Explanatory Notes Relating to the Air Travellers Security Charge, the First Nations Good and Services Tax, Income Tax and Other Related Measures

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

December 2004

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PREFACE

These explanatory notes describe proposed amendments to the *Air Travellers Security Charge Act*, the *First Nations Goods and Services Tax Act* and the *Income Tax Act* and related Acts. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These explanatory notes are provided to assist in an understanding of proposed amendments to the *Air Travellers Security Charge Act*, the *First Nations Goods and Services Tax Act* and 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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Clause 1

Short Title

This clause provides that the enactment to which these notes relate may be cited as the *Budget Implementation Act, 2004, No. 2*.

Part 1
Air Travellers Security Charge Act

Clause 2

Amount of Charge if Service Acquired in Canada

ATSCA
12(1)(*a*) to 12(1)(*e*)

Existing subsection 12(1) of the *Air Travellers Security Charge Act* sets out the amount of the charge that is payable on an air transportation service acquired in Canada. This includes air transportation services deemed under section 13 of the Act to have been acquired in Canada.

For domestic air travel, the amount of the charge is $7 (including the GST or the federal component of the HST where applicable) per chargeable emplanement to a maximum of $14 per ticket. For transborder air travel the amount of the charge is $12 (including the GST or the federal component of the HST where applicable) per chargeable emplanement to a maximum of $24 per ticket. For air travel from Canada to another international destination, the charge is $24.

The subsection is amended to reduce the charge for domestic air travel to $6 from $7 for one-way travel and to $12 from $14 for round-trip travel, for transborder air travel to $10 from $12 and for air travel from Canada to another international destination to $20 from $24. The reduced rates are applicable to air travel that includes a chargeable emplanement on or after April 1, 2004 and that is purchased on or after that date.

New paragraphs 12(1)(*a*) and (*b*) set out the new reduced amount of the charge for domestic air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired in Canada that does not include transportation to a destination outside of Canada is:

(*a*) $5.61 for each chargeable emplanement included in the service, to a maximum of $11.22, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or

(*b*) $6.00 for each chargeable emplanement included in the service, to a maximum of $12.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraphs 12(1)(*c*) and (*d*) set out the new reduced amount of the charge for transborder air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired in Canada that includes transportation to a destination outside Canada and does not include transportation to a destination outside the continental zone is:

(*c*) $9.35 for each chargeable emplanement included in the service, to a maximum of $18.69, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or

(*d*) $10.00 for each chargeable emplanement included in the service, to a maximum of $20.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraph 12(1)(*e*) sets out the new reduced amount of the charge for air travel from Canada to another international destination. The new paragraph provides that the amount of the charge in respect of an air transportation service acquired in Canada that includes transportation to a destination outside the continental zone is:

(*e*) $20.00, if the service includes transportation to a destination outside the continental zone.

Amount of Charge if Service Acquired outside Canada

ATSCA
12(2)(*a*) to 12(2)(*c*)

Existing subsection 12(2) of the Act sets out the amount of the charge that is payable on an air transportation service acquired outside Canada.

For transborder air travel, the amount of the charge is $12 (including the GST or the federal component of the HST where applicable) per chargeable emplanement to a maximum of $24 per ticket. For air travel from Canada to another international destination, the charge is $24.

The subsection is amended to reduce the charge for transborder air travel to $10 from $12 and for air travel from Canada to another international destination to $20 from $24. The reduced rates are applicable to air travel that includes a chargeable emplanement on or after April 1, 2004 and that is purchased on or after that date.

New paragraphs 12(2)(*a*) and (*b*) set out the new reduced amount of the charge for transborder air travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired outside Canada that includes transportation to a destination outside Canada but within the continental zone is:

(*a*) $9.35 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $18.69, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or

(*b*) $10.00 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $20.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

New paragraph 12(2)(*c*) sets out the new reduced amount of the charge for air travel from Canada to another international destination. The new paragraph provides that the amount of the charge in respect of an air transportation service acquired outside Canada that includes transportation to a destination outside the continental zone is:

(*c*) $20.00, if the service includes transportation to a destination outside the continental zone.

