

The loss, under the general rule in subsection 131(8.1), after the particular time of a corporation's status as a mutual fund corporation will continue to be subject to the exceptions found in paragraphs 131(8.1)(*a*) and (*b*) of the Act.

ITA
131(8.1)(*a*)

Paragraph 131(8.1)(*a*) of the Act is amended to clarify that, in addition to other forms of taxable Canadian property, Canadian resource property and timber resource property are included in determining the availability of relief under that paragraph. Except as otherwise provided in the transitional rules for the amendments, the amendments to paragraph 131(8.1)(*a*) apply after March 22, 2004.

Corporations incorporated after 2004

Paragraph 131(8.1)(*a*) is amended to provide that the exception applies to a corporation incorporated after 2004 only if, throughout the period that begins on the later of January 1, 2005 and the day of its incorporation and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as newly defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties.

Corporations incorporated before 2005

For a corporation incorporated before 2005, paragraph 131(8.1)(*a*) is amended to provide that the exception applies to the corporation only if both

- throughout the period that begins on January 1, 2005 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties, and

- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the

corporation was not more than 10% of the fair market value of all of its properties.

Transitional relief: corporations otherwise offside on March 23, 2004

Some corporations that were otherwise mutual fund corporations at the end of March 23, 2004, might have lost their mutual fund status on March 23, 2004 if the addition of Canadian resource property and timber resource property to the properties considered in determining the application of paragraph 131(8.1)(*a*) applied on March 23, 2004. For such a corporation, paragraph 131(8.1)(*a*) is amended to provide that the exception in that paragraph applies to the corporation if both

- throughout the period that begins on January 1, 2007 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the corporation was not more than 10% of the fair market value of all of its properties, and

- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2006, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the corporation was not more than 10% of the fair market value of all of its properties.

For more detail on the new definition "specified property" in subsection 132(4), see the commentary on that subsection.

ITA
131(8.1)(*b*)

Paragraph 131(8.1)(*b*) of the Act is amended to provide that the exception applies to a corporation only if the corporation satisfies the existing condition in that paragraph (*i.e.*, the condition found, under these amendments, in subparagraph 131(8.1)(*b*)(i)) and it has not issued a share (other than a share issued as a stock dividend) of its capital stock on or after Announcement Date and before the particular time to a partnership that, after reasonable inquiry, it had reason to believe was not a "Canadian partnership" (as defined in section 102 of the Act), except where the share was issued to that partnership under an agreement in writing, between the corporation and the partnership, made before Announcement Date.

The amendment to paragraph 131(8.1)(*b*) of the Act applies after March 22, 2004.

Clause 18

Mutual Fund Trusts

ITA
132

Section 132 of the Act sets out rules relating to the taxation of mutual fund trusts and their beneficiaries (unitholders).

Definitions

ITA
132(4)

Subsection 132(4) of the Act sets out a number of definitions that apply in section 132. Four additional definitions are added to the subsection.

"pro rata portion"

A beneficiary's "*pro rata* portion" of a mutual fund trust's TCP gains balance for a taxation year is defined, in respect of an amount designated under subsection 104(21) by the mutual fund trust for the taxation year, to mean the amount determined by the formula A x B/C. For this purpose, A is the mutual fund trust's TCP gains balance for the taxation year; B is the amount the mutual fund trust has designated under that subsection in respect of the beneficiary for the taxation year; and C is the total of all amounts designated under that subsection by the mutual fund trust for the taxation year.

The definition of "*pro rata* portion" ensures that, if a mutual fund trust's "TCP gains balance" is less than the total amount designated under subsection 104(21) by the mutual fund trust for the taxation year, each beneficiary that is deemed under paragraph 132(5.1)(*a*) to have received a TCP gains distribution in respect of the designation will only receive a proportionate share of the designation as a TCP gains distribution.

"Specified property"

"Specified property" means property that is taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)), Canadian resource property, or timber resource property.

The new definition "specified property" is relevant in applying paragraphs 131(8.1)(*a*) and 132(7)(*a*) of the Act. For more detail on those paragraphs, see the commentary to subsections 131(8.1) and 132(7).

"TCP gains balance"

"TCP gains balance" of a mutual fund trust for a particular taxation year is defined to mean the amount, if any, by which

- the total of the mutual fund trust's capital gains from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties and the TCP gains distributions (including those defined in section 131) received by the mutual fund trust at or before the end of the particular taxation year, exceeds

- the total of the mutual fund trust's capital losses from dispositions, after March 22, 2004 and at or before the end of the particular taxation year, of taxable Canadian properties and the total of all amounts deemed, in respect of amounts designated by the mutual fund trust under subsection 104(21) for earlier taxation years to be TCP gains distributions received by beneficiaries under the mutual fund trust.

"TCP gains distribution"

"TCP gains distribution" is defined in subsection 132(4) to mean a TCP gains distribution described in subsection 132(5.1).

These new definitions apply after March 22, 2004.

TCP Gains Distribution

ITA
132(5.1)

New subsection 132(5.1) of the Act treats a distribution that a Canadian mutual fund trust pays out of its gains on taxable Canadian property as Canadian-source trust income, and thus ensures that it is subject to non-resident withholding tax under paragraph 212(1)(*c*).

New paragraph 132(5.1)(*a*) provides that, if a mutual fund trust designates an amount under subsection 104(21) for a taxation year of the trust in respect of a beneficiary under the trust for the purposes of Part I and Part XIII, each beneficiary in respect of which the designation is made is deemed to have received from the trust, a TCP gains distribution equal to the lesser of twice the amount designated and the beneficiary's *pro rata* portion of the mutual fund trust's TCP gains balance for the taxation year.

The tax consequences of this characterization depend on the residence and status of the beneficiary. If the beneficiary is not resident in Canada, the tax consequences are described in paragraph (5.1)(*b*). In general, a beneficiary resident in Canada will be unaffected: the amount designated under subsection 104(21) will remain a taxable capital gain to the beneficiary from the disposition of a capital property. If the beneficiary is another mutual fund trust or a mutual fund corporation, the amount of the TCP gains distribution must be added to its own TCP gains balance.

New paragraph 132(5.1)(*b*) provides that, if a mutual fund trust designates an amount under subsection 104(21) for a taxation year of the trust in respect of a beneficiary under the trust, for the purposes of Part I and Part XIII, where the designation is made in respect of a beneficiary who is a non-resident person or a partnership that is not a Canadian partnership, the amount designated is deemed by subsection 104(21) to be a taxable capital gain of the beneficiary only to the extent that it exceeds the amount of the TCP gains distribution. In addition, one-half of the TCP gains distribution is to be added to the amount otherwise included under subsection 104(13) in computing the income of the beneficiary, and is deemed to be an amount to which paragraph 212(1)(*c*) applies.

As a result, the full amount of the TCP gains distribution that the non-resident beneficiary is deemed to have received under paragraph (5.1)(*a*) is an amount to which paragraph 212(1)(*c*) applies.

This amendment applies after March 22, 2004.

Application of Subsection 132(5.1)

ITA
132(5.2)

New subsection 132(5.2) of the Act provides that new subsection 132(5.1) applies to an amount designated under subsection 104(21) by a mutual fund trust for a taxation year only if more than five per cent of the total of all amounts each of which is an amount designated in respect of beneficiaries under the mutual fund trust each

of whom is a non-resident person or is a partnership that is not a Canadian partnership.

This amendment applies after March 22, 2004.

Loss of Mutual Fund Trust Status

ITA
132(7)

Subsection 132(7) of the Act provides that a trust is not a mutual fund trust after a particular time if, at the particular time, it is reasonable to conclude that the trust was established or maintained primarily for the benefit of non-resident persons. There are two exceptions to this rule. The first, which is set out in paragraph 132(7)(*a*), applies if, throughout the period that started on February 21, 1990 (or if later, the date of the trust's creation) and that ends at the particular time, all or substantially all of the trust's property consisted of property other than taxable Canadian property. The second, which is set out in paragraph 132(7)(*b*), applies if the trust did not issue any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was not resident in Canada, except where the unit was issued pursuant to an agreement in writing entered into before February 21, 1990.

The preamble to subsection 132(7) is amended to provide that a trust is not a mutual fund trust after a particular time if, at that time, more than 50% of the fair market value of the issued units of the trust is attributable to the fair market value of those issued units that are held by one or any combination of non-resident persons or partnerships other than Canadian partnerships (as defined in section 102 of the Act).

This amendment applies

- after March 22, 2004 to a trust that elects otherwise in writing by filing the election with the Minister of National Revenue on or before its filing-due date for its taxation year in which the amendment receives Royal Assent; and

- after 2004 to trusts that do not so elect. Where a trust does not so elect, subsection 132(7) will continue to provide, until December 31, 2004, that the trust is not a mutual fund trust after a particular time if, at that time, it can reasonably be considered that the trust

(having regard to all the circumstances, including the terms and conditions of the units of the trust) was created, or is maintained, primarily for the benefit of non-resident persons.

The loss, under the general rule in subsection 132(7), after the particular time of a trust's status as a mutual fund trust will continue to be subject to the exceptions found in paragraphs 132(7)(*a*) and (*b*) of the Act.

ITA
132(7)(*a*)

Paragraph 132(7)(*a*) of the Act is amended to clarify that, together with other forms of taxable Canadian property, Canadian resource property and timber resource property are included in determining the availability of relief under that paragraph. Except as otherwise provided in the transitional rules for the amendments, the amendments to paragraph 132(7)(*a*) apply after March 22, 2004.

Trusts created after 2004

In particular, paragraph 132(7)(*a*) is amended to provide that it applies to a trust created after 2004 if, throughout the period that begins on the later of January 1, 2005 and the day of its creation and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as newly defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties.

Trusts created before 2005

For a trust created before 2005, paragraph 132(7)(*a*) is amended to provide that it applies to the trust if both

- throughout the period that begins on January 1, 2005 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties, and

- throughout the period that began on the later of February 21, 1990 and the day of its creation and ends on the earlier of the particular time and December 31, 2004, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the fair market value of all of its properties.

For more detail on the new definition "specified property" in subsection 132(4), please see the commentary on that subsection.

Transitional relief: trusts otherwise offside on March 23, 2004

Some trusts that were otherwise mutual fund trusts at the end of March 23, 2004, might have lost their mutual fund status on March 23, 2004 if the addition of Canadian resource property and timber resource property to the properties considered in determining the application of paragraph 132(7)(*a*) applied on March 23, 2004. For such a trust, paragraph 132(7)(*a*) is amended to provide that the exception in that paragraph applies to the trust if both

- throughout the period that begins on January 1, 2007 and ends at the particular time, the total of all amounts each of which is the fair market value of a "specified property" (as defined in subsection 132(4)) of the trust was not more than 10% of the fair market value of all of its properties, and

- throughout the period that began on the later of February 21, 1990 and the day of its incorporation and ends on the earlier of the particular time and December 31, 2006, the total of all amounts each of which is the fair market value of a taxable Canadian property (determined without reference to paragraph (*b*) of the definition "taxable Canadian property" in subsection 248(1)) of the trust was not more than 10% of the fair market value of all of its properties.

