Explanatory Notes Relating to the Air Travellers Security Charge and to Income Tax

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

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PREFACE

These explanatory notes describe the proposed legislation implementing the *Air Travellers Security Charge Act* and amendments to the *Income Tax Act*. The Interest Rate Regulations for the *Air Travellers Security Charge Act* and draft amendments to the *Income Tax Regulations*, with corresponding explanatory notes, are also included.

These explanatory notes describe these measures, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Paul Martin
Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed legislation implementing the *Air Travellers Security Charge Act* and related *Interest Rate Regulations* and proposed amendments to the *Income Tax Act* and *Income Tax Regulations*. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Table of Contents

Air Travellers Security Charge

SHORT TITLE

Section 1 - Short title

This section provides that the enactment to which these notes relate may be cited as the *Air Travellers Security Charge Act.*

INTERPRETATION

Section 2 - Definitions

“accredited representative”

An “accredited representative” is a person who is a foreign diplomatic agent entitled to the tax exemptions specified in article 34 of the Vienna Convention on Diplomatic Relations (Schedule I to the *Foreign Missions and International Organizations Act)* or a person who is a consular official entitled to the tax exemptions specified in article 49 of the Vienna Convention on Consular Relations (Schedule II to the *Foreign Missions and International Organizations Act)*.

“Agency”

The “Agency” is the Canada Customs and Revenue Agency established by subsection 4(1) of the *Canada Customs and Revenue Agency Act.*

“air carrier”

An “air carrier” means a person who carries on a business of transporting individuals by air.

“air transportation service”

An “air transportation service” means all of the transportation of an individual by air, by one or more air carriers, included in a continuous journey of the individual. This term is used in section 11, under which every person who acquires from a designated air carrier all or part of an air transportation service that includes a chargeable emplanement is required to pay a charge.

“assessment”

The Minister of National Revenue may make an “assessment” of any charge, interest or other amount payable by any person under the Act. The Minister may also make an assessment of the amount of a refund payable to a person. An assessment for the purposes of the Act includes a reassessment.

“bank”

“Bank” means a bank as defined in section 2 of the *Bank Act* or an authorized foreign bank, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act.

“charge”

“Charge” is the charge payable under section 11 on the acquisition from a designated air carrier of an air transportation service that includes a chargeable emplanement. This definition does not apply for the purposes of the references to “charge” in the definition “security interest” and in section 74.

“chargeable emplanement”

The term “chargeable emplanement” describes the type of emplanement that must be included in an air transportation service for the service to be subject to a charge under this Act. A “chargeable emplanement” is defined as an embarkation by an individual at a listed airport on an aircraft operated by a particular air carrier, except if:

(*a*) the embarkation

(i) is for the purpose of transferring from a particular flight to a connecting flight and the particular flight included a chargeable emplanement by the individual, or the individual embarked on the particular flight outside Canada,

(ii) is a reboarding of the aircraft to resume a direct flight,

(iii) is a boarding of an aircraft that is being used to transport the individual on a direct flight to a destination in Canada that is not a listed airport, or

(iv) results from the provision of emergency or ground services to an aircraft or its occupants;

(*b*) the individual is

(i) an accredited representative,

(ii) an infant (other than an infant who has been issued a ticket that entitles the infant to occupy a seat for a part of the service that includes a chargeable emplanement),

(iii) an employee of the particular carrier, or of another air carrier that is a subsidiary wholly-owned corporation (in this subparagraph having the same meaning as in the *Income Tax Act*) of the particular carrier or of which the particular carrier is a subsidiary wholly-owned corporation, and whose embarkation is in the course of that employment, or

(iv) a prescribed individual;

(*c*) the embarkation is

(i) on an aircraft whose maximum certified take-off weight does not exceed 2,730 kg,

(ii) on an aircraft referred to in subsection 56(1) of the *Canada Transportation Act*,

(iii) in the course of a service listed in, or prescribed under, subsection 56(2) of the *Canada Transportation Act*, or

(iv) in the course of an air ambulance service; or

(*d*) the embarkation is made in prescribed circumstances.

In order for an emplanement to be a chargeable emplanement, it must be at one of the airports listed in the Schedule to the Act, which are

those where the new Air Transport Security Authority will take over responsibility for screening services and other security measures. Emplanements on direct flights either going to or departing from an airport that is not a listed airport will not trigger the application of the charge.

A passenger's connecting flight does not trigger the application of the charge as long as it is a transfer from a flight that was subject to the charge. Therefore, for example, if a passenger embarks at a non-listed airport on a flight that ends at a listed airport at which the passenger transfers to a flight to another listed airport, the passenger's connecting flight would be subject to the charge. If, instead, a passenger embarks at a listed airport on a flight with the next connection at another listed airport, the passenger's originating flight would be subject to the charge but not the passenger's connecting flight.

Paragraph (*b*) of the definition “chargeable emplanement” describes individuals whose travel is exempt from the charge. This includes foreign diplomats who are entitled to tax exemptions pursuant to certain international conventions, infants for whom no separate ticket is issued, and employees of air carriers who are travelling in the course of their employment.

Paragraph (*c*) of the definition describes specific types of services that are exempt from the charge. This includes services on very small aircraft (not exceeding 2730 kilograms), military flights, air ambulance services and a number of specialty services prescribed under subsection 56(2) of the *Canada Transportation Act* (e.g., aerial sightseeing services).

Paragraph (*d*) of the definition provides authority for additional exclusions to be prescribed by regulation.

“Commissioner”

The “Commissioner” is the Commissioner of Customs and Revenue appointed under section 25 of the *Canada Customs and Revenue Agency Act.*

“continental zone”

“Continental zone” is defined as Canada, the United States (except Hawaii) and the Islands of St. Pierre and Miquelon. This term is used in section 12 in determining the amount of charge that will apply in respect of an air transportation service.

“continuous journey”

A “continuous journey” is defined as a journey of an individual:

(*a*) for which one ticket is issued; or

(*b*) for which two or more tickets are issued, if there is no stopover between any of the legs of the journey for which separate tickets are issued, all the tickets are issued by the same issuer or by two or more issuers through one agent acting on behalf of all such issuers, and evidence satisfactory to the Minister that there is no stopover between any of the legs of the journey for which separate tickets are issued is maintained by the issuer or agent, if the tickets are issued at the same time, or submitted by the issuer or agent if the tickets are issued at different times.

This term is used in the definition “air transportation service”.

“data”

“Data” means representations of information or concepts, in any form. The term “data” is used in the definition of “record”.

“designated air carrier”

“Designated air carrier” means an air carrier that is authorized by the Canadian Transportation Agency under Part II of the *Canada Transportation Act* to operate a domestic service or an international service but does not include an air carrier that provides services that include only emplanements that are described in paragraph (c) or (d) of the definition “chargeable emplanement”. This term is used in section 17 to identify those air carriers that are required to register with the Minister of National Revenue for the purpose of filing returns and paying all charges collected to the Receiver General.

“fiscal month”

A “fiscal month” is the period determined under section 16 for purposes of reporting and paying a charge.

“Her Majesty”

The term “Her Majesty” is used to refer to the Crown in right of Canada as distinct from the Crown in right of a province.

“judge”

“Judge” refers to a judge of the Federal Court or a superior court where a matter under the Act is to be dealt with.