Part 2
First Nations Goods and Services Tax Act

Clause 3

Definitions and Interpretation

FNGSTA
2(1)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying each Part and schedule in the definitions of “administration agreement”, “governing body” and “lands”.

FNGSTA
2(2) and (3)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to “part” in subsections 2(2) and (3) of that Act.

Clause 4

Creation of Part 1

FNGSTA

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying where Part 1 is introduced. Part 1 is introduced after section 2.

Clause 5

Section 89 of the *Indian Act*

FNGSTA
3(1.1)

Section 89 of the *Indian Act* protects the real and personal property of an Indian or a band situated on a reserve against seizures at the instance of any person other than an Indian or a band.
The addition of subsection 3(1.1) of the *First Nation Goods and Services Tax Act* provides that where a first nation law is enacted, Canada or an agent of the first nation administering the tax will be able to make seizures in cases of non-compliance with the first nation law. In the absence of this addition, a first nation law may not be able to be administered and enforced effectively.

Subsection 4(1) applies despite any other Act of Parliament

FNGSTA
3(2)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to “schedule” in subsection 3(2) of that Act.

Clause 6

Authority to impose tax

FNGSTA
4(1)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to “schedule” in subsection 4(1) of that Act.

Supply made on lands

FNGSTA
4(2)

The purpose of this addition is to clarify that subsection 4(2) is meant to apply in the context of subsection 4(1).

Imported taxable supply made on lands

FNGSTA
4(4)

The purpose of this addition is to clarify that subsection 4(4) is meant to apply in the context of paragraph 4(1)(*c*).

Exception

FNGSTA
4(6)

The purpose of this addition is to clarify that subsection 4(6) is meant to apply in the context of paragraph 4(1)(*b*).

Carriers

FNGSTA
4(7)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to “Part” in subsection 4(7) of that Act.

Clause 7

Rules where agreement

FNGSTA
11(3)(*a*)

The amendment proposes to replace the exclusion to the criminal offences created under subsection 327(2) of the *Excise Tax Act* with a more general statement excluding all types of criminal offences. Although currently, all criminal offences under Part IX of the *Excise Tax Act* are created under subsection 327(2), the amendment would ensure that any future addition of criminal offences in another section would also be excluded from the law making power of the governing body.

Rules where agreement

FNGSTA
11(3)(*b*)

Consistent with the amendment to paragraph 11(3)(*a*) and with the addition of subparagraph 11(3)(*e*)(viii), paragraph 11(3)(*b*) is amended to clarify that a first nation law cannot incorporate by reference any provision of the *Excise Tax Act* that creates a criminal offence.

Rules where agreement

FNGSTA
11(3)(*e*)(viii)

The purpose of this addition is to confirm, for greater certainty, that nothing in Part 1 of the *First Nation Goods and Services Tax Act* is construed as conferring on a governing body the power to make an enactment in respect of criminal law.

Clause 8

Meaning of "first nation law"

FNGSTA
12(1)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to "schedule" in subsection 12(1) of that Act. Reflecting the addition of subparagraph 11(3)(*e*)(viii), a reference to that subparagraph is being added in subsection 12(1).

Cessation of agreement

FNGSTA
12(3)

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to "Part" in subsection 12(3) of that Act.

Clause 9

Amendment of Schedule 1

FNGSTA
15

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying the reference to "schedule" in section 15 of that Act.

Clause 10

First Nations Sales Tax - Quebec

FNGSTA
Part 2

A new Part and schedule is added to the *First Nations Goods and Services Tax Act*. These additions require specifying where part 2 is introduced. Part 2 is introduced after section 16.

Definitions

FNGSTA
17

Section 17 sets out definitions that apply for the purposes of Part 2 of the *First Nations Goods and Services Tax Act*.

“band law”

For the purposes of Part 2 of the *First Nation Goods and Services Tax Act*, a band law will be defined as a law enacted by a council of the band under section 23.

“council of the band”

The term “council of the band” has the same meaning in Part 2 of the *First Nations Goods and Services Tax Act* as the term “council of the band” in the *Indian Act*.