ITA
132(7)(*b*)

Paragraph 132(7)(*b*) of the Act is amended to provide that it applies to a trust only if the trust satisfies the existing condition in that paragraph (*i.e.*, the condition found, under these amendments, in subparagraph 132(7)(*b*)(i)) and it has not issued any unit (other than a unit issued to a partnership as a payment, or in satisfaction of the partnership's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust on or after Announcement Date and before the particular time to a partnership that, after reasonable enquiry, it had reason to believe was not a Canadian partnership, except where the unit was issued to that partnership under an agreement in writing, between the trust and the partnership, entered into before Announcement Date.

The amendment to paragraph 132(7)(*b*) of the Act applies after March 22, 2004.

Clause 19

Patronage Dividends

ITA
135

Section 135 of the Act sets out conditions that must be met in order to deduct from income payments made to customers pursuant to allocations in proportion to patronage.

Deduction in Computing Income

ITA
135(1)

Subsection 135(1) of the Act allows a taxpayer to deduct from income payments made to customers pursuant to allocations in proportion to patronage. Subsection 135(1) is amended to clarify that subsection (1) is subject to new subsection (1.1) and to subsections (2) and (2.1).

This amendment applies to taxation years that end after March 22, 2004.

Limitation Where Non-arm's Length Customer

ITA
135(1.1)

New subsection 135(1.1) of the Act provides that subsection (1), which provides for the deduction of payments made to customers pursuant to allocations in proportion to patronage, does not apply to any payment made by a taxpayer (other than a co-operative corporation described in subsection 136(2) or a credit union) to a customer with whom the taxpayer does not deal at arm's length.

New subsection 135(1.1) applies in respect of payments made after March 22, 2004.

Limitation Where Non-member Customer

ITA
135(2)

Subsection 135(2) of the Act is amended consequential to the amendment to subsection 135(1). The amendment to subsection 135(2) deletes the phrase "notwithstanding subsection (1)" which is

redundant as the amendment to subsection (1) clarifies that subsection (1) is subject to subsection (2).

In addition, the preamble to the English version of subsection 135(2) of the Act is amended to conform with the French version of the Act.

These amendments apply to taxation years that end after March 22, 2004.

Clause 20

Charities

ITA
149.1(1)

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered status. A registered charity is exempt from tax on its taxable income and can issue receipts which entitle its donors to claim tax relief for their donations.

Definitions

ITA
149.1(1)

Subsection 149.1(1) of the Act provides definitions that are relevant for the purposes of section 149.1. This subsection is amended to add the new definitions "capital gains pool" and "enduring property" and to amend the definition "disbursement quota".

"capital gains pool"

The new definition "capital gains pool" applies for the purpose of the definition "disbursement quota", applicable to taxation years that begin after March 22, 2004. Generally, the capital gains pool of a registered charity for a taxation year is the total of all capital gains of the charity from the disposition after March 22, 2004 of enduring properties, less the total disbursement requirement of the charity (under variable A.1 of the definition "disbursement quota") in respect of the expenditure of such properties in preceding taxation years that began after that date. For more information, refer to the commentary for the definition "disbursement quota".

"disbursement quota"

In order to retain registered status, charities must fulfil a minimum annual disbursement requirement set out in the Act. This rule, known

as the disbursement quota, ensures that a significant portion of a registered charity's resources are devoted to charitable programs and services, rather than, for example, fundraising, management, or administration. The disbursement quota may be met by a charity by expenditures on charitable activities and by gifts made to qualified donees.

The disbursement quota for a registered charity for a taxation year includes 80% of the previous year's receipted donations, other than testamentary gifts and gifts that are subject to a condition that the gift must be held by the charity for at least 10 years. Such an excepted gift, which is sometimes referred to as an "endowment", a "gift of capital" or a "10-year gift", received by a charity in a preceding year, is generally included in the disbursement quota to the extent of 80% of the amount of the gift that is expended by the charity in a taxation year.

A charity that is a public foundation must disburse, in addition, 80% of gifts received in the previous year from other charities, while a private foundation must disburse 100% of that amount. All foundations must also disburse 4.5% of the value of their investment assets, as determined under the Act. Charities are able to carry over excess disbursements in one year against any disbursement deficiencies in other years, and may apply to the Minister of National Revenue for a reduction of their disbursement quota where the circumstances warrant.

The definition "disbursement quota" in subsection 149.1(1) of the Act is amended, generally for taxation years beginning after March 22, 2004, to provide the following:

- The 4.5% disbursement quota rate on investment assets is reduced to 3.5%.

- This disbursement requirement is extended to registered charities that are charitable organizations. However, charitable organizations that were registered before March 23, 2004 will not be subject to this requirement until their taxation years that begin after 2008.

- The characteristics of a gift referred to above as an "endowment" or a "10-year gift" are generally incorporated into the new definition "enduring property". For more information on what is an "enduring property", refer to the commentary for that definition.

- A gift of an enduring property received from another registered charity is no longer subject to the disbursement quota in the year after the year in which it is received. Such gifts are now subject to the same requirements as those that apply to gifts of enduring

property received from other persons. The exception for a "specified gift" continues to apply.

- The requirement to disburse 80% of the amount of an enduring property expended in the year is extended to such property received by way of gift in the same year. However, this requirement is reduced by the lesser of 3.5% of the investment assets of the charity and 80% of the "capital gains pool" of the charity. For this purpose, the calculation of investment assets is made without reference to variables E and F in the definition "disbursement quota". For more information on what is the "capital gains pool" of a charity, refer to the commentary for that new definition.

- A different disbursement requirement applies for an enduring property that is expended by way of gift to a qualified donee. The charity must disburse 100% of such an amount (which requirement is satisfied by the gift itself).

"enduring property"

The new definition "enduring property" applies for the purpose of the definition "disbursement quota", applicable to taxation years that begin after March 22, 2004. Generally, an enduring property of a registered charity is a gift received by way of bequest or inheritance, a transfer of property that is deemed to be a gift by subsection 118.1(5.2) or (5.3) of the Act, or a gift received that is subject to a trust or direction that the gift is to be held by the charity for a term of not less than 10 years (sometimes referred to as a "10-year gift"). However, in the case of such a 10-year gift, the trust or direction may permit the charity to substitute the gifted property, or to transfer the enduring property to another registered charity, subject to the same conditions and to the original term of the gift. It may also permit the charity, or the transferee charity, to expend such amount of the gift (or the substituted property) before the end of that term, to the extent necessary for the charity or the transferee charity to meet the requirement under the disbursement quota that it expend in the year 3.5% of its investment assets. For more information on the disbursement quota, refer to the commentary for that definition.

Exclusions of Expenditures as Qualifying Disbursements

ITA
149.1(1.1)

Subsection 149.1(1.1) of the Act provides that a gift or expenditure made by a registered charity will not be considered in determining whether it has met its annual disbursement quota if the gift is made

by way of a specified gift or if the expenditure is on political activities. Subsection 149.1(1) is amended, consequential to the amendment of Part V of the Act in respect of taxes and penalties for which the charity is liable under subsection 188(1.1) or section 188.1 of the Act. New paragraph 149.1(1.1)(*c*) provides that a transfer to another registered charity that is an eligible donee, that reduces such a liability of the transferor charity under that Part, does not qualify as an expenditure for the purpose of calculating the transferor's disbursement quota. For more information on what is an eligible donee, refer to the commentary for subsection 188(1.3) of the Act.

This amendment applies in respect of notices of intention to revoke the registration of a charity, and to notices of assessment, issued by the Minister of National Revenue after the later of December 31, 2004 and 30 days after Royal Assent.

Refusal to Register and Annulment of Registration

ITA
149.1(22), (23) and (24)

New subsections 149.1(22) and (23) of the Act are introduced concurrently with the introduction of new subsection 168(4) of the Act. Subsection 149.1(22) provides that the Minister of National Revenue may notify a person of the decision to refuse the application of the person for registration as a charity. Conversely, subsection 149.1(23) provides for notification that the registration of the person as a charity is annulled. The Minister may annul the registration of a charity if the person was registered in error or the person was a charity but has ceased to be a charity solely because of a change in law. A charity the registration of which has been annulled is deemed never to have been registered as a charity, but is not liable for the revocation tax under Part V of the Act.

New subsection 149.1(24) provides that an official receipt issued by a registered charity prior to the annulment of that charity will be accepted as valid notwithstanding that the charity is deemed never to have been registered, as long as the receipt would have otherwise been valid.

Subsection 168(4) provides a person a right to file a notice of objection in respect of the decision of the Minister. Subsections 149.1(22), (23) and (24) apply in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Clause 21

Reassessment With Taxpayer's Consent

ITA
152(4.2)

Subsection 152(4.2) of the Act gives the Minister of National Revenue the discretion to make a reassessment or determination beyond the normal reassessment period when so requested by a taxpayer who is an individual or a testamentary trust. Currently such reassessments or determinations may be requested back to the 1985 taxation year.

Subsection 152(4.2) is amended to provide that the Minister may not make a reassessment or determination under this authority in respect of a taxation year unless the request is made to the Minister of National Revenue within ten calendar years after the end of that taxation year.

This amendment applies to requests made after 2004.

Clause 22

Refunds

ITA
164(1)(*a*)(i)

Subsection 164(1) of the Act provides rules governing refunds of overpayments of tax.

Paragraph 164(1)(*a*) of the Act authorizes the Minister of National Revenue, on or after mailing the notice of assessment for a year, to refund any overpayment of tax for the year. Subparagraph 164(1)(*a*)(i) of the Act is amended consequential to the addition of new subsection 127.1(2.2), which is described in the explanatory note to that provision.

This amendment applies to taxation years that end after March 22, 2004.

Late Refund of Overpayment

ITA
164(1.5)

Subsection 164(1.5) of the Act gives the Minister of National Revenue discretion to refund all or any portion of an overpayment of tax for a taxation year to which an individual or testamentary trust may be entitled even where the tax return for the taxation year was filed later than three years after the end of the taxation year.

Subsection 164(1.5) is amended to provide that the Minister may not refund any portion of an overpayment of tax in respect of a taxation year under this authority unless the return is filed within ten calendar years after the end of that taxation year.

This amendment applies to returns filed after 2004.

Clause 23

Registered Charities

ITA
168

Section 168 of the Act deals with the circumstances in which the Minister of National Revenue may revoke the registration of a charity or a registered Canadian amateur athletic association.

Charities Registration (Security Information) Act

ITA
168(3)

Subsection 168(3) of the Act provides that, notwithstanding a notice of intention from the Minister of National Revenue to revoke the registration of a charity, or an application from a person to the Federal Court of Appeal for a stay of publication of such a notice, the registration of the charity is revoked as of the time that a certificate issued under the *Charities Registration (Security Information) Act* is determined to be reasonable. Subsection 168(3) is amended consequential to the introduction of subsection 168(4) of the Act, in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent, such that the registration of the person as a charity is also revoked as of the time

that a certificate issued under the *Charities Registration (Security Information) Act* is determined to be reasonable notwithstanding that the person may have filed a notice of objection under subsection 168(4).

Objection to Proposal or Designation

ITA
168(4)

New subsection 168(4) of the Act extends the application of the existing objection review process of the Minister of National Revenue to notices of decisions regarding charities, including

- applications for registration that have been denied;
- revocations or annulments of a charity's registration; and
- designations relating to whether a registered charity is a private or public foundation or one that is directly involved with charitable programs and services.