“listed airport”

A “listed airport” is defined as an airport listed in the Schedule to this Act and a prescribed airport. This term is used in the definition “chargeable emplanement”.

“Minister”

Responsibility for the administration and enforcement of the Act rest with the Minister of National Revenue.

“month”

A “month” may be a calendar month or a similar period overlapping two consecutive calendar months.

“person”

The term “person” is used to refer to governments, individuals, partnerships, trusts and all forms of organizations.

“prescribed”

“Prescribed” means authorized by the Minister of National Revenue when referring to a form or the manner of filing a form and, when referring to the information to be given on or with a form, specified

by the Minister. In any other case, it means prescribed by regulation or determined in accordance with rules prescribed by regulation.

“record”

“Record” is broadly defined to include any material on which data are recorded or marked. Every person who collects or is required to collect a charge is required to keep records concerning their operations under the Act.

“secured creditor”

A “secured creditor” means a particular person who has a security interest in the property of another person. It also refers to a person who acts for or on behalf of the particular person with respect to the security interest and includes:

- a trustee appointed under a trust deed relating to a security interest,
- a receiver or receiver-manager appointed by the particular person or appointed by a court on the application of the particular person,
- a sequestrator, or
- any other person performing a function similar to that of a person referred to in any of the above three bullets.

“security interest”

“Security interest” means, for the purposes of the definition “secured creditor”, section 15 and subsection 75(3), any interest in property that secures payment or performance of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for.

“stopover”

A “stopover” is defined as the disembarkation of an individual from an aircraft other than a disembarkation that:

- is solely for the purpose of transferring to a connecting flight;

- is in the course of a direct flight if the individual reboards the aircraft to resume the flight; or

- results from the provision of emergency or ground services to an aircraft or its occupants.

This term is used in the definition “continuous journey”.

“Tax Court”

“Tax Court” means the Tax Court of Canada. A person may, under certain conditions, appeal an assessment or reassessment to the Tax Court (see section 46).

Section 3 – Meaning of “administration or enforcement of this Act”

The purpose of this section is to ensure that the phrase “administration and enforcement of this Act”, wherever it is used in the Act, is read as including the collection of any amount payable under the Act.

Section 4 – Deemed issuance of ticket

This section provides that, if no ticket is issued for all or part of a journey, and it is reasonable to consider that a ticket would ordinarily be issued by a person for such a journey, then such a ticket is, except for the purposes of paragraph 11(2)(c), deemed to have been issued by the person.

Section 5 – Separate journeys deemed

This section provides that, if a journey includes more than one chargeable emplanement by an individual at a particular listed airport, the journey is, despite any other provision of this Act, deemed not to be a continuous journey and to be a series of separate continuous journeys each of which commences with the second and any subsequent chargeable emplanement from the particular listed airport. It applies to a service that provides the traveller with the right to multiple return trips or to depart from the same airport multiple times.

On such a ticket, the charge will be payable on each second and subsequent departure from a particular listed airport.

APPLICATION

Section 6 – Binding on Her Majesty

This provision ensures that the Act has application to governments where relevant.

Section 7 - Application to air transportation services

This section provides that this Act will apply to the acquisition, on or before March 31, 2002, of an air transportation service for which any consideration is paid or becomes payable after March 31, 2002 and that includes a chargeable emplanement made after

- March 31, 2002, if the service is acquired in Canada, or

- May 31, 2002, if the service is acquired outside Canada.

The Act also applies to the acquisition after March 31, 2002 of an air transportation service that includes a chargeable emplanement made after

- March 31, 2002, if the service is acquired in Canada, or

- May 31, 2002, if the service is acquired outside Canada.

ADMINISTRATION AND OFFICERS

Section 8 – Minister’s duty

The Minister of National Revenue has responsibility for the administration and enforcement of the Act and the Commissioner may exercise all the powers and perform all the duties of the Minister.

Section 9 – Officers and employees

This section provides for the appointment or employment of persons necessary to administer and enforce the Act. The Minister of National Revenue may authorize an officer, agent or class of officers or agents to exercise the powers and duties of the Minister.

Section 10 – Administration of oaths

If designated by the Minister of National Revenue, any person employed in connection with the administration or enforcement of the Act may administer oaths and receive affidavits, declarations and affirmations related to the administration or enforcement of the Act or the regulations.

CHARGE PAYABLE

Section 11 – Charge payable

This section provides that every person who acquires from a designated air carrier all or part of an air transportation service that includes a chargeable emplanement is required to pay a charge as determined under this Act in respect of the service.

The charge is payable at the time any consideration for the service is first paid or becomes payable. If no consideration is paid or payable, the charge is payable at the time a ticket for the service is issued. If no consideration is paid or payable and no ticket is issued for the service, the charge is payable at the time of emplanement.

Section 12 – Amount of charge

This section sets out the amount of the charge that is payable on the acquisition of an air transportation service. The amount of the charge payable is determined according to where the service is acquired (i.e., in Canada or outside Canada) and the destination of the travel.

If service acquired in Canada

Subsection 12(1) provides that, subject to subsection 12(3), if an air transportation service is acquired in Canada, the amount of the charge in respect of the service is

(a) $11.22 for each chargeable emplanement included in the service, to a maximum of $22.43, if the service does not include transportation to a destination outside the continental zone and 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;

(b) $12.00 for each chargeable emplanement included in the service, to a maximum of $24.00, if the service does not include transportation to a destination outside the continental zone and tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service; or

(c) $24.00, if the service includes transportation to a destination outside the continental zone.

If service acquired outside Canada

Subsection 12(2) provides that, subject to subsection 12(3), if an air transportation service is acquired outside Canada, the amount of the charge in respect of the service is:

(a) $11.22 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 $22.43, if the service does not include transportation to a destination outside the continental zone and tax under subsection 165(1) of the *Excise Tax Act* is required to be paid in respect of the service;

(b) $12.00 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 $24.00, if the service does not include transportation to a destination outside the continental zone and tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service; or

(c) $24.00, if the service includes transportation to a destination outside the continental zone.

Prescribed amount of charge

Subsection 12(3) provides authority to prescribe by regulation a lesser amount of the Air Travellers Security Charge in respect of an air transportation service that is determined under subsection 12(1) or (2) in respect of that service. The subsection also provides authority for rules to be prescribed to determine the amount of a charge in a manner set out in the regulations.

Section 13 – Air transportation service deemed to be acquired in Canada

This section provides that, if an air transportation service is acquired outside of Canada in circumstances in which any consideration for the service is paid by transmission or delivery from within Canada to a place outside Canada, or by any other arrangement with a person outside Canada for the benefit or convenience of a person who is resident in Canada, the service is deemed to have been acquired in Canada. It also provides that all purchases made outside Canada by charterers from designated air carriers are deemed to have been made in Canada if the air transportation service being acquired begins at a point in Canada.

COLLECTION OF CHARGE

Section 14 – Duty of designated air carrier to collect charge

As set out in section 11, every person who acquires all or part of an air transportation service that includes a chargeable emplanement is required to pay a charge. Section 14 requires every designated air carrier from whom the air transportation service is acquired to collect the charge payable from the person required to pay the charge as an agent for Her Majesty in right of Canada. This general rule is subject to the special collection rules under subsection 14(2) to (4), which deal with situations where the air transportation service being acquired is comprised of transportation of an individual by air by two or more designated air carriers.