“direct”

The term “direct” serves to distinguish a direct tax from an indirect tax. The definition indicates that the term “direct” has the same meaning as in class 2 of section 92 of the *Constitution Act, 1867*.

“parallel Quebec law”

The term “parallel Quebec law” has the purpose of identifying the band law that is similar to the law of the government of Quebec.

“reserves in Quebec”

The “reserves in Quebec” of a band comprise the area where a band law enacted by the council of that band applies or would apply once the band law comes into force. Only bands that have reserves in the province of Quebec would have the authority to enact a band law under Part 2 of the *First Nations Goods and Services Tax Act*.

“sales tax”

Under Part 2 of the *First Nations Goods and Services Tax Act*, a council of the band is provided with the authority to impose a direct sales tax within its reserves in Quebec. The term “sales tax” is defined as being broad enough to encompass various types of sales taxes, such as those imposed by the government of Quebec under the

Tobacco tax act, Licenses act, An Act respecting the ministère du Revenu, Act respecting the Québec sales tax and the *Fuel tax act.* However, it is not meant to cover taxes on income or real property.

Section 87 of the *Indian Act* and similar provisions

FNGSTA
18(1)

Section 87 of the *Indian Act* provides a tax exemption in respect of property of an Indian situated on a reserve. Other federal legislative vehicles may also provide tax exemptions similar to the exemption under section 87 of the *Indian Act*.

Subsection 18(1) of Part 2 of the *First Nations Goods and Services Tax Act* provides that, if a council of the band listed in schedule 2 to that Act enacts a band law imposing a sales tax within its reserves in Quebec, the obligation to pay that tax or any other amount required to be paid under that law applies despite the exemption under section 87 of the *Indian Act* or any other similar exemption.

Section 89 of the *Indian Act*

FNGSTA
18(2)

Section 89 of the *Indian Act* protects the real and personal property of an Indian or a band situated on a reserve against seizures at the instance of any person other than an Indian or a band.
Subsection 18(2) of Part 2 of the *First Nations Goods and Services Tax Act* provides that, if a council of the band listed in schedule 2 to that Act enacts a band law imposing a sales tax within its reserves in Quebec, an agent of the band administering the tax will be able to make seizures in cases of non-compliance with the band law. This ensures that band laws can be administered and enforced effectively.

Not subject to *Statutory Instruments Act*

FNGSTA
19

Section 19 provides that a band law enacted under the authority of subsection 23(1) is not subject to the *Statutory Instruments Act*. Accordingly, a band law would not have to be published in the *Canada Gazette*.

Application of section 23

FNGSTA
20

Section 20 clarifies that, even where other federal legislation provides a limitation on the tax powers of a council of the band, the council of the band may, if it is listed in schedule 2 to the *First Nations Goods and Services Tax Act*, enact a law to impose a sales tax within its reserves in Quebec under the authority of subsection 23(1) of Part 2 of that enactment.

Application of other Acts of Parliament

FNGSTA
21

Section 21 ensures that where a law of Quebec specifies that one or more laws of Quebec apply as if the tax imposed under a band law were imposed under a particular law of Quebec, all Acts of Parliament apply as if the tax imposed under the band law were imposed under that particular law of Quebec.

The purpose of this section is to ensure that, where there is a cross-reference in federal legislation to Quebec legislation and where Quebec legislation provides that a tax imposed under the band law is to apply as if it were imposed under a law of Quebec, the federal legislation that refers to that Quebec legislation is to be applied as if a reference to a tax imposed under the law of Quebec includes a reference to the tax imposed under that band law.

For example, subsection 4(1) of the federal *Tax Rebate Discounting Act* makes references to tax required to be paid under *An Act respecting the Quebec sales tax*. If a law of Quebec specifies that a tax imposed under a specific band law applies as if it was imposed under the *An Act respecting the Quebec sales tax*, for purposes of administering subsection 4(1) of the federal *Tax Rebate Discounting Act*, the tax imposed under that specific band law would automatically be considered as if it was imposed by the *An Act respecting the Quebec sales tax.*

Authority to enter into agreement

FNGSTA
22

Section 22 enables the council of the band to enter into an administration agreement with the Government of Quebec in respect of the administration of the band laws.