Filing of a notice of objection is a required step before an appeal to the Federal Court of Appeal may be made under subsection 172(3) of the Act. New subsection 168(4) applies in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Subsection 168(2) of the Act is unchanged, with the result that the Minister retains the option to publish, in the *Canada Gazette*, a copy of a notice of intention to revoke the registration of a charity, if at least 30 days have elapsed since the notice was issued. After the time of publication, the registration of a charity is revoked, along with its authority to issue official income tax receipts in respect of gifts that it receives, notwithstanding that an objection may have been filed. The opportunity remains under paragraph 168(2)(*b*) for the Federal Court of Appeal, in response to an application by the charity, to have the 30-day period extended.

Clause 24

Appeal From Refusal to Register, Revocation of Registration, etc.

ITA
172(3)(*a*) and (*a*.1)

Subsection 172(3) of the Act provides a person with a right to appeal to the Federal Court of Appeal against a decision of the Minister of National Revenue to, among other things, refuse the person's registration as a charity. An appeal is also available in respect of a notice of intention to revoke the registration of a charity or a refusal to designate a charity as a charitable organization, public foundation or private foundation.

Paragraphs 172(3)(*a*) and (*a*.1) are amended concurrently with the introduction of new subsection 168(4) of the Act, applicable in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent. The right to appeal against a decision of the Minister, in respect of a notice issued under any of subsections 149.1(2) to (4.1), (6.3), (22) or (23) or 168(1), will then apply in respect of the confirmation of the Minister of such a decision, in response to a notice of objection filed under subsection 168(4). A person who has filed such an objection has the option to appeal against the decision after 90 days have elapsed from the day that the objection was filed.

Deemed Refusal to Register

ITA
172(4)

Subsection 172(4) of the Act provides a deadline of 180 days for a person to appeal certain decisions of the Minister of National Revenue to the Federal Court of Appeal. Subsection 172(4) is amended, concurrently with the introduction of subsection 168(4) and the amendment of subsection 172(3), to remove references to certain decisions of the Minister in respect of registered charities. Rules in respect of the objection to or appeal from such decisions are provided for in those other provisions.

Amended subsection 172(4) applies in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Clause 25

Appeals to Federal Court of Appeal

ITA
180(1)

Subsection 180(1) of the Act provides that an appeal to the Federal Court of Appeal under subsection 172(3) of the Act may not be filed after 30 days from the time that notice of the Minister of National Revenue's decision was mailed, unless this time limit is extended by the Court. Subsection 180(1) is amended concurrently with the introduction of subsection 168(4) of the Act and the amendment of subsection 172(3) to provide that, for decisions of the Minister in respect of charities and applicants for status as a registered charity, this period begins from the day on which the Minister responds to a notice of objection filed under new subsection 168(4).

Amended subsection 180(1) applies in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Clause 26

Carry-Forward Period for Business Losses

ITA
186(1)(*d*)(i)

Under existing subparagraph 186(1)(*d*)(i) of the Act, private corporations and subject corporations may carry forward non-capital losses seven taxation years to reduce their tax under Part IV of the Act. This subparagraph is amended to allow losses that arise in taxation years that end after March 22, 2004 to be carried forward ten taxation years.

Clause 27

Tax and Penalties in Respect of Registered Charities

ITA
Part V

The heading to Part V is amended to include a reference to penalties.

Clause 28

Revocation Tax

ITA
188(1) and (1.1)

Subsection 188(1) of the Act imposes a tax on charities in respect of which the Minister of National Revenue has revoked registration. A revoked charity has one year from the date of that revocation to file a return that discloses the extent to which the charity has divested itself of its assets to registered charities or other qualified donees. The balance of the net assets of a revoked charity, after this divestiture, must be paid to the Crown as a revocation tax.

Subsection 188(1) is amended, and new subsection 188(1.1) added, effectively to provide that the one-year period for divestiture (the "winding-up period", described in new subsection 188(1.2)) begins on the day that the Minister issues a notice of intention to revoke the registration of a charity, or on the day that a certificate issued under the *Charities Registration (Security Information) Act* is determined to be reasonable. This period may be extended, as discussed in the commentary to subsection 188(1.2). Amended subsection 189(8) of the Act continues to provide for assessment by the Minister of the tax in a manner similar to that for taxpayers liable under Part I of the Act, such that collection of the tax after the winding-up period may, in certain circumstances, be further deferred if the liability of the charity is the subject of a notice of objection by the charity.

In particular, subsection 188(1) deems a taxation year of the charity to end on the day that the certificate or notice of intention to revoke is issued. Subsection 188(1.1) provides that the charity is liable, for that taxation year, for a revocation tax that is equal, generally, to the value of the net assets of the charity on that day, adjusted for income earned and eligible disbursements made during the subsequent winding-up period. Income during the period includes all gifts received and any income that would be subject to tax under section 3 of the Act if the charity were taxable. Eligible disbursements during the period include, generally, expenditures made on charitable activities and gifts made to eligible donees. However, if the charity does not file a notice objection in respect of an assessment of the revocation tax, the time for making such a gift to an eligible donee is limited to one year from the date on which the taxation year is deemed to end.

While an expenditure in respect of charitable activities or by way of gift to an eligible donee may reduce the liability of a charity for the revocation tax under subsection 188(1.1), the excess amount of such

expenditures over the amount required to satisfy the liability does not result in a refundable amount to the charity.

Added to the amount for which a charity is liable under subsection 188(1.1) are any appropriations from the property of the charity made within 120 days before the date on which the taxation year is deemed to end, to a person who is jointly and severally, or solidarily, liable with the charity for the amounts under amended subsection 188(2) of the Act.

For more information on the winding-up period and what is an eligible donee, refer to the commentary for subsections 188(1.2) and (1.3).

These amendments apply in respect of notices of intention to revoke issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Winding-Up Period

ITA
188(1.2)

New subsection 188(1.2) of the Act applies for the purpose of calculating the revocation tax under new subsection 188(1.1) of the Act, in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minster of National Revenue, after the later of December 31, 2004 and 30 days after Royal Assent. The winding-up period of a charity begins immediately after the notice or certificate is issued and ends at the latest of three times:

- the day on which the charity files a return in respect of the revocation tax, but not later than one year after the notice or certificate was issued;

- the day of the last assessment of revocation tax by the Minister; and

- if the charity has objected to or appealed from an assessment by the Minister of the revocation tax, the day on which the Minister may take action to collect the tax under amended section 225.1 of the Act. For more information regarding collection restrictions on revocation tax, refer to the commentary for that section.

Generally, the results are as follows:

- As the Minister would not normally assess a charity for the revocation tax before the time that the charity is required, under new subsection 189(6.1) of the Act, to file a return, if a charity has not filed a return at the time of an assessment by the Minister, the winding-up period would generally end at that time. The Minister will compute the liability for revocation tax up to the date of assessment. Under new subsection 189(6.2), the charity may continue to reduce that liability, such as by gifts to eligible donees, up to the time that is one year from the day that the certificate or notice of intention to revoke was issued. For more information, refer to the commentary for subsection 189(6.2).

- If a charity files a return calculating the amount for which it is liable under subsection 188(1.1), the charity will include in the calculation its income and disbursements in the period up to the date of filing, but not later than one year from the day that the certificate or notice of intention to revoke was issued. This period will apply notwithstanding that the Minister may have previously assessed the charity. The Minister would normally be expected to assess the liability based on the information reported by the charity, unless the Minister disputed the calculation or other information relevant to the assessment became available to the Minister.

- If, at any time after an assessment of the liability of the charity, the Minister reassesses that liability, the Minister will consider in the calculation the income and disbursements of the charity up to the date of that reassessment. The Minister could initiate such a reassessment, or could reassess in response to a direction from a court resulting from an appeal of the amount of tax by the charity.

- If a charity files a notice of objection to an amount assessed under subsection 188(1.1), the time at which the Minister may begin to collect the liability is deferred by amended section 225.1, generally until any objection or appeal by the charity has been disposed of. At that time the Minister may be expected to reassess the charity to include in the calculation the income and disbursements of the charity up to the date of that reassessment.

The Minister would not normally be expected to assess a charity for the revocation tax before the time that the charity is required, under new subsection 189(6.1) of the Act, to file a return. However, there may be circumstances where the Minister becomes aware that a charity's assets are being diverted or directed for private benefit. In such a case, the Minister may consider issuing an assessment notice

without waiting for the charity to file the required return. Such a charity will, for one year from the notice of intention to revoke its registration, retain the opportunity to satisfy the liability under subsection 189(6.2).

Eligible Donee

ITA
188(1.3)

New subsection 188(1.3) of the Act applies for the purpose of calculating the revocation tax under new subsection 188(1.1) of the Act, in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minster of National Revenue, after the later of December 31, 2004 and 30 days after Royal Assent. A revoked charity has one year from the date of that notice or certificate to file a return that discloses the extent to which the charity has divested itself of its assets to eligible donees.

For these purposes, an eligible donee in respect of a particular charity is a registered charity

- that is not the subject of a suspension under new subsection 188.2(1) of the Act;
- that has no unpaid liabilities under the Act or the *Excise Tax Act*;
- that is not subject to a certificate under the *Charities Registration (Security Information) Act*; and
- more than 50% of the members of the board of directors or trustees of which deal at arms' length with each member of the board of directors or trustees of the particular charity.

For more information regarding subsection 188.2(1), refer to the commentary for that subsection.

Shared Liability – Revocation Tax

ITA
188(2)

Subsection 188(2) of the Act imposes a liability for the revocation tax payable under subsection 188(1) by a deregistered charity, jointly with persons, other than qualified donees, who receive property from the charity. Subsection 188(2) is amended consequential to the amendments to section 188, to apply in respect of property

appropriated after the time that is 120 days before the end of the taxation year of the charity that is deemed by amended subsection 188(1).

This amendment applies in respect of notices of intention to revoke the registration of a charity that are issued by the Minister of National Revenue after the later of December 31, 2004 and 30 days after Royal Assent.

Non-Application of Revocation Tax

ITA
188(2.1)

New subsection 188(2.1) of the Act applies consequential to amendments to the revocation tax payable under subsection 188(1) by a deregistered charity, in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minister of National Revenue after the later of December 31, 2004 and 30 days after Royal Assent. Subsection 188(2.1) provides that the revocation tax does not apply where the Minister notifies the charity that the intention to revoke has been abandoned. Such a decision could be taken, for example, upon the review of a notice of objection of a charity in respect of a notice of intention to revoke its registration.

Subsection 188(2.1) also applies if, after the revocation of the registration of the charity and within one year from the day of the notice of intention to revoke, the Minister has accepted a subsequent application from the charity for registration. In such a case, the revocation tax does not apply if the charity has, before the new registration, paid all other amounts owing under the Act or the *Excise Tax Act* and filed all information returns required to be filed under the Act before that time.

Non-Application of Tax on Transfer of Foundation Property

ITA
188(3.1)

Subsection 188(3) of the Act generally applies where a charitable foundation transfers property to a charitable organization, the total "net value" of which is greater than 50% of the "net asset amount" of the foundation, if the main purpose of the transfer is to reduce disbursement quota of the foundation. In such a circumstance the foundation is liable to pay a tax of 25% of the net value of the property transferred. The net value of a property is defined in

subsection 188(5) of the Act as the fair market value of the property less any consideration given to the foundation on the transfer. The net asset amount of a foundation is defined in subsection 188(5) as, generally, the excess of the value of all property of the foundation over the total debt of the foundation.