The charge must be collected not later than the time when the charge becomes payable by the person under subsection 11(2).

Subsection 14(5) deals with the situation where an air transportation service is acquired outside Canada and a designated air carrier issues a ticket and accepts consideration for the service on behalf of the emplaning designated air carrier that is required to collect a charge in respect of the service. In that case, the issuing carrier is jointly and severally liable with the emplaning carrier for the collection and payment of the charge.

Section 15 – Trust for amounts collected

This section provides that amounts collected by a person as or on account of a charge are considered to be held in trust for Her Majesty in Right of Canada, except in the case of a bankruptcy of the person.

Amounts held in trust prior to bankruptcy will not be considered to be held in trust after a person becomes bankrupt. However, amounts collected as or on account of charges during the bankruptcy, other than amounts that became collectible prior to the bankruptcy, are considered to be held in trust and these amounts are considered to be separate from, and to form no part of, the estate of the bankrupt.

The deemed trust applies only to property of the person equal in value to the amounts deemed to be held in trust and not paid to Her Majesty as and when required. In addition, the Crown's claim over the deemed trust amounts takes priority over any security interest of a secured creditor (other than a prescribed security interest). To the extent that the deemed trust does not apply to certain amounts in the case of bankruptcy, this priority likewise does not apply to those amounts. The regulations to prescribe security interests for purposes of this provision are intended to parallel those made under subsection 227(4.2) of the *Income Tax Act*.

GENERAL PROVISIONS CONCERNING CHARGES AND OTHER AMOUNTS PAYABLE

Fiscal Month

Section 16 – Determination of fiscal months

Designated air carriers required to file returns under the Act must notify the Minister of National Revenue of their fiscal months. A designated air carrier's fiscal months for the purposes of this Act are determined as follows:

- if a carrier's fiscal months have been determined for GST/HST purposes under subsection 243(2) or (4) of the *Excise Tax Act*, those fiscal months are the carrier's fiscal months for the purposes of this Act;

- if a carrier's fiscal months have not been so determined, the carrier may choose at the time of registration fiscal months for the purposes of this Act that meet the requirements set out in subsection 243(2) of the *Excise Tax Act*; and

- in every other case, the carrier's fiscal months are calendar months.

Returns and Payments of Charges and Other Amounts

Section 17 – Registration, returns and payments

This section requires every designated air carrier that is required to collect a charge to register with the Minister of National Revenue before the end of the first fiscal month in which the carrier collects or is required to collect a charge.

Every designated air carrier that is registered or is required to register must file monthly returns, calculate in the return the total of all charges collected and other amounts collected as or on account of charges, and pay an amount equal to that total to the Receiver General. The return for each of a designated air carrier's fiscal months must be filed, and any amount payable by the carrier must be paid, by the end of the first month following the fiscal month.

Section 18 – Amount collected as charge by person not required to collect

This section provides that, if a person collects an amount as or on account of a charge and they are not required to pay it to the Receiver General under subsection 17(2) (e.g., a non-designated air carrier acting on their own behalf collects a charge), they shall pay that amount to the Receiver General and report the matter to the Minister.

Section 19 – Set-off of refunds

This section allows certain refunds that are due to a designated air carrier to be deducted from the amount required to be paid by the carrier, as reported in their return. To be deductible, the refund must be due to the carrier at the time they file the return and must be claimed in that return or another return or in a separate application filed with that return. In such a case, the carrier is deemed to have paid, and the Minister of National Revenue is deemed to have refunded, an amount equal to the lesser of the amount payable by the carrier and the amount of the refund.

Section 20 – Large payments

Every person required under the Act to pay $50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution.

Section 21 – Small amounts owing

If the total amount payable by a designated air carrier is less than or equal to $2.00, it is deemed to be nil. Similarly, if the total of the amount payable to a designated air carrier by the Minister of National Revenue is less than or equal to $2.00, the Minister is not required to pay it. The Minister may, however, deduct that amount from any amount payable by the carrier.

Section 22 – Authority for separate returns

If a designated air carrier carries on business through separate branches or divisions, the designated air carrier may seek permission from the Minister of National Revenue to file separate returns for the

carrier's separate branches or divisions. To qualify, a branch or division must be separate in terms of its location or operations and it must have separate books and records as well as a separate accounting system. The Minister may revoke an authorization where the carrier fails to comply with the Act or any condition imposed in respect of the authorization, the carrier no longer meets the requirements for authorization or the authorization is no longer required.

Section 23 – Electronic filing

A designated air carrier that is required to file returns under the Act and that meets the criteria specified by the Minister of National Revenue for electronic filing may use electronic media for filing the returns. A return filed electronically is deemed to be a return filed in the prescribed form on the day the Minister acknowledges acceptance of it.

Section 24 – Execution of returns, etc.

This section specifies that a return (other than a return filed electronically), or other document made by a person other than an individual shall be signed on behalf of the person by a duly authorized individual. Senior officers named in the section are deemed to be duly authorized signing officers.

Section 25 – Extension of time

The Minister of National Revenue may extend the time for filing a return or providing information.

Section 26 – Demand for return

The Minister of National Revenue may require any designated air carrier to file a return for any designated period within a reasonable time. The demand for the return must be served personally, or by registered or certified mail.

Interest

Section 27 – Compound interest on amounts not paid when required

This section imposes interest at the prescribed rate on amounts a person has failed to pay under the Act. Interest will be compounded daily at the rate prescribed from the day following that on which the amount was required to be paid until the day the amount is paid.

It should also be noted that, in addition to the interest imposed under this section, a penalty is imposed on late or deficient payments under section 53 of the Act.

Section 28 – Compound interest on amounts owed by Her Majesty

This section imposes interest on amounts owed by Her Majesty to a person. Interest will be compounded daily at the rate prescribed from the day following that on which the amount was required to be paid by Her Majesty until the day the amount is paid or is applied against an amount owed by the person to Her Majesty.

Section 29 – Application of interest provisions if Act amended

This section clarifies that, should the Act be amended by a provision that is deemed to come into force on a day before the provision is assented to, the provisions of the Act relating to interest shall apply as if the amending provision were assented to on the day it was deemed to have come into force.

Section 30 – Waiving or reducing interest

The Minister of National Revenue may waive or reduce interest payable under the Act. This section provides the Minister with the discretionary authority to waive interest where, due to extraordinary circumstances beyond a person's control, the person has been prevented from complying with the requirement to pay a charge or other amount.

Refunds

Under certain conditions, persons may apply for a refund of the charge paid in respect of air transportation services. Refund applications are generally required to be made within 2 years of the event that gave rise to the refund entitlement.

Section 31 – Statutory recovery rights

Any charge, interest or other amount paid under the Act is not refundable except to the extent that the Act, or the *Financial Administration Act,* provides.

Section 32 – Refund of charge if service not provided

Section 32 authorizes a designated air carrier to refund or credit, in certain circumstances, an amount that the air carrier collected as or on account of a charge.

Subsection (1) provides for a refund or credit by a designated air carrier of a charge that was properly collected from a person if the service in respect of which the charge was paid was not used or was only partially used. Where the service was only partially used, the air carrier may refund the amount of the charge if the part that was used would not, by itself, be subject to a charge.

Subsection (2) provides for a refund or credit of an amount that was collected as or on account of a charge in excess of the charge properly collectible. This includes a situation where no charge was payable.