Authority to impose a direct sales tax

FNGSTA
23(1)

Subsection 23(1) is the delegating provision whereby a council of the band is provided with the authority to impose a direct sales tax within its reserves located in Quebec.

Parallel Quebec law

FNGSTA
23(2)

Subsection 23(2) requires that each law enacted by a council of the band must have only one parallel Quebec law and shall identify it. For example, if a council of the band would like to impose a direct fuel sales tax within its reserves that is similar to the tax levied by the government of Quebec under its *Fuel tax act* and a direct tobacco sales tax that is similar to the tax levied by the government of Quebec under its *Tobacco tax act,* the council of the band would be required to enact two distinct laws: one for the fuel tax, and one for the tobacco tax.

Force of law

FNGSTA
23(3)

Subsections 23(3) stipulates the conditions that a council of the band must follow in order for its laws related to direct sales tax be valid.

Paragraph 23(3)(*a*) requires that the council of the band enter into an administration agreement with the government of Quebec in respect of band laws enacted by the council of the band.

Paragraph 23(3)(*b*) requires the band law to be administered, enforced and collected in accordance with an administration agreement entered between the council of the band and the government of Quebec.

Paragraph 23(3)(*c*) requires that the council of the band, the band and its reserves be listed in schedule 2.

Paragraph 23(3)(*d*) stipulates that the band law ceases to be in effect if the parallel Quebec law ceases to be in force.

Conformity with *Indian Act*

FNGSTA
23(4)

Subsection 23(4) provides that a band law is valid if the power of the council of the band to enact the law is exercised in conformity with paragraph 2(3)(*b*) of the *Indian Act*.

Criminal law exclusion

FNGSTA
23(5)

Subsection 23(5) confirms that band councils have not been provided with an authority to make enactments in respect of criminal law.

Coming into force - law under section 23

FNGSTA
24

Section 24 provides that a band law enacted under subsection 23(1) comes into force on the date specified in the administration agreement entered into between the council of the band and the government of Quebec in respect of that law.

Proof of law

FNGSTA
25

Section 25 concerns the certification of copies of a band law as being true copies that can be relied on by a court. Section 25 provides that, in the case of a law enacted under subsection 23(1), such a certification can be provided by the Minister of Finance or a person authorized by that Minister.

Publication of law

FNGSTA
26

Section 26 specifies requirements for publishing band laws. A copy of each such law is required to be published in a newspaper that has general circulation on the reserves where the law applies and in the *First Nations Gazette*.

Expenditures

FNGSTA
27

Section 27 outlines requirements related to the expenditure of revenues by the council of the band that has enacted a band law under the authority of subsection 23(1). The decision made by a council of the band to expend moneys received by the council of the band pursuant to an administration agreement with the government of Quebec in respect of that band law is validly exercised only if it is exercised in conformity with paragraph 2(3)(*b*) of the *Indian Act*.

Indian moneys

FNGSTA
28

Section 28 provides that moneys raised from a band law enacted under the authority of subsection 23(1) do not constitute "Indian moneys" as that term is defined in the *Indian Act*. Under the *Indian Act*, Indian moneys are collected, received or held by Her Majesty in right of Canada for the use and benefit of Indians or bands.

Amendment of schedule 2

FNGSTA
29

Section 29 allows the Governor in Council to amend schedule 2 to the *First Nations Goods and Services Tax Act* by adding, deleting or varying the name of a band, the council of the band in Quebec or the description of the reserves in Quebec.

Clause 11

Amendment to schedule 1

FNGSTA
Schedule 1

The existing schedule to *First Nations Goods and Services Tax Act* is renumbered as schedule 1 and the names of two new first nations are added to that schedule in alphabetical order.

Clause 12

Schedule 2

FNGSTA
Schedule 2

Schedule 2 is added to the *First Nations Goods and Services Tax Act* and the name of an *Indian Act* band is added to that schedule.