New subsection 188(3.1) of the Act is introduced concurrently with the introduction of new subsection 188.1(11) of the Act, which applies a penalty upon a registered charity where the charity makes a gift of property to another charity for the purpose of delaying the expenditure of amounts on charitable activities. Subsection 188(3.1) precludes the application of subsection 188(3) to a transfer of property in respect of which subsection 188.1(11) applies, for taxation years that begin after March 22, 2004.

Clause 29

Penalties Applicable to Charities

ITA
188.1

New section 188.1 of the Act introduces penalties on registered charities that are more appropriate than revocation for unintended or incidental breaches of the Act. The penalties generally apply in respect of activities that charities are not permitted to undertake. Some penalties are progressive, increasing in severity for repeat infractions within a period of 10 years. Penalties may apply in respect of the activities of a charity notwithstanding the discretion of the Minister of National Revenue to revoke the registration of a charity in respect of the same activities. Section 188.1 is introduced concurrently with amendments to section 189 of the Act, which introduces a process for assessment and dispute resolution, applicable for taxation years that begin after March 22, 2004.

Business Activities

ITA
188.1(1) and (2)

New subsection 188.1(1) of the Act introduces a penalty equal to 5% of the gross income of a charitable organization or a public foundation from a business not related to the charitable activities of the charity, or 5% of the gross income from any business carried on by a private foundation. Subsection 188.1(2) increases the penalty for a repeat infraction to 100% if the Minister of National Revenue has, for a previous taxation year and less than 10 years before the time of the repeat infraction, assessed the 5% or this 100% penalty.

Control of a Corporation by a Charitable Foundation

ITA
188.1(3)

New subsection 188.1(3) of the Act introduces a penalty equal to 5% of the amount of a dividend received by a charitable foundation from a corporation of which the foundation has acquired control. The penalty is increased to 100% of the amount of the dividend if, less than 10 years after the assessment of the 5% or this 100% penalty, the charity continues to control the corporation or has again acquired control of a corporation.

Undue Benefits

ITA
188.1(4) and (5)

New subsection 188.1(4) of the Act introduces a penalty on a registered charity equal to 105% of the amount of any undue benefit that the charity confers on any person. The penalty is increased to 110% of the amount for a repeat infraction if the Minister of National Revenue has, for a previous taxation year and less than 10 years before the repeat infraction, assessed the 105% or this 110% penalty.

New subsection 188.1(5) of the Act describes an undue benefit as not including a benefit conferred by a charitable act in the ordinary course of the charitable activities of a charity, unless it can reasonably be considered that the eligibility of the beneficiary relates solely to the relationship of that person to the charity. Nor does an undue benefit include reasonable consideration or remuneration for property acquired by the charity or for services it receives.

Subject to the foregoing, however, an undue benefit will generally include

- a disbursement by way of a gift (other than a gift to a qualified donee); and
- the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person

    (a) who is a proprietor, member, shareholder, trustee or settlor of the charity,

(b) who has contributed or otherwise paid into the charity more than 50% of the capital of the charity, or

(c) who does not deal at arm's length with a person in (a) or (b), or with the charity.

The amount of an undue benefit may be conferred by the charity, or may be received by the beneficiary from a third party, at the direction or with the consent of the charity, if the charity otherwise would have had a right to that amount.

Failure to File Information Returns

ITA
188.1(6)

New subsection 188.1(6) of the Act introduces a penalty of $500 on a registered charity that fails to file the annual information returns required under subsection 149.1(14) of the Act, or that files a return after the time that it is required to be filed.

Incorrect Information

ITA
188.1(7) and (8)

New subsection 188.1(7) of the Act introduces a penalty equal to 5% of the amount reported on an official receipt, issued by a registered charity, as the amount eligible for a charitable donations deduction or charitable donations tax credit, if the receipt includes incorrect information or is missing information that is required by the Act or the *Income Tax Regulations* to be included on the receipt. New subsection 188.1(8) increases the penalty for a repeat infraction to 10% if the Minister of National Revenue has, for a previous taxation year and less than 10 years before the time of the repeat infraction, assessed the 5% or this 10% penalty.

Concurrent with the introduction of section 188.1 of the Act, it is proposed that sections 3501 and 3502 of the *Income Tax Regulations* be amended to provide that official receipts include the name and current internet address of the *Canada Revenue Agency*. Unlike the introduction of section 188.1 of the Act, it is proposed that this amendment to the *Income Tax Regulations* apply for receipts issued after 2004.

False Information

ITA
188.1(9) and (10)

New subsection 188.1(9) of the Act introduces a penalty equal to 125% of the amount reported on a receipt, issued by a charity or any other person, as the amount eligible for a charitable donations deduction or charitable donations tax credit, if the receipt includes a false statement that is made under circumstances amounting to culpable conduct. The penalty may be applied to a registered charity where the person making the false statement is an officer, employee, official or agent of the charity.

If both section 163.2 of the Act and subsection 188.1(9) apply in respect of a false statement by a person, new subsection 188.1(10) limits the liability of the person to the greater of the two penalties.

For more information about "culpable conduct" and a "false statement", refer to commentary previously released for section 163.2.

Delay of Expenditure

ITA
188.1(11)

New subsection 188.1(9) of the Act introduces a penalty equal to 110% of the fair market value of property transferred by way of gift from one registered charity to another registered charity, if it may reasonably be considered that the reason for the transfer was to unduly delay the expenditure of amounts on charitable activities. Both the transferor and transferee are jointly and severally, or solidarily, liable for the penalty.

Suspension of Authority to Issue Tax Receipts

ITA
188.2

New section 188.2 of the Act provides for the suspension of a registered charity's tax-receipting privileges concurrently with the assessment of certain penalties under section 188.1 of the Act by the Minister of National Revenue. For the one-year period that begins seven days after the assessment date, a suspended charity is prohibited from issuing official receipts, and other registered charities are not permitted to provide them with gifts. Section 188.2 applies to taxation years that begin after March 22, 2004.

Notice of Suspension

ITA
188.2(1) and (2)

New subsection 188.2(1) of the Act requires the Minister of National Revenue to issue a notice to a registered charity that its authority to issue official tax receipts has been suspended, if the charity is being assessed a penalty

- under subsection 188.1(2) of the Act, for repeatedly carrying on an unrelated business or, in the case of a private foundation, any business;

- under paragraph 188.1(4)(*b*) of the Act, for repeatedly conferring undue benefits on certain persons; or

- under subsection 188.1(9) of the Act, for making false statements on receipts that report, in total for a taxation year, more than $20,000 in respect of which a person may claim a charitable donations deduction or charitable donations tax credit.

New subsection 188.2(2) of the Act provides that the Minister may suspend a registered charity that

- fails to comply with certain provisions of the Act relating to administration and enforcement, such as the requirement to keep proper books and records; or

- assists another charity in avoiding the effect of a suspension by accepting gifts or transfers of property on behalf of the suspended charity.

Effect of Suspension

ITA
188.2(3)

New subsection 188.2(3) of the Act generally provides that, for a one-year period beginning seven days after the Minister issues a notice of suspension, a registered charity is deemed not to be a qualified donee for the purposes of the Act, such that no charitable donations deduction or tax credit may be claimed by any person who makes a gift to the charity during that period. (Official receipts may continue to be issued in respect of gifts made before that period.) If a charity is offered a gift while under suspension, the charity must inform the potential donor of the suspension, that it is not a qualified donee while under suspension and that, if the gift is made during the

suspension, no charitable donations deduction or tax credit may be claimed by the donor in respect of the gift.

Postponement of Suspension

ITA
188.2(4) and (5)

New subsection 188.2(4) of the Act allows for the postponement of the period for suspension of a registered charity under subsection 188.2(1) or (2) of the Act, if the charity has filed a notice of objection in respect of the suspension. The charity must file an application for the postponement to the Tax Court of Canada. New subsection 188.2(5) of the Act allows the Court to grant the application only if it would be just and equitable to do so. The portion of the suspension that has not elapsed will recommence at such time as is determined by the Court.

Clause 30

Revoked Charity to File Returns

ITA
189(6.1)

New subsection 189(6.1) of the Act is introduced concurrently with amendments to subsection 188(1) of the Act, applicable in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minister of National Revenue, after the later of December 31, 2004 and 30 days after Royal Assent. Subsection 189(6.1) requires a person that is liable for a revocation tax under new subsection 188(1.1) to file a return within one year from the date of the certificate or notice, without notice or demand, and to estimate and pay tax payable. The person must also file any information returns required to be filed under subsection 149.1(14) of the Act.

Reduction of Liability

ITA
189(6.2) and (6.3)

New subsection 189(6.2) of the Act is introduced concurrently with the amendment to section 188 of the Act in respect of the revocation tax payable by a charity that has been issued a certificate under the *Charities Registration (Security Information) Act* or a notice by the Minster of National Revenue of an intention to revoke the registration

of the charity. Subsection 189(6.2) applies if the Minister assesses revocation tax in excess of $1,000 at a time that is less than one year after the day that the notice or certificate is issued.

When this provision applies, the charity may reduce the liability for the revocation tax during the balance of the one-year period, also known as the "post-assessment period", by the amount by which the value of property transferred to an "eligible donee" in that period exceeds the consideration given to the charity. (For information on the description of an "eligible donee", refer to the commentary for new subsection 188(1.3) of the Act.) In addition, the liability is reduced by the amount by which the charity's expenditures in the post-assessment period in respect of charitable activities exceed its net income for that period (including any gifts received).

Subsection 189(6.2) is nullified if, after the one-year period, the Minister issues an assessment of the revocation tax under new subsection 188(1.1) of the Act, and any reduction in liability by such transfers and expenditures is incorporated into that assessment.

Similarly, new subsection 189(6.3) of the Act applies to a registered charity that the Minister assesses for penalties under section 188.2 for a taxation year in excess of $1,000. The charity may reduce the liability by the amount by which the value of property transferred to an "eligible donee", in the one-year period following the assessment date, exceeds the consideration given to the charity.

Subsections 189(6.2) and (6.3) apply in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Minister May Assess

ITA
189(7)

Subsection 189(7) of the Act, which applies in respect of interest applicable to liabilities under Part V of the Act, is replaced with subsection 189(9) of the Act. New subsection 189(7) applies in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent, to clarify that the assessment of any amount under Part V does not preclude the Minister of National Revenue from revoking the registration of a charity.

Provisions Applicable to Part V

ITA
189(8) and (8.1)

Subsection 189(8) of the Act provides that certain provisions of Part I relating to returns, assessments, payments and appeals are applicable to the taxes payable under Part V in respect of registered charities. Subsection 189(8) is amended consequential to amendments to the revocation tax under section 188 and the introduction of penalties and suspension under new sections 188.1 and 188.2, applicable in respect of notices issued by the Minister of National Revenue after the later of December 31, 2004 and 30 days after Royal Assent.

The process for judicial review of the assessment of amounts payable under Part V is different from the process for appealing certain decisions of the Minister, such as to revoke the registration of a charity. In this regard, subsection 189(8.1) clarifies that a taxpayer may not appeal to the Tax Court of Canada in respect of an issue that could be the subject of a notice of objection filed under new subsection 168(4) of the Act. For more information on objecting to and appealing from such decisions, refer to the commentary for subsections 168(4), 172(3) and 180(1) of the Act.