Subsection (3) requires an air carrier that refunds or credits an amount to a person within two years after the day the amount was collected to issue a document containing prescribed information.

Subsection (4) entitles an air carrier that has refunded or credited an amount under subsection (1) or (2) and that has issued a document in accordance with subsection (3) to deduct the amount refunded or credited from the amount payable to the Receiver General in the fiscal month in which the document is issued provided that the amount refunded or credited was included in the amount payable by the air carrier for that or a preceding fiscal month.

Section 33 – Payment in error

A person who pays an amount under the Act that is in fact not payable may apply for a refund of the amount, provided the person applies for the refund within 2 years of the day the amount was paid. A person applying for a refund under the Act must make an application in the prescribed form and manner. The refund is not, however, payable to the person where the amount has been included in an assessment under section 39.

Section 34 – Restriction on refunds, etc.

This section provides that a person is not entitled to a refund of an amount under the Act to the extent that the person has been previously paid the amount under this or any other Act of Parliament, or has applied for the refund payment or remission of the amount under any other Act of Parliament. Also, the person is not entitled to a refund to the extent that it can reasonably be regarded that the amount has been, or will be, refunded to the person by the air carrier. Only one application may be made for a particular refund.

Section 35 – Restriction re trustees

A refund to which a person was entitled prior to the appointment of a trustee in bankruptcy for the person shall not be paid unless all returns for the fiscal months that ended before the appointment of the trustee have been filed and all outstanding payments for those fiscal months have been paid.

Section 36 – Overpayment of refunds, etc.

This section provides that, if a person receives a refund to which the person was not entitled or an overpayment of a refund, the person shall pay the amount of the refund or overpayment to the Receiver General.

Records and Information

Sections 37 and 38 set out the requirements under the Act relating to the keeping of records and the provision of records and information

for any purpose relating to the administration and enforcement of the Act.

Section 37 – Keeping records

Every person who collects or is required to collect a charge is required to keep records sufficient to enable a determination to be made of whether they have complied with the Act.

The basic period for retaining records is 6 years after the end of the year to which they relate.

Section 38 – Requirement to provide information

The Minister of National Revenue may, by notice, require a person resident in Canada or a non-resident carrying on business in Canada to produce information or records relevant to the administration or enforcement of the Act. A recipient of a notice may have the notice reviewed by a judge to determine whether the requirement to disclose is unreasonable. A person who fails to comply substantially with a notice will be prohibited from introducing any information covered by the notice as evidence in any civil proceeding under the Act.

Assessments

Section 39 – Assessment

This section authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under the Act. When assessing a person, the Minister may take into account any overpayment made by the person or refund owing to the person.

The Minister of National Revenue is not bound by any return, application or information supplied by a person and an assessment may be made even if no return has been filed. A person's liabilities under the Act are not affected by an incorrect or incomplete assessment or the absence of an assessment.

Section 40 – Assessment of refund

If a person applies for a refund, the Minister of National Revenue shall consider the application and assess the amount of the refund owing. To receive a refund a person must have filed all returns or other records required to be filed under this Act. Interest shall be paid at the prescribed rate on refunds for the period beginning 30 days after the refund application is filed with the Minister and ending on the day the refund is paid.

Section 41 – Notice of assessment

This section requires the Minister of National Revenue to provide a notice of assessment to any person who has been assessed. A notice of assessment may include assessments of any number or combination of fiscal months, refunds or amounts payable under the Act.

Section 42 – Limitation period for assessments

This section sets out the limitation periods for assessing any charge or other amount payable under the Act. Generally, an assessment of a charge or other amount payable under the Act shall not be made more than 4 years after it became payable under the Act.

Objections to Assessment

Section 43 – Objection to assessment

A person who objects to an assessment may file a notice of objection with the Minister of National Revenue within 90 days from the date of the notice of assessment. The Minister is required to reconsider the assessment and either vacate or confirm the assessment or make a reassessment and notify the person accordingly. However, the Minister may confirm the assessment without reconsidering it if a person who wishes to appeal directly to the Tax Court requests the Minister to do so.

Section 44 – Extension of time by Minister

If a person does not file a notice of objection under section 43 within the time limited under the Act but wishes to do so, the person may make an application to extend the time for filing and the Minister of National Revenue may grant it. However, the application cannot be granted unless it is made within one year of the expiration of the time for objecting and as soon as circumstances permit. The person must demonstrate that the person was unable to act within the time otherwise limited for objecting and that the person had a *bona fide* intention to object to the assessment within that time. The person must also give the reasons why it would be just and equitable to grant the application.

Appeal

A person may appeal the Minister of National Revenue's decision on an objection relating to an assessment to the Tax Court of Canada. The Tax Court may either dismiss an appeal or allow it and cancel the assessment or refer the assessment back to the Minister for reconsideration. Any decision of the Tax Court may be appealed to the Federal Court of Appeal of Canada.

Section 45 – Extension of time by Tax Court

If the Minister of National Revenue refuses an application for an extension of time for filing a notice of objection or does not make a decision within 90 days of receiving the application, a person may apply to the Tax Court for an extension of time. However, the application cannot be granted unless it is made within 30 days from the day the Minister's decision under section 44(5) is mailed to the person. The applicant must meet the same conditions as in the case of an application to the Minister for an extension of time.

Section 46 – Appeal to Tax Court

A person may appeal to the Tax Court where, in response to a notice of objection, the Minister of National Revenue has confirmed the assessment or made a reassessment, or, where the Minister has not made a decision on the notice of objection, within 180 days of the notice being filed. Where the Minister has confirmed the assessment

or reassessed, the appeal is to be made within 90 days of notice of that decision being sent to the person. The Court may permit an appellant to amend an appeal to include any further relevant assessment.

Section 47 – Extension of time to appeal

If an appeal to the Tax Court under section 46 is not commenced within the allotted time, an application may be made to the Court seeking an extension of the time for appealing. The application must be made within one year following the time allowed for appealing and must contain information to justify why an extension should be granted. The applicant must also demonstrate that there are reasonable grounds for appealing.

Section 48 – Limitation on appeals to the Tax Court

An appeal to the Tax Court may only pertain to an issue specified in the notice of objection to an assessment, as required under subsection 43(2), and the relief sought with respect to an issue cannot be revised. These restrictions do not, however, apply if the issue was raised for the first time in the Minister of National Revenue's reconsideration of the assessment. A person cannot appeal in respect of an issue for which the right of objection or appeal has been waived in writing by the person.

Section 49 – Institution of appeals

Appeals to the Tax Court are to be instituted in accordance with the *Tax Court of Canada Act* and the related rules.

Section 50 – Disposition of appeal

The Tax Court may either dismiss an appeal or allow the appeal and either vacate the assessment or refer the assessment back to the Minister of National Revenue for reconsideration and reassessment.

Section 51 – References to Tax Court

This section allows the Minister of National Revenue and another person to agree to have a question relating to an assessment or proposed assessment determined by the Tax Court. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal.

Section 52 – Reference of common questions to Tax Court

The Minister of National Revenue may apply to the Tax Court to determine a question concerning transactions or occurrences that are common to assessments or proposed assessments of two or more persons. The determination of the Court is binding on all parties. It may be appealed to the Federal Court of Appeal. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal.