Part 3
Income Tax Act

Clause 13

Estate Loss Carryback

ITA
40(3.61)

Section 40 of the Act provides rules for determining a taxpayer’s gain or loss from the disposition of a property. The Act contains a number of rules that defer recognition of a loss in certain circumstances, such as the rules set out in subsections 40(3.4) and (3.6). In broad terms these defer a taxpayer's loss where, despite a disposition by the taxpayer, the loss property remains within – or an identical property is acquired by – the population of persons who are affiliated with the taxpayer.

Proposed amendments to subsection 251.1 (1) of the Act, concerning when a person is affiliated with a trust, could in some typical estate and post-mortem arrangements cause these loss-deferral rules to apply. For example, an individual who is the majority interest beneficiary of the estate of a deceased taxpayer will be affiliated with the estate under the proposed amendments, as would be the estate and a corporation controlled by that individual. As a result, a loss arising, for instance, from a redemption by the corporation of a share held by the estate would be deemed to be nil by subsection 40(3.6). This would include a loss arising in the course of administering the estate that would otherwise be capable of being carried back under subsection 164(6) of the Act. That subsection allows a deceased taxpayer’s legal representative to elect to treat certain losses of the taxpayer’s estate for its first taxation year as losses of the taxpayer for the taxpayer’s last taxation year.

New subsection 40(3.61) will ensure that subsections 40(3.4) and (3.6) do not apply to any portion of an estate's capital loss carried back under subsection 164(6), and applies in respect of dispositions occurring after March 22, 2004.

Clause 14

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 15

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 16

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. It is proposed that the following will be prescribed for this purpose: 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*.

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

Clause 17

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.

This amendment applies after March 22, 2004.

Clause 18

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.

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

Clause 19

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 20

Carry-Forward Period for Non-Capital 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.

ITA
111(8) “net capital loss”

Under the definition “non-capital loss” in subsection 111(8) of the Act, a taxpayer's “non-capital loss” for a year includes the taxpayer's allowable business investment loss (ABIL) for the year. Currently, ABILs that have not been used within seven taxation years following the year (i.e., during the existing carry forward period for non-capital losses) become net capital losses. This is accomplished under the definition “net capital loss” in subsection 111(8).

Consequential to the extension of the carry forward period of non-capital losses from seven to ten taxation years (see note in respect of paragraph 111(1)(*a*)), the definition “net capital loss” is amended to ensure that ABILs that have not been used ten, rather than seven, taxation years after the year will be included in taxpayers' net capital losses.

To this end, paragraphs (*a*) and (*b*) in the description of C in the formula in the definition “net capital loss” are amended. Paragraph (*c*) in the description of C, which applies to reduce to nil a corporate taxpayer's inclusion under C in the event the taxpayer has undergone a change in control, is also amended to reflect the proposed extension of the non-capital loss carry forward period.

These amendments to the definition “net capital loss” generally apply to losses that arise in taxation years that end after March 22, 2004. In computing a net capital loss for a taxation year that ends before the taxpayer's eighth taxation year that ends after that date, however,

paragraph (*c*) in the description of C is still to be read with reference to the taxpayer's seventh preceding taxation year. This will ensure that the limit imposed in that paragraph is not invoked by an acquisition of control that took place before the ABIL in question arose.

Clause 21

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 22

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 23

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 24

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 25

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 26

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 27

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 28

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 29

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 30

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.

Clause 31

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. Three 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.

"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 one-half 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.

Clause 32

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 in respect of payments made 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 generally apply to any payment made by a taxpayer to a customer with whom the taxpayer does not deal at arm's length. However such a non-arm's length payment will continue to be deductible under subsection 135(1) if it is made by a cooperative corporation as defined in subsection 136(2) or a credit union, or if it is a prescribed payment. The concept of a prescribed payment has been introduced in order to accommodate cooperative structures that would, but for non-substantive technical reasons, satisfy the definition of a cooperative corporation.

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

Given the extended time during which section 135 allows a deductible payment to be made, a corporation may choose to calculate and pay its tax, for a given taxation year, in the expectation that a section 135 deduction will be available in respect of a later payment. Ordinarily, that decision is taken at the corporation's own risk: if it fails to make the payment or is otherwise prevented from deducting the payment, it will have underpaid its tax for that taxation year and will be liable for the consequences, including interest on the underpayment and, in some cases, instalment interest.