Interest

ITA
189(9)

Amended subsection 189(8) of the Act provides, in part, that interest accrues on an amount assessed under Part V of the Act pursuant to subsection 161(11) of the Act. Paragraph 161(11)(*c*) instructs that interest accrues from the day of mailing of an original notice of assessment by the Minister of National Revenue. New subsection 189(9) of the Act modifies subsection 161(11) for the purpose of liabilities under Part V. Interest on the revocation tax payable by a person under subsection 188(1.1) of the Act accrues only on the balance remaining at the time that is one year after the day on which the person was issued a certificate under the *Charities Registration (Security Information) Act* or a notice by the Minister of National Revenue of an intention to revoke the registration of the charity. Similarly, interest on penalties under section 188.1 of the Act accrues only on the balance remaining one year after the liability was first assessed.

Subsection 189(9) applies in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Clause 31

Carry-Forward Period for "taxable Canadian life investment losses"

ITA
211.1(2)

Under existing subsection 211.1(2) of the Act, life insurers may carry forward "taxable Canadian life investment losses" seven taxation years to reduce their tax under Part XII.3 of the Act. This subsection is amended to allow losses that arise in taxation years that end after March 22, 2004 to be carried forward ten taxation years.

Clause 32

Non-Resident Investors in Canadian Mutual Funds

ITA
Part XIII.2 – 218.3

New Part XIII.2 of the Act applies a 15 per cent income tax, as a tax on gains, to distributions that are not otherwise subject to tax under Part I or Part XIII (defined as an "assessable distribution" in new subsection 218.3(1)), paid or credited by certain mutual funds to their non-resident investors. Where the non-resident investor realizes a loss (defined as a "Canadian property mutual fund loss" in subsection 218.3(1)) on the disposition of the mutual fund investment, the loss may in certain circumstances be applied against the gain on similar investments. In general, the loss may be carried back three taxation years and forward indefinitely.

Definitions

ITA
218.3(1)

New subsection 218.3(1) of the Act defines a number of terms for the purposes of new Part XIII.2 of the Act.

"Assessable distribution"

"Assessable distribution" is defined, in respect of a Canadian property mutual fund investment, as the portion of any amount that is paid or credited by the mutual fund to a non-resident investor who holds the investment, and that is not otherwise subject to tax under Part I or Part XIII.

"Canadian property mutual fund investment"

"Canadian property mutual fund investment" is defined to mean a share of a mutual fund corporation, or a unit of a mutual fund trust, if the share or unit is listed on a prescribed stock exchange and more than 50 per cent of the value of the share or unit is attributable to one or more properties each of which is real property in Canada, a Canadian resource property, or a timber resource property.

"Canadian property mutual fund loss"

A non-resident investor's "Canadian property mutual fund loss" for a taxation year is defined to mean the non-resident investor's loss for the taxation year from the disposition of a Canadian property mutual fund investment, but only to the extent that the loss does not exceed the total of all assessable distributions that were paid or credited on the Canadian property mutual fund investment after the non-resident investor last acquired the investment and at or before the time of the disposition. For greater certainty, the non-resident investor's loss is determined under section 40 of the Act. A non-resident investor has a Canadian property mutual loss for a taxation year only if the non-resident investor files a return of income under Part XIII.2 for the taxation year. The Canadian property mutual fund loss of a non-resident investor is calculated on an investment-by-investment basis. A non-resident investor may therefore have more than one Canadian property mutual fund loss for the same taxation year.

"Non-resident investor"

"Non-resident investor" is defined to mean a non-resident person or a partnership other than a Canadian partnership. (It should be noted that if the non-resident person is a partnership, for the purposes of Part XIII.2, the tax under this Part is paid and calculated at the partnership level.)

"Unused Canadian property mutual fund loss"

"Unused Canadian property mutual fund loss", of a non-resident investor for a taxation year, is defined to mean the portion of the total of the non-resident investor's Canadian mutual fund property losses for preceding taxation years that has neither reduced under new subsection 218.3(3) the amount of tax payable, nor increased under new subsection 218.3(5) the amount of a refund of tax paid, under Part XIII.2 for any preceding taxation year.

The definition unused Canadian property mutual fund loss allows a non-resident investor's Canadian property mutual fund loss to be carried forward indefinitely. Unlike Canadian property mutual fund

losses which are calculated on an investment-by-investment basis, unused Canadian property mutual fund loss is calculated as a pool of Canadian property mutual fund losses.

Tax Payable

ITA
218.3(2)

New paragraph 218.3(2)(*a*) of the Act provides that if at any time a person (referred to as the "payer") pays or credits, to a non-resident investor who holds a Canadian property mutual fund investment, an amount as, on account of, in lieu of payment of or in satisfaction of, an assessable distribution, the non-resident investor is deemed for the purposes of the Act, other than section 150, to have disposed at that time of a property that is taxable Canadian property, the proceeds of which are equal to the amount of the assessable distribution. The adjusted cost base of the property to the non-resident investor immediately before that time is also deemed to be nil. The property that is deemed to have been disposed of is in all other respects identical to the Canadian property mutual fund investment.

As mentioned, the deemed disposition does not apply for the purpose of section 150. This ensures that a non-resident investor is not required to file a return of income solely because of the deemed disposition in paragraph (2)(*a*). As described in more detail below, the non-resident investor will be required to file a return of income under Part XIII.2 only if the investor chooses to apply their Canadian property mutual fund losses or unused Canadian property mutual fund loss to reduce the amount of tax payable under subsection (3) or to obtain a refund under subsection (5).

New paragraph 218.3(2)(*b*) provides that the non-resident investor is liable to pay an income tax of 15 per cent on the amount of the gain that results from the deemed disposition described in paragraph (a). For greater certainty, the non-resident investor's gain is determined under section 40 of the Act.

New paragraph 218.3(2)(*c*) provides that, if a payer pays or credits, to a non-resident investor who holds a Canadian property mutual fund investment, an amount as, on account of, in lieu of payment of or in satisfaction of, an assessable distribution, the payer is required to withhold 15 per cent from the amount and remit it to the Receiver General on behalf of the non-resident investor on account of the tax.

Use of Losses

ITA
218.3(3)

New subsection 218.3(3) of the Act provides that if a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under Part XIII.2, the non-resident investor is liable, instead of paying the fixed and final tax under paragraph (2)(*b*), to pay an income tax that takes losses into account. Specifically, a non-resident investor who files a return under this provision will pay a tax of 15 per cent for the taxation year on the amount, if any, by which the total of the non-resident investor's gains under subsection (2) for the taxation year exceeds the total of the non-resident investor's Canadian property mutual fund losses and unused Canadian property mutual fund loss for the taxation year.

Deemed Tax Paid

ITA
218.3(4)

New subsection 218.3(4) of the Act provides that if a non-resident investor files, on or before their filing-due date for a taxation year, a return of income under Part XIII.2, any amount that is remitted to the Receiver General in respect of an assessable distribution paid or credited to the non-resident investor in the taxation year is deemed to have been paid on account of the non-resident investor's tax under subsection (3) for the taxation year.

Refund

ITA
218.3(5)

New subsection 218.3(5) of the Act entitles a non-resident investor to a refund of excessive tax withholding. That refund is equal to the amount, if any, by which the total of all amounts paid on account of a non-resident investor's tax under subsection (3) for a taxation year exceeds the non-resident investor's liability for tax under Part XIII.2 for the taxation year.

Excess Loss: Carryback

ITA
218.3(6)

New subsection 218.3(6) of the Act provides a mechanism that in effect allows Canadian property mutual fund losses to be carried back. To use this mechanism, the non-resident investor must file, on or before their filing-due date for a taxation year, a return of income under Part XIII.2. The non-resident investor may then be entitled to a refund if the total of the non-resident investor's Canadian property mutual fund losses for the taxation year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year exceeds the total of all assessable distributions paid or credited to the non-resident in the taxation year.

If the non-resident investor is entitled to a refund, the Minister shall refund to the non-resident investor an amount equal to the lesser of

- the total amount of tax under Part XIII.2 paid by the non-resident investor in each of the three preceding taxation years, to the extent that the Minister has not previously refunded that tax, and

- 15 per cent of the amount, if any, by which the total of the non-resident investor's Canadian property mutual fund losses for the taxation year and the non-resident investor's unused Canadian property mutual fund loss for the taxation year exceeds the total of all assessable distributions paid or credited to the non-resident investor in the taxation year.

Subsection (6) has the effect of allowing a non-resident investor's Canadian property mutual fund loss to be carried back three taxation years. However, it requires that the non-resident investor first apply their Canadian property mutual fund losses and unused Canadian property mutual fund loss for a particular taxation year to assessable distributions paid or credited in that taxation year, before they are eligible to be carried back. It should be noted that the limits on refund interest under subsection 164(5) apply for the purposes of Part XIII.2.

Ordering

ITA
218.3(7)

New subsection 218.3(7) of the Act provides that, in applying subsection (6), amounts of tax are considered to be refunded in the order in which they were paid.

Partnership Filing-due Date

ITA
218.3(8)

New subsection 218.3(8) of the Act provides that for the purposes of Part XIII.2, the taxation year of a partnership is its fiscal period and the filing-due date for the taxation year is to be determined as if the partnership were a corporation.

Partnership – Member Resident in Canada

ITA
218.3(9)

New subsection 218.3(9) of the Act provides for the allocation of tax paid by a partnership under Part XIII.2 (in respect of an assessable distribution paid or credited to the partnership) to its members resident in Canada. The amount allocated must reasonably be considered to be the resident member's share of the tax paid. The tax so allocated will be treated as an amount paid on account of the member's liability for tax under Part I and as neither a tax paid on account of the partnership's tax under this Part nor a tax paid by the partnership. This will enable a Canadian-resident partner to recover the partner's share of the tax (assuming it is not required to satisfy another liability).

Provisions Applicable

ITA
218.3(10)

Under new subsection 218.3(10), various administrative provisions of the Act are made applicable to Part XIII.2. It is expected that sections 202 and 210 of the Regulations will be amended to make reference to Part XIII.2.

New Part XIII.2 applies to distributions paid or credited after 2004.

Clause 33

Waiver of Penalty or Interest

ITA
220(3.1)

Subsection 220(3.1) of the Act gives the Minister of National Revenue discretion to waive or cancel a penalty or interest payable under the Act.

Subsection 220(3.1) is amended to provide that the Minister may not waive or cancel a penalty or interest payable in respect of a taxation year of the taxpayer (or, in the case of a partnership, a fiscal period of the partnership) unless the taxpayer or partnership has made application therefore on or before the day that is ten calendar years after the end of that taxation year or fiscal period. Provision is also made to give the Minister discretion to waive or cancel a penalty or interest payable without application where extraordinary circumstances, such as a natural disaster, prevent taxpayers from meeting their income tax obligations.

This amendment applies after 2004.

Late, Amended or Revoked Elections

ITA
220(3.2)

Subsection 220(3.2) of the Act gives the Minister of National Revenue discretion to allow a taxpayer or partnership to make a late election or to amend or revoke a valid election previously made.

Subsection 220(3.2) is amended to provide that a taxpayer or partnership may not make a late election, or amend or revoke a valid election previously made in respect of a taxation year of the taxpayer (or in the case of a partnership, a fiscal period of the partnership), more than ten calendar years after the end of that taxation year or fiscal period.

This amendment applies to applications made after 2004.