ENFORCEMENT

Penalties

Section 53 – Penalty

Section 53 imposes a penalty where a person has failed to pay an amount as and when required under this Act. The penalty on late or deficient payments is 6% per year compounded daily and will be imposed on the amount not paid. The penalty will be calculated for the period beginning on the first day following the due date for payment of the amount and ending on the day the amount is paid.

It should be noted that the 6% penalty imposed on late or deficient payments may be offset where the Minister holds security under section 73 for the payment of any other amount under this Act. On any particular day, where security is held by the Minister, the penalty will be applicable only to the extent that the total of all amounts outstanding on the particular day exceeds the value of the security at the time it was accepted by the Minister.

It should also be noted that, in addition to this penalty, interest is imposed on late or deficient payments under section 27 of the Act.

Section 54 – Effect of extension for returns

This section provides that, if the Minister extends the time for the filing of a return, and the return is filed within the time so extended and any amount due with the return is paid within that time, the 6% penalty provided under section 53 will not apply.

Section 55 – Waiving or cancelling penalties

The Minister of National Revenue may waive or cancel penalties payable by a person under section 53. This section is intended to provide the Minister with the authority to waive or cancel the penalty in circumstances where, due to extraordinary circumstances beyond a person's control, the person is prevented from complying with the requirement to file a return or pay an amount.

The circumstances in which the Minister would consider waiving a penalty under this section will be set out in administrative guidelines to be issued by the Minister. Such circumstances would include a natural disaster, the death or serious illness of a key employee, as well as situations where the Canada Customs and Revenue Agency has provided erroneous information to the public in publications. Relief will not be provided where a delay in compliance arises out of neglect or lack of awareness on the part of the person.

Section 56 – Failure to answer demand

The Minister may demand that any person file a return with respect to any period. A failure to comply with the demand will result in a penalty equal to the greater of $250 and 5% of the amount outstanding with respect to the period.

Section 57 – Failure to provide information

Failure to provide any information or record as and when required under this Act may result in a penalty of $100 for each default unless, in the case of a person's failure to provide information in respect of another person, a reasonable effort was made by the person to comply.

Section 58 – False statements or omissions

This section imposes a penalty on a person for knowingly, or under circumstances amounting to gross negligence, makes or is a party to the making of a false statement or omission in a return or other document. The penalty is equal to the greater of $250 and 25% of the total of any reductions in amounts owing and any excess refunds resulting from the false statement or omission.

Penalty Imposition

Section 59 – Notice of imposed penalty

A penalty under any of sections 56 to 58 may be imposed by the Minister of National Revenue by serving on the person a notice or by sending the notice by certified or registered mail and such notice is deemed to be an assessment for the purposes of the Act.

Section 60 – When penalty becomes payable

The amount of a penalty under section 59 is payable at the time it is imposed.

Offences and Punishment

Section 61 – Offence for failure to file return or to comply with demand or order

This section provides that every person who fails to file or make a return or comply with a requirement to keep accurate records, provide reasonable access to any record or property, or provide any record or information as required, is guilty of an offence.

Conviction carries a fine of not less than $1,000 and not more than $25,000 and may include imprisonment for a term not exceeding one year.

A person convicted under this section is relieved of any penalty imposed under section 56 or 57 for failure to file a return or provide any information or record as and when required, unless a notice of

assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

Section 62 – Offences for false or deceptive statement

This section provides that every person is guilty of an offence if that person

(a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, application or other record or answer filed or made for the purposes of this Act,

(b) employs any fraudulent or destructive means for the purpose of evading the payment of any amount or to obtain a refund to which the person is not entitled under this Act,

(c) wilfully, in any manner, evades or attempts to evade compliance with the requirements of this Act,

(d) wilfully, in any manner, obtains or attempts to obtain a refund to which the person is not entitled under this Act, or

(e) conspires with any person to commit any of the foregoing offences.

In addition to any penalty otherwise provided, conviction carries a fine of not less than 50% and not more than 200% of the amount payable that was sought to be evaded or the refund sought to be gained. Where the amount cannot be ascertained, a fine of not less than $1,000 and not more than $25,000 shall be imposed. The fine may be accompanied by imprisonment for a term not exceeding eighteen months.

A person convicted under this section is not also liable to a penalty imposed under any of sections 56 to 58 in respect of the same matter unless a notice of the assessment for that penalty preceded the laying of the information or the making of the complaint giving the rise to the conviction.

The Minister may stay an appeal under this Act pending the determination of a prosecution under this section where substantially the same facts are at issue in both instances.

Section 63 – Failure to pay or collect charges

Every person who wilfully fails to pay or collect a charge as when required under this Act is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding the aggregate of $1,000 and an amount equal to 20% of the amount of the charge that should have been paid or collected. This fine may be accompanied by imprisonment for a term not exceeding 6 months.

Section 64 – General offence

Every person who contravenes a provision of the Act or regulations, the contravention of which is not specified elsewhere in the Act to be an offence, is guilty of an offence. A person found guilty on summary conviction faces a fine of up to $1,000.

Section 65 – Defence of due diligence

This section provides that a person who establishes that all due diligence was exercised to prevent the commission of an offence shall not be convicted of that offence.

Section 66 – Compliance orders

If a person has been convicted for non-compliance with a provision of the Act or regulations, the court has the authority to make an order to enforce compliance with the provision.

Section 67 – Officers of corporations, etc.

This section provides that where a person, other than an individual, is guilty of an offence under this Act, every officer, director or agent of that person who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is liable to the punishment provided for the offence upon the conviction, whether or not the person has been prosecuted or convicted.

Section 68 – Power to decrease punishment

In respect of any prosecution or proceeding under this Act, the Court has no authority to impose less than the minimum penalty nor the power to suspend sentence.

Section 69 – Information or complaint

Any information or complaint under this Act may be laid or made by any officer of the Canada Customs and Revenue Agency, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister. Where an information or complaint purports to have been duly laid or made it shall be so deemed and shall not be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for the Crown.

Any information or complaint in respect of an offence under this Act may be for one or more offences.

Any information or complaint under this Act may be heard, tried or determined by any court where the accused is resident, carrying on a commercial activity, found or apprehended or is in custody.

Any information or complaint relating to the summary conviction under the Criminal Code, in respect of an offence under this Act, may be laid or made within two years after the day the matter of the information or complaint arose.

Inspections

Section 70 – By whom

A person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property or processes in order to determine whether a person is in compliance with the Act. The authorized person may enter any premises or place of business and require persons to offer reasonable assistance. However, where the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Section 71 – Copies of records

Copies may be made of records examined under section 70.

Collection

The Minister of National Revenue may take collection action where a person fails to pay any amount payable under the Act. The collection procedures, which are similar to those under the GST/HST legislation, include certificates of default, garnishment, deduction or set-off and the seizure and sale of items belonging to a charge debtor. Directors of a corporation may also be jointly and severally liable together with the corporation for any amounts payable. However, as under the *Income Tax Act*, the Minister may not take action to collect amounts owing under the Act until certain time limits for objection or appeal have passed or certain decisions have been made.

Section 72 – Debts to Her Majesty

Amounts payable under the Act are debts due to Her Majesty and may be recovered through the court process. A proceeding in court to recover an amount payable may only be commenced, in the case of an amount that may be assessed under this Act, if the person has been or may be assessed and in any other case if not more than four years have passed since the person became liable to pay the amount.