Recognizing this some transitional relief is provided. Interest and penalties will not be payable in respect of the portion of tax that is paid late or an instalment of tax that is deficient solely as a result of the introduction of new subsection 135(1.1).

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 in respect of payments made after March 22, 2004.

Clause 33

Lifelong Learning Plan

ITA
146.02(1)

Section 146.02 of the Act contains the rules governing the Lifelong Learning Plan (LLP). Under the LLP, individuals can withdraw amounts from their registered retirement savings plans on a tax-free basis to finance their education. The amounts withdrawn are repayable on a non-deductible basis over 10 years.

The definition "qualifying educational program" in subsection 146.02(1) defines the type of educational program in which an individual must be enrolled in order to withdraw an amount under the

LLP. The definition imports the definition of that expression in subsection 118.6(1) that applies for purposes of the education tax credit, but with certain modifications.

As a consequence of an amendment to the definition "qualifying educational program" in subsection 118.6(1), the definition of that expression in subsection 146.02(1) is amended to incorporate the relevant requirements, rather than making reference to subsection 118.6(1). This amendment, which applies after 2003, does not represent any change in policy relating to the LLP.

Clause 34

Registered Education Savings Plans

ITA
146.1(1)

Section 146.1 of the Act contains rules governing registered education savings plans (RESPs). Paragraph 146.1(2)(*g*.1) provides, as a condition of registration, that an educational assistance payment can be made to an individual under an RESP only if the individual is enrolled as a full-time student in a qualifying educational program at a post-secondary educational institution.

The expression "qualifying educational program" is defined in subsection 146.1(1) by reference to the definition of that expression in subsection 118.6(1) that applies for purposes of the education tax credit. Because of paragraph (*b*) of that definition, educational assistance payments cannot be made to individuals who pursue post-secondary education that is related to their current employment.

As a consequence of an amendment to the definition "qualifying educational program" in subsection 118.6(1) to remove the condition in paragraph (*b*), the definition of that expression in subsection 146.1(1) is amended to incorporate the relevant requirements, rather than making reference to subsection 118.6(1). As a result of these amendments, the restriction on employment-related programs no longer applies when determining whether an educational program qualifies under the RESP rules.

Subsection 146.1(1) is also amended to add the definition "post-secondary school level". This is intended to clarify that educational assistance payments are permitted to be made in connection with occupational skills programs at educational institutions certified by the Minister of Human Resources and Skills Development.

These amendments apply after 2003.

Clause 35

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 declared capital gains of the charity from the disposition after March 22, 2004 of enduring properties, less ay claims by the charity (under paragraph (*b*) of variable A.1 of the definition "disbursement quota") that have reduced the disbursement requirements (under that variable) in respect of the expenditure of such properties for preceding taxation years that began after that date. The annual calculation of additions to and deductions from the capital gains pool is voluntary; however, it may be of benefit to a charity to make this calculation if it expects ever to claim a reduction of its disbursement quota in respect of the expenditure of enduring property. 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 now applies only if the value of investment assets of a charity exceeds $25,000. However, this requirement is extended to registered charities that are charitable organizations. 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.

- 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).

- However, if the value of investment assets of a charity is greater than $25,000, the charity may claim a reduction to the disbursement requirements in respect of the expenditure of enduring property. The reduction is equal to the lesser of 3.5% of the investment assets of the charity and 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.

"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,

- a gift received by a charitable organization from an another registered charity, the majority of directors and trustees of which deal at arm's length with those of the charitable organization, if the gift is subject to a trust or direction that, in general, the gift be utilized over a period not exceeding 5 years in the course of a program of charitable activities or for the purpose of acquiring a capital property to be used directly in such activities, 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 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(1.1) 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 day that is 30 days after Royal Assent.