Clause 34

Collection Restrictions

ITA
225.1(1) and (1.1)

Section 225.1 of the Act restricts the right of the Minister of National Revenue to collect unpaid amounts for which a taxpayer has been assessed under the Act. In general, collection actions are limited for 90 days after the date of assessment, or until any objection or appeal by the taxpayer has been disposed of.

Subsection 225.1(1) is amended concurrently with amendments to Part V of the Act in respect of registered charities, to replace the reference to the 90-day period with the term "collection-commencement day". New subsection 225.1(1.1) describes the collection-commencement day in respect of revocation tax assessed under subsection 188(1.1) of the Act as one year after the day on which the Minister has issued a notice of intention to revoke the registration of a charity. In respect of penalties assessed under section 188.1 of the Act, the collection-commencement day is one year from the day on which the notice of assessment was mailed. For amounts assessed under other Parts of the Act, the collection-commencement day remains 90 days after the date of assessment.

These amendments apply in respect of notices issued by the Minister after the later of December 31, 2004 and 30 days after Royal Assent.

Clause 35

Disclosure of Information – Registered Charities

ITA
241(3.2)

Subsection 241(3.2) of the Act permits a government official to release certain information relating to an organization that was at any time a registered charity under the Act, provided that the information relates to the period during which the organization was so registered.

Subsection 241(3.2) is amended to further enhance transparency and accessibility by making new information available on registered charities, the registration process, regulatory decisions, and compliance activities. This amendment does not compromise existing safeguards that are in place to protect the privacy of individuals. The following additional documents regarding registered charities may be released, if they are sent by the Minister of National Revenue, or are

filed or required to be filed with that Minister, after the later of December 31, 2004 and Royal Assent:

- Financial statements that are filed with annual information returns.
- Letters sent by the Canada Revenue Agency ("CRA") to a charity relating to the grounds for revocation or annulment of the charity's registration.
- A letter or notice regarding the CRA's decision concerning a notice of objection to an assessment of tax or penalties.
- The information that a registered charity has filed in support of an application for special status or an exemption under the Act, as well as any response to such an application (e.g., a request for permission to accumulate assets).
- Identification of a registered charity on which a sanction has been imposed, the type of sanction imposed, and the letter sent to the charity relating to the grounds for the sanction.

Information Pertaining to Organizations Denied Registration

Currently, no information is made available to the public about organizations that have been denied registration as registered charities under the Act. However, paragraph 241(4)(*g*) permits a government official to use information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates. Access to such information will assist the charitable sector and the public in understanding how the CRA determines whether an organization meets the criteria for registration as a registered charity. Accordingly, the CRA may make available its reasons for denying the registration of organizations, in such a manner as to withhold the identity of an applicant. Subject to this restriction on confidentiality, such information could include the following:

- The governing documents of an organization, including the organization's statement of purpose.
- Information disclosed by an organization in the course of making an application for registration as a charity.
- A copy of the notice of denial in respect of the organization.
- A copy of the decision, if any, of the Appeals Branch of the CRA regarding a notice of objection, if any, filed by the organization.

Clause 36

General Anti-Avoidance Rule

ITA
245(1)

The definition of "tax benefit" in subsection 245(1) of the Act is amended to clarify that a tax benefit includes a reduction, avoidance or deferral of tax or other amount that would be payable under the Act but for a tax treaty, or an increase in a refund of tax or other amount under the Act as a result of a tax treaty.

This amendment applies with respect to transactions entered into after September 12, 1988.

ITA
245(4)

Subsection 245(4) of the Act is amended to clarify that section 245 applies to a misuse or abuse of the provisions of the *Income Tax Regulations*, *Income Tax Application Rules*, a tax treaty, or any other enactment that is relevant in computing tax or other amount payable by or refundable to a person under the Act or any other amount that is relevant for the purposes of computing that amount.

This amendment applies with respect to transactions entered into after September 12, 1988.

ITA
245(5)

Subsection 245(5) is amended to clarify that tax consequences shall be determined notwithstanding any other enactment, that such determination includes the allowance or disallowance in whole or in part of any exemption or exclusion in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof, and that any such exemption or exclusion or part thereof may be allocated to any person.

This amendment applies with respect to transactions entered into after September 12, 1988.

Clause 37

Transfer Pricing

ITA
247(1)

The definition of "tax benefit" in subsection 247(1) of the Act is amended to clarify that a tax benefit includes a reduction, avoidance or deferral of tax or other amount that would be payable under the Act but for a tax treaty, or an increase in a refund of tax or other amount under the Act as a result of a tax treaty.

Clause 38

Affiliated Persons Rules and Trusts

ITA
251.1

Section 251.1 of the Act sets out rules for determining when persons are affiliated with one another, which is relevant to a number of provisions of the Act, most notably those restricting the realization of losses on certain transfers.

Existing section 251.1 does not specifically address when a trust is affiliated with another person. New paragraphs 251.1(1)(*g*) and (*h*) – in tandem with the new definitions "beneficiary", "contributor", "majority interest beneficiary", and "majority interest group of beneficiaries" in subsection 251.1(3), and new interpretive rules in subparagraphs 251.1(4)(*c*)(i) to (v) – expand the existing affiliated persons rules to expressly apply to trusts. It should be noted that new paragraphs 251.1(1)(*g*) and (*h*) are intended to complement, rather than to supplant, the existing rules as they apply to trusts. A trust may, therefore, be affiliated with another person otherwise than under new paragraphs (*g*) and (*h*). For example, a trust will continue to be affiliated under paragraph 251.1(1)(*b*) with a corporation that it controls.

New paragraph 251.1(1)(*g*) sets out certain circumstances in which a person and a trust are affiliated (as always under the Act, unless otherwise specified, a person includes a trust). This paragraph applies if a person is a majority interest beneficiary or is affiliated with a majority interest beneficiary of the trust otherwise than solely because of paragraph (*g*) itself. This exception – that in deciding whether a person is affiliated with a majority interest beneficiary, paragraph (*g*) is ignored – can have important effects.

The following are some of the important effects of these rules:

- *A sole beneficiary of a trust is, by virtue of being a majority interest beneficiary of the trust, affiliated with the trust.*

- *Two trusts are affiliated where a corporation that is a majority interest beneficiary of one trust is controlled by the other trust.*

- *Two trusts are not affiliated under paragraph 251.1(1)*(g) *simply because they share a majority interest beneficiary.*

Example

Situation: *Trust B owns all of the shares of Canco, a corporation. Canco is also a majority interest beneficiary of Trust C.*

Result: *Trust B controls Canco, and thus is affiliated with it. Trust C is also affiliated with Canco, because Canco is a majority interest beneficiary of Trust C. Since Trust B and Canco are affiliated otherwise than solely because of paragraph 251.1(1)(g), their affiliation means that Trust B is affiliated with Trust C.*

New paragraph 251.1(1)(*h*) sets out circumstances in which two trusts are affiliated. This paragraph applies where two conditions are met. First, a contributor to one of the trusts is affiliated with a contributor to the other trust. Second, a majority interest beneficiary of one of the trusts must be affiliated with either a majority interest beneficiary or each member of a majority interest group of beneficiaries of the other trust; or each member of a majority interest group of beneficiaries of each trust is affiliated with at least one member of majority interest group of beneficiaries of the other trust.

Paragraphs 251.1(1)(*g*) and (*h*) apply in determining whether persons are, at any time after March 22, 2004, affiliated.

Definitions

ITA
251.1(3)

Subsection 251.1(3) of the Act defines a number of terms for the purpose of subsection 251.1. Several new definitions are added to this subsection. These new definitions apply in determining whether persons are, at any time after March 22, 2004, affiliated.

"beneficiary"

A person who is beneficially interested in a trust is a "beneficiary" under the trust. Existing subsection 248(25) of the Act, which applies for the purposes of the Act, sets out when a person is beneficially interested in a trust.

"contributor"

Broadly speaking, a "contributor" is a person who, at any time, has contributed property or transferred funds to the trust on a non-arm's length basis or for inadequate consideration. Note that, as a result of the interpretive rule in new subparagraph 251.1(4)(*c*)(ii) of the Act, a beneficiary of a trust will not be considered to deal on a non-arm's length basis with the trust for these purposes simply by virtue of being a beneficiary under the trust. However, a beneficiary who is considered for these purposes to deal at arm's length with the trust and who transfers property or funds to the trust for fair market value consideration will nonetheless be a contributor to the trust if, immediately after the transfer, the beneficiary is a majority interest beneficiary of the trust.

"majority interest beneficiary"

A person is a "majority interest beneficiary" of a trust at any time if their interest as a beneficiary, if any, in the income or capital of the trust together with the interests as a beneficiary in the income or capital of the trust of all persons with whom the person is affiliated is greater than half of the fair market value at that time of all such interests in the income or capital of the trust, as the case may be. Note that, in determining whether a person is a majority interest beneficiary, the interpretive rules in new subparagraphs 251.1(4)(*c*)(i), (iv) and (v) of the Act must be taken into consideration.

Examples

Situation: *Philip has no interest as a beneficiary in either the income or capital of Trust A, but his wife, Muriel, with whom he is affiliated, has an interest in the income of Trust A, the fair market value of which is more than half of the fair market value of all the interests as a beneficiary in the income of Trust A.*

Result: *Philip, as well as Muriel, is a majority interest beneficiary of Trust A because he is affiliated with a person who has an interest in the income of Trust A the fair market value of which is more than half of the fair market value of all the interests as a beneficiary in the income of Trust A.*

Situation: *Jacqueline is one of ten persons, each of whom would receive as a beneficiary up to 100% of either the income or capital of Trust B if a discretionary power were fully exercised in their favour.*

Result: *Jacqueline, along with the other nine persons, is a majority interest beneficiary of Trust B, since, by reason of the rule in subparagraph 251.1(4)(c)(i), the fair market value of Jacqueline's interest, as well as the interest of each of the other nine persons, as a beneficiary in either the income or the capital of the trust would be deemed to be 100% of the fair market value of all the interests in the income or capital, as the case may be, in Trust B.*

"majority interest group of beneficiaries"

A group of persons is a "majority interest group of beneficiaries" of a trust at any time where two conditions are met: each member of the group is a beneficiary under the trust at that time such that if one member held all the interests as a beneficiary of the members of the group that person would be a majority interest beneficiary of the trust; and if any member were not a member of the group, then the former condition would not be met. For the purposes of this definition, only persons acting in concert are considered to be a group.

Example

Situation: *Any of Gail, Richard and Debra would receive as a beneficiary up to 100% of the income and capital of Trust C if a discretionary power were fully exercised in their favour.*

Result: *Gail, Richard and Debra would not constitute a majority interest group of beneficiaries, given that, as a result of the interpretive rule in subparagraph 251.1(4)(c)(i) of the Act, each would be a majority interest beneficiary of Trust C, and thus in no case could the second condition of the majority interest group of beneficiaries definition be met.*

Interpretation

ITA
251.1(4)(*c*)

Subsection 251.1(4) of the Act contains interpretive rules that apply for the purposes of section 251.1, and new paragraph 251.1(4)(*c*) contains five new rules applicable in determining when a person is affiliated with a trust.

New subparagraph 251.1(4)(*c*)(i) contains a special rule concerning discretionary powers and the amount of income or capital of a trust that a person may receive as a beneficiary under the trust. If the amount depends on the exercise or non-exercise of the power, subparagraph (i) deems the power to have been fully exercised or not exercised, as the case may be. The effect of this rule is to maximize, for the purposes of determining whether a person is affiliated with a trust, the amount of income or capital of the trust a person may receive as a result of a discretionary power.