Similarly, no collection action under any of sections 74 to 79 can be taken in respect of any amount that may be assessed under the Act unless the amount has been assessed.

Section 73 – Security

The Minister of National Revenue may accept security in respect of any amount payable under the Act. On request, the Minister must surrender security to the extent that its value exceeds the amount payable for which the security was furnished.

Section 74 – Certificates

The Minister of National Revenue may certify any amount payable under this Act and register the certificate in the Federal Court. Upon registration, proceedings may be taken to collect the amount certified as if the certificate were a judgment of the Court. The Court may issue a notification or “memorial” that may be recorded in a province to create a charge, lien or priority on, or binding interest in, a property in which the person has an interest. Any property bound by

the registration of a certificate or memorial may not be sold or otherwise disposed of without the written consent of the Minister.

Section 75 – Garnishment

This section authorizes the collection of any amount payable under the Act by way of garnishment. Garnishment may be used in respect of amounts owing to a person indebted to Her Majesty under this Act and in respect of amounts to be loaned or advanced to the person. A third person who fails to comply with a garnishment notice is liable to Her Majesty for the amount not paid. Amounts paid in respect of a garnishment notice are deemed to have been paid to or on behalf of the debtor.

Section 76 – Recovery by deduction or set-off

If a person who is indebted under this Act is or may be owed an amount by the Crown, the Minister of National Revenue may require the satisfaction of all or part of the person's indebtedness under the Act out of the amount owing.

Section 77 – Acquisition of debtor's property

The Minister of National Revenue is authorized to acquire and dispose of any interest in property of a person indebted under this Act for the purpose of collecting the debt.

Section 78 – Money seized from debtor

The Minister of National Revenue may require a person holding money seized in the administration or enforcement of the criminal law of Canada from a debtor under this Act to pay the money to the Receiver General on account of the debtor's indebtedness.

Section 79 – Seizure if failure to pay

Where a person fails to pay an amount as required under the Act, the Minister of National Revenue may give written notice of the Minister's intention to direct that the person's property be seized. If payment is not made within 30 days as set out in the notice, the Minister may issue a certificate of failure and direct that the person's property be seized. Seized property is to be held for 10 days at the

person's expense and, should the default in payment continue, the property may be disposed of as the Minister considers appropriate and the proceeds applied to the amount owing and all expenses. Any net surplus resulting from a disposition is to be paid to the person. Property that is exempt from seizure according to applicable provincial law is exempt from seizure under this section.

Section 80 – Person leaving Canada or defaulting

Where the Minister of National Revenue suspects that a person has left or is about to leave Canada in advance of the due date for payment of any amount, the Minister may by notice demand that the person pay without delay all amounts for which they are liable or will be liable under the Act. If the person fails to pay the amount demanded, the Minister may direct that the person's property be seized and disposed of as the Minister considers appropriate in accordance with subsections 79(2) to (4).

Section 81 – Liability of directors

Directors of a corporation who hold office at the time the corporation fails to pay any amount as and when required under the Act are jointly and severally or solidarily liable together with the corporation for the amount payable provided that:

- a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 74 and execution has been returned unsatisfied;

- the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the liability has been proved within 6 months after the earlier of the commencement of the proceedings or the dissolution; or

- the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount owing has been proved within 6 months of the assignment or receiving order.

A director is not, however, liable if the director exercised a degree of care, diligence and skill to prevent the failure to pay that a reasonably prudent person would have exercised in comparable circumstances.

A director shall not be assessed more than 2 years after ceasing to be a director of that corporation.

Evidence and Procedure

Sections 82 and 83 deal with the sending of a notice or other document by mail or other means of delivery, and specify matters relating to evidence under the Act.

Section 82 – Sending by mail

This section provides that anything sent by first class, registered or certified mail is deemed to have been received by the person to whom it was sent on the day it was mailed, except that an amount payable under the Act to the Receiver General is only considered to have been paid when it is actually received.

Section 83 – Proof of service by mail

This section describes how officers of the Canada Customs and Revenue Agency may use duly sworn affidavits as evidence that:

- a request, notice or demand was sent by mail to a named person on a stated day;
- a request, notice or demand was personally served on a named person on a stated day;
- a named person has not made a return, application, statement, or similar filing;
- a named person made a return, application, statement or similar filing on a stated day;
- the nature and contents of an attached document or copy are as they appear to be; or
- a notice of assessment was sent to a named person and that a notice of objection or appeal from the assessment was not received in the time allowed.

Where the Minister of National Revenue mails a notice or demand, the date of mailing is deemed to be the date of the notice or demand.

REGULATIONS

Section 84 – Regulations

This section provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act.

A regulation normally takes effect from the day it is published in the *Canada Gazette* or from a later date mentioned in the regulation. However, a regulation made under this Act may take effect from an earlier date if the regulation:

- has a relieving effect only;
- corrects an ambiguity or deficiency that is not consistent with the objects of the Act;
- is consequential to an amendment to the Act that is applicable prior to the date of publication of the regulation; or
- gives effect to a budgetary or other public announcement.

SCHEDULE

(Section 2)

Listed Airports

The Schedule is referred to in the definition “listed airport” under section 2 of the *Air Travellers Security Charge Act* enacted under Part 2. The list of 90 airports in the Schedule corresponds to those airports where the new Canadian Air Transport Security Authority will be taking over responsibility for passenger screening services and where new equipment and security measures will be put in place.

CONSEQUENTIAL AMENDMENTS

Tax Court of Canada Act

Amendments to the *Tax Court of Canada Act* are required in light of the proposed new appeals system under the *Air Travellers Security Charge Act*, whereby a person may appeal the Minister of National

Revenue's decision on an objection relating to an assessment to the Tax Court of Canada.

Clause 6

This section extends the exclusive original jurisdiction of the Court:

- in subsection 12(1) of the *Tax Court of Canada Act* to include references and appeals arising under the *Air Travellers Security Charge Act*;
- in subsection 12(3) to include questions referred to the Court under section 51 or 52 of the *Air Travellers Security Charge Act*; and
- in subsection 12(4) to include applications for extensions of time under section 45 or 47 of the *Air Travellers Security Charge Act*.

Clause 7

Subsection 18.29(3) of the *Tax Court of Canada Act* is amended to add applications for extensions of time under section 45 or 47 of the *Air Travellers Security Charge Act* to those to which the informal procedural rules, referred to in subsection 18.29(1), apply.

Clause 8

In subsection 18.31(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 51 of the *Air Travellers Security Charge Act* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*.

Clause 9

In subsection 18.32(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 52 of the *Air Travellers Security Charge Act* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*, provided that neither the Attorney General of Canada nor a person concerned requests the application of the informal procedure.

COORDINATING AMENDMENTS

Clause 10 – Bill C-47

Subclause 10(1):

This provision provides that the coordinating amendments in subclauses 10(2) to (6) apply if Bill C-47 (*Excise Act, 2001*) receives royal assent.

Subclause 10(2):

Subsection 408(7) of Bill C-47 would amend subsection 12(1) of the *Tax Court of Canada Act* to ensure that it refers to Part V.1 of the *Customs Act* and the *Excise Act, 2001* once both Bill C-47 and Bill S-23 came into force. This coordinating amendment would amend that same subsection 12(1) to ensure that it also contains a reference to the *Air Travellers Security Charge Act* after Bill C-47 and this Act have both come into force.