Revocation of registration of charitable organization

ITA
149.1(2)(*b*)

Subsection 149.1(2) of the Act describes reasons for which the Minister of National Revenue may revoke the registration of a charitable organization. Paragraph 149.1(2)(*b*) is amended, concurrently with the amendment of the definition of "disbursement quota" in subsection 149.1(1), to provide that the requirement of other charities to annually disburse 3.5% of their investment assets be extended to charitable organizations for taxation years beginning after March 22, 2004. Under the definition of "disbursement quota", this

requirement applies if the value of investment assets of a charity exceeds $25,000. However, charitable organizations registered before March 23, 2004 will not be subject to this requirement until their taxation years that begin after 2008.

Revocation of registration of registered charity

ITA
149.1(4.1)

Subsection 149.1(4.1) allows the Minister of National Revenue to revoke the registration of a registered charity that has made a gift to another registered charity, if the Minister is satisfied that one of the main reasons for making the gift was to unduly delay the expenditure of amounts on charitable activities. The Minister may also revoke the registration of the recipient charity where it co-operated with the donor charity to achieve the delay.

Subsection 149.1(4.1) is amended to provide that registration may also be revoked if a false statement or omission was made, in circumstances amounting to culpable conduct, in the furnishing of information for the purpose of obtaining registration of the charity.

This amendment applies in respect of notices of intention to revoke the registration of a charity issued by the Minister of National Revenue after the the day that is 30 days after Royal Assent.

Definition of Disbursement Excess

ITA
149.1(21)

Subsection 149.1(21) of the Act defines "disbursement excess" for the purposes of subsection 149.1(20). The disbursement excess is the amount by which a registered charity’s expenditures in the year exceeds its disbursement requirements for the year.

Subsection 149.1(21) is amended consequential to amendments to the disbursement requirements of charitable organizations in the definition of “disbursement quota” and in paragraph 149.1(2)(*b*), for taxation years beginning after March 22, 2004. However, charitable organizations registered before March 23, 2004 will not be subject to this requirement until their taxation years that begin after 2008.

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 day that is 30 days after Royal Assent.

Clause 36

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 37

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 38

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 day that is 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 day that is 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 39

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 day that is 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 day that is 30 days after Royal Assent.

Clause 40

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 day that is 30 days after Royal Assent.

Clause 41

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 42

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 43

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 day that is 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 day that is 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 day that is 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 day that is 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 day that is 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 44

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 45

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 day that is 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 day that is 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 day that is 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 day that is 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 day that is 30 days after Royal Assent.

Clause 46

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 47

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 48

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 49

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 day that is 30 days after Royal Assent.

Clause 50

Offences

ITA
239(5)

Subsection 120(2.2) allows individuals to reduce their federal tax payable under Part I by the amount of income tax payable to an Aboriginal government, where that Aboriginal government has entered into a tax sharing agreement with the Government of Canada. New subsection 239(5) ensures that, in determining whether a criminal offence under the Act has been committed, and in determining any punishment associated with such an offence, all individuals in Canada would be subject to the same sanctions even where Canada has entered into a tax sharing agreement with an Aboriginal Government.

Clause 51

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 52

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 53

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 54

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 interpretive rules in new paragraphs 251.1(4)(*c*) and (*d*) – 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)(*d*)(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)(*d*)(i), (iii) and (iv) 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)(d)(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)(d)(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*) and (*d*)

Subsection 251.1(4) of the Act contains interpretive rules that apply for the purposes of section 251.1.

New paragraph 251.1(4)(*c*) clarifies that, notwithstanding subsection 104(1) of the Act, a reference to a trust does not include a reference to the trustee or other persons who own or control the trust property.

New paragraph 251.1(4)(*d*) introduces four rules that apply in determining whether a person is affiliated with a trust. New subparagraph 251.1(4)(*d*)(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)(*d*)(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)(*d*)(iii) 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)(*d*)(iv) 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)(d)(i). Given the interpretive rule in subparagraph 251.1(4)(d)(iv), 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)(*d*)(iv) which applies in determining whether persons are, at any time on or after September 16, 2004, affiliated.

Clause 55

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 56

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 57 and 58

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 59

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 60

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 61 to 63

Amendments to Tax Court of Canada Act

TCCA
12, 18, 18.29

Clauses 61 to 63 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 64

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.