Subparagraph 251.1(4)(*c*)(ii) introduces a rule to ensure that a beneficiary under a trust may transfer funds or property to the trust for fair market value consideration and not be considered in all cases to be a contributor to the trust. As a result of this rule, a person who is a beneficiary under a trust will not be considered, in determining whether a person is affiliated with a trust, to deal on a non-arm's length basis with the trust simply because the person is a beneficiary under the trust.

New subparagraph 251.1(4)(*c*)(iii) clarifies that, notwithstanding subsection 104(1), in determining whether a person is affiliated with a trust, a reference to a trust does not include a reference to the trustee or other persons who own or control the trust property.

New subparagraph 251.1(4)(*c*)(iv) provides a special rule to be applied in determining whether a trust is a majority beneficiary of another trust. Under this rule, a trust is not a majority interest beneficiary of another trust unless the first trust has an interest as a beneficiary in the income or capital of the other trust. As a result, a trust that has no interest as a beneficiary in either the income or capital of another trust is in no case a majority interest beneficiary of the other trust, even if the first trust is affiliated with one or more persons who together have majority interests in either the income or capital of the other trust. Satisfying the condition created by this rule is necessary but not sufficient to cause a trust to be a majority interest beneficiary of another trust, since once it is met the person must nonetheless fall within the definition of a "majority interest beneficiary" in respect of the other trust.

New subparagraph 251.1(4)(*c*)(v) expands, for the purposes of determining whether a contributor to one trust is affiliated with a contributor to another trust, the categories of individuals who are considered to be affiliated with one another. As a result, individuals who are connected by blood relationship, common-law partnership, or adoption will also be considered to be affiliated with one another for these purposes.

The following are some of the important effects of these rules:

- *Two trusts are not affiliated simply because they share the same trustee.*

- *A person is not affiliated with a trust simply because that person is affiliated with the trustee of the trust.*

- *The spouse of the sole beneficiary of a trust is affiliated with the trust even if the spouse is not affiliated with the trustee of the trust.*

- *A trust that shares a majority interest beneficiary with another trust is not a majority interest beneficiary of the other trust unless the person has an interest as a beneficiary in either the income or capital of the other trust.*

Examples

Situation: *Melanie is the sole beneficiary of both Trust D and Trust E, while neither trust has an interest as a beneficiary in the other.*

Result: *Melanie is a majority interest beneficiary of both trusts, and thus both trusts are affiliated with Melanie. However, neither trust is a majority interest beneficiary of the other, despite their affiliation with a majority interest beneficiary of the other, since neither has an interest as a beneficiary in the other.*

Situation: *Two brothers, David and Eric, separately establish two trusts, and transfer property for less than fair market value consideration to their respective trusts. Both trusts are created for the benefit of the spouses of David and Eric, such that each spouse would receive as a beneficiary 100% of either the income or capital of either trust if a discretionary power were fully exercised in their favour.*

Result: *David and Eric are each contributors in respect of the trust to which they transferred property for less than fair market value consideration, and both spouses are majority interest beneficiaries in respect of both trusts, given the discretionary power and the deeming rule in subparagraph 251.1(4)(c)(i). Given the interpretive rule in subparagraph 251.1(4)(c)(v), David and Eric are affiliated under paragraph 251(6)(a) of the Act. As a result, the trusts are affiliated with each other given that a contributor to one is affiliated with a contributor to the other, and a majority interest beneficiary of one is affiliated with a majority interest beneficiary of the other (persons are affiliated with themselves given the existing rule in paragraph 251.1(4)(a)).*

These new rules apply in determining whether persons are, at any time after March 22, 2004, affiliated, except subparagraph 251.1(4)(*c*)(v) which applies in determining whether persons are, at any time on or after Announcement Date, affiliated.

Clause 39

Acquisition of Control

ITA
256(7)

Subsection 256(7) of the Act sets out rules for determining whether there has been an acquisition of control for the purposes of certain provisions of the Act. Subsection 256(7) is amended, applicable in respect of gifts made after March 22, 2004, to include a reference to new subsection 110.1(1.2).

Budget Implementation Act, 2003

Clause 40

Small Business Deduction

BIA (2003)
79(3)

ITA
125(2)

Subsection 79(1) of the Budget Implementation Act, 2003 implemented the 2003 Budget proposal to phase in an increase of the business limit for the purposes of the "small business deduction" for Canadian-controlled private corporations in subsection 125 of the Income Tax Act to $300,000 from $200,000. Subsection 79(3) of the Budget Implementation Act, 2003 provided that this increase was to take effect over four years by increments of $25,000 each year, starting in 2003.

Subsection 79(3) of the Budget Implementation Act, 2003 is amended to implement the 2004 Budget proposal to accelerate access to the full $300,000 business limit one year earlier. As a result of this amendment, for any taxation year that begins after 2004, the business limit under subsection 125(2) (which is, it should be noted, subject to adjustment by other provisions of section 125) will be $300,000. For earlier taxation years, a corporation's business limit under subsection 125(2) will be the total of the following:

(a) that proportion of $200,000 that the number of days in the taxation year that fall before 2003 is of the number of days in the taxation year,

(b) that proportion of $225,000 that the number of days in the taxation year that fall in 2003 is of the number of days in the taxation year,

(c) that proportion of $250,000 that the number of days in the taxation year that fall in 2004 is of the number of days in the taxation year, and

(d) that proportion of $300,000 that the number of days in the taxation year that fall after 2004 is of the number of days in the taxation year.

Specified Partnership Income

BIA (2003)
79(4)

ITA
125(7)

Subsection 125(7) of the Income Tax Act provides definitions for the terms used in section 125, relating to the "small business deduction" for Canadian-controlled private corporations (CCPCs). The "specified partnership income" of a corporation is defined in this provision and is used in determining the small business deduction of a CCPC that carries on an active business through a specified partnership.

A CCPC's specified partnership income for a taxation year can be very broadly understood as the total of two amounts, A and B.

"A" is the lesser of: (a) the corporation's net partnership income for the partnership's fiscal period that ends in the year; and (b) that proportion of the (prorated) maximum business limit under section 125 that the corporation's share of the partnership's Canadian-source active business income for that fiscal period is of the partnership's total of such income for the period.

"B" is the lesser of: the corporation's Canadian source active business losses for the year plus its "specified partnership loss" for the year; and the amount, if any, by which the A (a) amount (the corporation's net partnership income for the partnership's fiscal period that ends in the year) exceeds the A (b) amount (that proportion of the maximum business limit under section 125 that the corporation's share of the partnership's Canadian-source active business income for that fiscal period is of the partnership's total of such income for the period).

In this computation, the prorated maximum business limit under section 125 is represented by the element M in a formula. As amended by the Budget Implementation Act, 2003, "M" is currently described as the lesser of the business limit for the calendar year ($225,000 for 2003; $250,000 for 2004; $275,000 for 2005 and $300,000 after 2005) and the amount determined when multiplying the number of fiscal days of the partnership in the calendar year by the per-day business limit for the calendar year (for 2003, $617; for 2004, $685; for 2005, $754 and after 2005, $822).

Subsection 79(4) of the Budget implementation Act is amended to reflect the increase in the business limit for 2005 to $300,000 from $275,000, such that the description of "M" is amended to be the lesser of the business limit for the calendar year ($225,000 for 2003;

$250,000 for 2004; and $300,000 after 2004) and the amount determined when multiplying the number of fiscal days of the partnership in the calendar year by the per-day business limit for the calendar year (for 2003, $617; for 2004, $685; and after 2004, $822).

Bank Act

Clauses 41 and 42

Notices to Financial Institutions: Banks and Authorized Foreign Banks

Bank Act
462, 579

Section 462 of the Bank Act sets out the conditions that must be met in order for certain legal documents to have effect in respect of a bank customer's property in the possession of the bank, or money owing to the customer because of the customer's account at the bank. In general terms, the section requires that a document be sent to the particular branch where the account in question is recorded (the "branch of record" of the account) or where the property is held. In the case of enforcement notices for spousal or family support, however, it is not necessary to locate the particular branch. Instead, a bank is required to identify an office in each province in which the bank does business where notices may be sent.

New subsection (2.1) is added to the section to provide a special rule for documents relating to tax matters. The documents in question are those that relate to the Minister of National Revenue's administration of an Act of Parliament, or – where a tax collection agreement applies – to the administration of a provincial Act or aboriginal legislation.

These tax-related documents will no longer have to be sent to the branch of record (or the branch where property is held) in order to constitute notice to a bank, to fix the bank with knowledge of its contents and, where applicable, to be binding on the customer's property or amounts owing to the customer. They may be sent instead either to one of the offices that the bank has designated for support orders, or to another office agreed to by the bank and the Minister of National Revenue.

Section 579 of the Bank Act has the same effect, in respect of authorized foreign banks, as section 462 (described above). Section 579 is amended in the same manner as section 462.

These amendments apply when this Act is assented to.

Cooperative Credit Associations Act

Clause 43

Notices to Financial Institutions: Cooperative Credit Associations

Cooperative Credit Associations Act
385.32

Section 385.32 of the Cooperative Credit Associations Act sets out the conditions that must be met in order for certain legal documents to have effect in respect of a cooperative credit association customer's property in the possession of the association, or money owing to the customer because of the customer's account at the association. The section is comparable to section 462 of the Bank Act, and is being amended in the same way. Reference may be had to the notes to that amendment for a complete description.

This amendment applies when this Act is assented to.

Income Tax Conventions Interpretation Act

Clause 44

Application of Section 245 of the Income Tax Act

ITCIA
4.1

Section 245 of the *Income Tax Act* provides a statutory general anti-avoidance rule. This rule is intended to prevent abusive or artificial tax avoidance schemes, without interfering with legitimate commercial and family transactions. The *Income Tax Conventions Interpretation Act* is amended to add new section 4.1 to clarify that section 245 of the *Income Tax Act* applies to any benefit provided under a convention.

This amendment applies with respect to transactions entered into after September 12, 1988.

Tax Court of Canada Act

Clauses 45 to 47

Amendments to Tax Court of Canada Act

TCCA
12, 17.01, 18.29

Clauses 45 to 47 amend the *Tax Court of Canada Act* consequential to amendments to the *Income Tax Act* providing for the possibility of an appeal to that court by a Registered Charity. For further information see the commentary to the amendment to section 188.2 of the *Income Tax Act*.

Trust and Loan Companies Act

Clause 48

Notices to Financial Institutions: Trust and Loan Companies

Trust and Loan Companies Act
448

Section 448 of the Trust and Loan Companies Act sets out the conditions that must be met in order for certain legal documents to have effect in respect of property of a customer of a company to which the Act applies, or money owing to the customer because of the customer's account at the company. The section is comparable to section 462 of the Bank Act, and is being amended in the same way. Reference may be had to the notes to that amendment for a complete description.

This amendment applies when this Act is assented to.

Draft Amendments to the Income Tax Regulations

Appendix A

PART XI – CAPITAL COST ALLOWANCE

(General-Purpose Electronic Data Processing Equipment and Data Network Infrastructure Equipment)

The following amendments to the *Income Tax Regulations* reflect measures announced in the 2004 Budget. Details of the proposals are also discussed at pages 332 to 335 of Annex 9 to *The Budget Plan 2004*.