Subclause 10(3):

Subsection 408(8) of Bill C-47 would amend subsections 12(3) and (4) of the *Tax Court of Canada Act* to ensure that they refer to certain sections of the *Customs Act* and the *Excise Act, 2001* once both Bill C-47 and Bill S-23 came into force. This coordinating amendment would amend those same subsections to ensure that they also contain a reference to the appropriate sections of the *Air Travellers Security Charge Act* after Bill C-47 and this Act have both come into force.

Subclause 10(4):

Subsection 408(10) of Bill C-47 would amend section 18.29(3) of the *Tax Court of Canada Act* to ensure that it refers to certain sections of the *Customs Act* and the *Excise Act, 2001* once both Bill C-47 and Bill S-23 came into force. This coordinating amendment would amend that same section 18.29(3) to ensure that it also contains a reference to the appropriate sections of the *Air Travellers Security Charge Act* after Bill C-47 and this Act have both come into force.

Subclause 10(5):

Subsection 408(16) of Bill C-47 would amend section 18.31(2) of the *Tax Court of Canada Act* to ensure that it refers to a certain section in each of the *Customs Act* and the *Excise Act, 2001* once both Bill C-47 and Bill S-23 came into force. This coordinating amendment would amend that same section 18.31(2) to ensure that it also contains a reference to the appropriate section of the *Air Travellers Security Charge Act* after Bill C-47 and this Act have both come into force.

Subclause 10(6):

Subsection 407 of Bill C-47 makes a consequential amendment to section 18.32(2) of the *Tax Court of Canada Act* so that it refers to a certain section in the *Excise Act, 2001*. This coordinating amendment would amend that same section 18.32(2) to ensure that it also contains a reference to the appropriate section of the *Air Travellers Security Charge Act* after Bill C-47 and this Act have both come into force.

COMING INTO FORCE

Clause 11 – Coming into force

The *Air Travellers Security Charge Act* enacted under Part 2 comes into force on the day on which it receives royal assent or is deemed to have come into force on April 1, 2002, whichever is the earlier.

APPENDIX A

DRAFT *INTEREST RATE REGULATIONS*
(AIR TRAVELLERS SECURITY CHARGE ACT)

Air Travellers Security Charge

INTERPRETATION

1. In these Regulations, "quarter" means any period of three consecutive months beginning on January 1, April 1, July 1 or October 1. (trimestre)

RATE OF INTEREST

2. For the purposes of the *Air Travellers Security Charge Act*, the prescribed rate of interest in effect during any quarter shall be the rate (expressed as a percentage per month and rounded to the nearest one tenth of a percentage or, if the percentage is equidistant from two consecutive multiples of one tenth of a percentage, to the higher thereof) determined by the formula

A /12

where A is the simple arithmetic mean of all amounts, each of which is the average equivalent yield (expressed as a percentage per year) of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that were sold at auctions of Treasury Bills during the first month of the immediately preceding quarter.

COMING INTO FORCE

3. These regulations come into force or are deemed to have come into force on April 1, 2002.

INTEREST RATE REGULATIONS
(AIR TRAVELLERS SECURITY CHARGE ACT)

Explanatory Note

These Regulations prescribe the rate of interest imposed under section 27 of the *Air Travellers Security Charge Act*.

The prescribed interest rate is a monthly rate adjusted quarterly based on average yields of 90-day Treasury Bills for the first month of the preceding quarter.

Income Tax

Clause 20

Employment Benefits

ITA
Section 6

Section 6 of the *Income Tax Act* provides for the inclusion in an employee's income of most employment-related benefits other than those specifically excluded.

GST Rebates re Costs of Property or Service

ITA
6(8)

Subsection 6(8) of the Act provides rules governing the tax treatment of a GST rebate received by an employee in respect of an amount deducted by the employee under section 8. As a general rule, the GST is included in determining the cost to an employee of any taxable property or service for which a deduction is permitted by section 8 in computing the income of the employee from an office or employment. Where the rebate is in respect of an expense, the rebate is included in computing the income of the employee for the taxation year in which the rebate is received. Where the rebate is in respect of the capital cost of property, the rebate reduces the capital cost of the property at the time the rebate is received.

Subsection 6(8) is amended consequential to the introduction of new paragraph 8(1)(*r*), which provides eligible apprentice mechanics with a deduction in respect of eligible tools. Under amended subsection 6(8), the treatment accorded a GST rebate received in respect of eligible tools is the same as that accorded an expense. That is, the GST rebate is to be included in the taxpayer's income for the taxation year in which it is received.

This amendment applies to the 2002 and subsequent taxation years.

Clause 21

Income from Office or Employment - Deductions

ITA
8

Section 8 of the Act provides for the deduction of various amounts in computing income from an office or employment.

Apprentice Mechanic Deduction for Tools

The 2001 Budget proposed an income tax deduction for the extraordinary cost of new tools acquired by certain apprentice mechanics after 2001. The following explanatory notes discuss in detail the provisions of the Act that are enacted or amended to give effect to this Budget proposal.

In general terms, the legislation describes the types of mechanics that are “eligible apprentice mechanics” as well as the tools acquired in a taxation year that are considered to be “eligible tools”. Among other things, an eligible apprentice mechanic's employer must certify in prescribed form that the tools were required as a condition of, and for use in, the apprentice's employment as an eligible apprentice mechanic.

The cost of eligible tools acquired in a taxation year by an eligible apprentice mechanic is deductible in computing income subject to certain limits more fully described below in the note accompanying paragraph 8(1)(*r*) of the Act. Paragraph 8(1)(*r*) also provides a rule under which amounts not previously deducted by an apprentice mechanic are carried forward and may be deducted in a subsequent taxation year.

However, the cost of eligible tools acquired in a taxation year by an eligible apprentice mechanic is to be reduced for income tax purposes in that year. A tool's cost is reduced by the deductible portion of the cost, even if any portion of that cost is not deducted until a subsequent taxation year. As well, proceeds received from the disposition of eligible tools are to be included in income to the extent, in general, that the proceeds exceed the cost (as reduced for income tax purposes) of the disposed of tools. The rules also allow

an apprentice mechanic to transfer on a tax-deferred basis his or her eligible tools to a corporation or partnership.

Apprentice Mechanics' Tool Costs

ITA
8(1)(*r*)

New paragraph 8(1)(*r*) of the Act allows, subject to certain limits, eligible apprentice mechanics to deduct the cost of certain extraordinary expenditures incurred in respect of the cost of eligible tools they are required to acquire and use as a condition of their employment as an apprentice mechanic. Paragraph 8(1)(*r*) applies to eligible tools acquired after 2001. The terms “eligible apprentice mechanic” and “eligible tools” are described in the commentary to new subsection 8(6).

The deduction under new paragraph 8(1)(*r*) in respect of eligible tools of an eligible apprentice mechanic is subject to two income limits. First, the amount claimed by an eligible apprentice mechanic for a taxation year cannot create a non-capital loss – that is, the maximum amount deductible in a year is limited to the amount of the apprentice's income for the year from all sources (which, under section 3 of the Act, cannot be less than nil), computed without reference to the deduction for the cost of eligible tools.