1. (1) Paragraph 1100(1)(*a*) of the *Income Tax Regulations* is amended by deleting the word "and" at the end of subparagraph (xxix.1) and by adding the following after subparagraph (xxx):

(xxxi) of Class 45, 45 per cent, and

(xxxii) of Class 46, 30 per cent,

(2) Paragraph 1100(1.13)(*a*) of the Regulations is amended by adding the following after subparagraph (*a*)(i):

(i.1) general-purpose electronic data processing equipment and ancillary data processing equipment, included in Class 45 in Schedule II, other than any individual item of that type of equipment having a capital cost to the taxpayer in excess of $1,000,000,

2. Subsection 1101(5p) of the Regulations is replaced by the following:

(5p) Subject to subsection (5q), a separate class is hereby prescribed for one or more properties of a taxpayer acquired in a taxation year and included in Class 8 in Schedule II, where each of the properties has a capital cost to the taxpayer of at least $1,000 and is

(*a*) computer software;

(*b*) a photocopier; or

(*c*) office equipment that is electronic communications equipment, such as a facsimile transmission device or telephone equipment.

3. Subsection 1104(2) of the Regulations is amended by adding the following definition in alphabetical order:

"data network infrastructure equipment" means network infrastructure equipment that controls, transfers, modulates or directs data, and that operates in support of telecommunications applications such as e-mail, instant messaging, audio- and video-over-Internet Protocol or Web browsing, Web searching and Web hosting, including data switches, multiplexers, routers, remote access servers, hubs, domain name servers, and modems, but does not include:

(*a*) network equipment (other than radio network equipment) that operates in support of telecommunications applications, if the bandwidth made available by that equipment to a single end-user of the network is 64 kilobits per second or less in either direction;

(*b*) radio network equipment that operates in support of wireless telecommunications applications unless the equipment supports digital transmission on a radio channel;

(*c*) network equipment that operates in support of broadcast telecommunications applications and that is unidirectional;

(*d*) network equipment that is end-user equipment, including telephone sets, personal digital assistants and facsimile transmission devices;

(*e*) equipment that is described in paragraph (*f*.2) or (*v*) of Class 10 or in Class 45;

(*f*) wires or cables, or similar property; and

(*g*) structures.

4. (1) The portion of paragraph (*f*) of Class 10 in Schedule II to the Regulations that is before subparagraph (i) is replaced by the following:

(*f*) general-purpose electronic data processing equipment and systems software for that equipment, including ancillary data processing equipment, acquired after May 25, 1976 and before March 23, 2004 (or after March 22, 2004 and before 2005 if an

election in respect of the property is made under subsection 1101(5q)), but not including property that is principally or is used principally as

(2) Schedule II to the Regulations is amended by adding after Class 44 the following:

Class 45

Property acquired after March 22, 2004 (other than property acquired before 2005 in respect of which an election is made under subsection 1101(5q)) that is general-purpose electronic data processing equipment and systems software for that equipment, including ancillary data processing equipment, but not including property that is principally or is used principally as

(*a*) electronic process control or monitor equipment,

(*b*) electronic communications control equipment,

(*c*) systems software for equipment referred to in paragraph (a) or (b), or

(*d*) data handling equipment (other than data handling equipment that is ancillary to general-purpose electronic data processing equipment).

Class 46

Property acquired after March 22, 2004 that is data network infrastructure equipment, and systems software for that equipment, that would, but for this Class, be included in Class 8 because of paragraph (*i*) of that Class.

APPLICATION

5. (1) Sections 1, 3 and 4 are deemed to come into force on March 23, 2004.

(2) Section 2 applies to property acquired after 2004.

Explanatory Notes – Capital Cost Allowance (General-Purpose Electronic Data Processing Equipment and Data Network Infrastructure Equipment)

CCA Rates

ITR
1100(1)(*a*)(xxxi) and (xxxii)

Subsection 1100(1) of the *Income Tax Regulations* sets out the capital cost allowance (CCA) rates that taxpayers may claim with respect to specified classes of depreciable property.

Subsection 1100(1) is amended to provide a

- 45 per cent CCA rate for property included in new Class 45, which is certain computer equipment; and

- 30 per cent CCA rate for property included in new Class 46, which is data network infrastructure equipment (as defined by subsection 1104(2)).

These amendments apply to property acquired after March 22, 2004.

Specified Leasing Property Rules – Exempt Property

ITR
1100(1.13)(*a*)

Paragraph 1100(1.13)(*a*) of the Regulations defines property that is "exempt property" for the purposes of the specified leasing property rules, which may apply to restrict a taxpayer's deduction of CCA in respect of specified leasing property.

Paragraph 1100(1.13)(*a*) is amended to add new subparagraph (i.1), which provides that certain computer equipment included in new Class 45 (other than an individual item of such equipment that has a capital cost in excess of $1 million) is exempt property for the purpose of the specified leasing property rules.

This amendment applies to property acquired after March 22, 2004.

Separate Class Election

ITR
1101(5p)

Section 1101 of the Regulations provides separate classes in respect of certain property described in Schedule II to the Regulations.

The combined effect of subsection 1101(5p) and (5q) is that a taxpayer may elect to include one or more properties, included in Class 8 or 10, each of which has a capital cost of at least $1,000 and that is of a certain type and the same class, in a separate class. The types of property to which this separate class election can be applied include certain general-purpose electronic data processing equipment and systems software for that equipment.

Subsection 1101(5p) is amended to preclude any such separate class election in respect of general-purpose data processing equipment and systems software for that equipment, consequential to new Class 45, which increases the CCA rate applicable to such property to 45% from 30%.

To accommodate taxpayers who may have planned purchases in 2004 based on the availability of the separate class election applicable to certain computer property included in Class 10, this amendment applies to property acquired after 2004. If a taxpayer makes a separate class election in respect of general-purpose electronic data processing equipment and systems software for that equipment acquired after March 22, 2004 and before 2005, the equipment will be included in Class 10 (30% CCA rate) rather than in new Class 45 (45% CCA rate).

Definitions

ITR
1104(2)

Subsection 1104(2) sets out definitions that apply for the purposes of Part XI of the Income Tax Regulations and in Schedule II.

Subsection 1104(2) is amended to add the definition “data network infrastructure equipment”.

Generally, “data network infrastructure equipment” means network infrastructure equipment that controls, transfers, modulates or directs data, and that operates in support of telecommunications applications such as e-mail, instant messaging, audio- and video-over- Internet Protocol or Web browsing, Web searching and Web hosting,

including data switches, multiplexers, routers, remote access servers, hubs, domain name servers, and modems, but not including:

- network equipment (other than radio network equipment) that operates in support of telecommunications applications, if the bandwidth made available by that equipment to a single end-user of the network is 64 kilobits per second or less in either direction; which is equivalent to the amount of bandwidth made available by a single voice channel of the Public Switched Telephone Network (PSTN);

- radio network equipment that operates in support of wireless telecommunications applications unless the equipment supports digital transmission over a radio channel; for example, Advanced Mobile Phone Service (AMPS) radio network equipment which provides analog speech modulation is excluded from data network infrastructure equipment;

- network equipment that operates in support of broadcast telecommunications applications and that is unidirectional;

- network equipment that is end-user equipment, including telephone sets, personal digital assistants and facsimile transmission devices;

- equipment that is described in paragraph (*f*.2) or (*v*) of Class 10 or in Class 45;

- wires or cables, or similar property; and

- structures.

Property that is data network infrastructure equipment (acquired after March 22, 2004) is included in new Class 46 (30% CCA rate).

General-Purpose Electronic Data Processing Equipment and Ancillary Property

Schedule II – Class 10(*f*)

Paragraph (*f*) of Class 10 (30% CCA rate) applies to "general-purpose electronic data processing equipment" and certain ancillary property. Paragraph (*f*) of Class 10 is amended consequential to the introduction of new Class 45 (45% CCA rate), which applies to such property acquired after March 22, 2004 unless the property is acquired before 2005 and the taxpayer elects under subsection 1101(5q) to have the property included in a separate Class 10.

General-Purpose Electronic Data Processing Equipment and Ancillary Property

Schedule II – Class 45

New Class 45 (45% CCA rate) applies to "general-purpose electronic data processing equipment" and certain ancillary property acquired after March 22, 2004, other than property that is acquired before 2005 in respect of which a taxpayer elects under subsection 1101(5q) to have the property included in a separate Class 10.

Data Network Infrastructure Equipment

Schedule II – Class 46

New Class 46 (30% CCA rate) applies to "data network infrastructure equipment" and systems software for that equipment acquired after March 22, 2004 that would otherwise be included in Class 8 because of the default provision in paragraph (*i*) of that Class. For details on the definition "data network infrastructure equipment", see the note accompanying that new definition in amended subsection 1104(2) of the Regulations.

Appendix B

PART LVII – MEDICAL DEVICES AND EQUIPMENT

The following amendment to the *Income Tax Regulations* is consequential to amended section 64 of the *Income Tax Act*. This amendment ensures that a taxpayer may claim the cost of a talking textbook either as a disability supports deduction under amended section 64 of the Act or as a medical expense under section 118.2 of the Act. For further information, see the commentary to section 64.

1. Paragraph 5700(*w*) of the *Income Tax Regulations* is replaced by the following:

(*w*) talking textbook prescribed by a medical practitioner for use by an individual with a perceptual disability in connection with the individual's enrolment at an educational institution in Canada, or a designated educational institution.

APPLICATION

2. Section 1 applies to the 2004 and subsequent taxation years.

Appendix C

PART LXXIII – PRESCRIBED AMOUNTS

The following amendments to the *Income Tax Regulations* are consequential to new section 67.6 of the Income Tax Act. For further information, see the commentary to that section.

1. The *Income Tax Regulations* are amended by adding the following after section 7308:

7309. For the purpose of section 67.6 of the Act, each of the following is a prescribed fine or penalty

(*a*) an amount paid or payable under any of paragraphs 280(1)(*a*), 280(1.1)(*a*) and 280(2)(*a*) of the *Excise Tax Act*;

(*b*) an amount paid or payable under paragraph 110.1(*a*) of the *Excise Act*; and

(*c*) an amount paid or payable under subsection 53(1) of the *Air Travellers Security Charge Act*.

APPLICATION

2. Section 1 applies to fines and penalties imposed after March 22, 2004.

Appendix D

PART LXXIV – PRESCRIBED MISSIONS

The following amendments to the *Income Tax Regulations* are consequential to new paragraph 110(1)(*f*)(v) of the Income Tax Act. For further information, see the commentary to that section.

1. The *Income Tax Regulations* are amended by adding the following after Part LXXIII:

PART LXXIV

PRESCRIBED MISSIONS

7400. For the purposes of subclause 110(1)(*f*)(v)(A)(II) of the Act, the following missions are hereby prescribed:

(*a*) Operation Palladium (Bosnia-Herzegovina);

(*b*) Operation Halo (Haiti);

(*c*) Operation Danaca (Middle East – Golan Heights);

(*d*) Operation Calumet (Middle East – Sinai);

(*e*) Operation Jade (Middle East – Jerusalem and Damascus);

(*f*) Operation Iraqi Freedom (Kuwait); and

(*g*) Operation Solitude (Senegal).

APPLICATION

2. Section 1 applies to the 2004 and subsequent taxation years.