Second, the amount claimed in a year cannot exceed the amount determined by the formula

$$(A - B) + C$$

where

A is the total cost of:

(i) eligible tools acquired in the year, and

(ii) eligible tools acquired in the last 3 months of the preceding taxation year in connection with the employment if the taxpayer first became employed as an eligible apprentice mechanic in the year.

B is the lesser of two amounts. The first amount is the value of A determined for the year (i.e., the value of B cannot exceed the value of A for the year). The second amount is the amount that is the greater of $1,000 and 5% of the apprentice's total employment income from being an apprentice mechanic in the year, computed before deducting an amount for the cost of eligible tools.

C is any carryover amount in respect of the undeducted portion of the amount determined under subparagraph 8(1)(*r*)(ii) in respect of the taxpayer for the preceding taxation year. That is, the amount by which the amount determined under this formula for the preceding year exceeds the amount deducted by the taxpayer under paragraph 8(1)(*r*) for that year. The carryover amount is reduced as the taxpayer claims it.

An example of a deduction under new paragraph 8(1)(*r*) is provided in the explanatory note to new subsections 8(6) and (7). See also the commentary to new paragraph 56(1)(*k*), which provides that any gain from the disposition of eligible tools is to be included in income.

Apprentice Mechanics – Special Rules

ITA
8(6) and (7)

New subsection 8(6) of the Act, which applies to tools acquired after 2001, provides three special rules for the purpose of the apprentice mechanic tools deduction in new paragraph 8(1)(*r*). First, new paragraph 8(6)(*a*) provides that a taxpayer is an eligible apprentice mechanic in a taxation year if, at any time in the year, the taxpayer

- is registered in a program in accordance with the laws of a province that leads to designation under those laws as a mechanic licensed to repair self-propelled motorized vehicles such as automobiles, trucks, aircraft and motorcycles, and

- is employed as an apprentice mechanic.

Second, new paragraph 8(6)(*b*) provides that an eligible tool is a tool (including ancillary equipment – e.g., a tool box) that

- is acquired by a taxpayer for use in connection with the taxpayer's employment as an eligible apprentice mechanic,

- is new (not previously used), and

- is certified in prescribed form by the taxpayer's employer to be required to be provided by the taxpayer as a condition of, and for use in, the taxpayer's employment as an eligible apprentice mechanic.

Third, new paragraph 8(6)(*c*) provides that a former eligible apprentice mechanic is entitled to deduct a carryover amount under paragraph 8(1)(*r*) from a preceding taxation year – i.e., because of the value of the description of C in paragraph 8(1)(*r*).

New subsection 8(7) of the Act provides that where a taxpayer is entitled to deduct an amount for a taxation year under paragraph 8(1)(*r*) in respect of eligible tools, the cost to the taxpayer of the tools is reduced *pro rata* by the deductible amount.

Example:

Assumed facts:

- *The Motor Company hires Abraham on November 1 of Year 1 as an eligible apprentice mechanic (i.e., Abraham enters a provincially recognized program leading to designation as a mechanic licensed to repair self-propelled motorized vehicles and is so employed). Abraham receives $3,000 of income from that employment during the remainder of Year 1 (November and December).*

- *In Year 1, Abraham acquires $4,300 of eligible tools (i.e., the tools are acquired by Abraham in connection with his employment as an eligible apprentice mechanic, the tools are new tools and the Motor Company certifies that the tools were provided by Abraham as a condition of, and for use in, his employment as an eligible apprentice mechanic).*

- *Abraham has other employment income in the year of $17,000.*

1. Maximum deduction in Year 1:

Application of Paragraph 8(1)(r)

Under paragraph 8(1)(r), Abraham may deduct an amount not exceeding the lesser of

(i) $20,000 ($17,000 + $3,000 - section 3 income before deduction), and

(ii) (A – B) + C = ***$3,300***

where

A = $4,300 – i.e., the cost of the new tools

B = $1,000 – being the lesser of

(i) $4,300 (A above), and

(ii) the greater of:

(A) $1,000, and

(B) $ 150 (5% of $3,000)

C = Nil – there is no carryover from the preceding year.

2. Effect of cost reduction rule in subsection 8(7)

The reduction under subsection 8(7) of the cost of Abraham's eligible tools for income tax purposes applies on a tool-by-tool basis and is determined in accordance with the following formula:

$$K – (K \times L/M)$$

where

K is the cost of the particular tool determined without reference to any reduction to that cost under subsection 8(7).

L *is the deductible portion of the cost of all eligible tools acquired in the taxation year (i.e., the amount that would be determined under subparagraph 8(1)(r)(ii) if the value of C in that subparagraph were nil).*

M *is the total cost of all eligible tools acquired in the taxation year determined without reference to subsection 8(7) (i.e., the value of A in the formula in subparagraph 8(1)(r)(ii)). See the note to new paragraph 8(1)(r) for additional information.*

Application of Subsection 8(7)

Assume that Abraham acquired one eligible tool that costs $4,300. The cost of that tool is reduced by $3,300 to $1,000 calculated as follows:

$$K - (K \times L/M)$$

= $1,000, [being $4,300 – ($4,300 x $3,300/$4,300)]

where

K *is $4,300. K is the cost of the eligible tool computed without reference to subsection 8(7).*

L *is $3,300. L would be $3,300 even if Abraham deducted less than that amount in the year, or if Abraham's deduction under paragraph 8(1)(r) were limited by the rule in subparagraph 8(1)(r)(i) that restricts a taxpayer's maximum deduction to his or her income for the year.*

M *is $4,300. M is the cost of all eligible tools computed without reference to subsection 8(7) – i.e., the value of A in the formula in subparagraph 8(1)(r)(ii).*

3. Description of C in Subparagraph 8(1)(r)(ii) – Carryforward Amounts

If Abraham were to deduct less than $3,300 in this example because he decides to deduct less than the amount otherwise allowable or because the income limitation rule in subparagraph 8(1)(r)(i) applies, then the non-deducted portion is a carryover amount to which the

description C in paragraph 8(1)(r) applies in the following taxation year. This amount may be carried forward indefinitely.

Clause 22

Gift to Qualified Donee

ITA
38(*a*.1)

Paragraph 38(*a*.1) of the Act provides a temporary special inclusion rate for capital gains arising as a result of a gift of certain securities to qualified donees. This inclusion rate is one half of the normal inclusion rate. This measure was scheduled to expire on December 31, 2001. Paragraph 38(*a*.1) is amended to extend the application of this measure indefinitely.

Clause 23

Adjusted Cost Base Reductions

ITA
53(2)

Subsection 53(2) of the Act provides for reductions in computing the adjusted cost base of a taxpayer's property.

ITA
53(2)(*m*)

Paragraph 53(2)(*m*) requires the adjusted cost base to a taxpayer of a property to be reduced by the amount of that cost that is deductible (otherwise than under the capital gain/loss provisions) in computing the taxpayer's income. Paragraph 53(2)(*m*) is amended effective after 2001 consequential to the enactment of new paragraph 8(1)(*r*) of the Act, which provides a deduction with respect to the cost of eligible tools acquired by an eligible apprentice mechanic. The deduction under paragraph 8(1)(*r*) in respect of eligible tools is excluded from the cost base reduction because subsection 8(7) already provides for a reduction of the cost of the tools for income tax purposes.

Clause 24

Apprentice Tools, re Proceeds

ITA
56(1)(*k*)

New paragraph 56(1)(*k*) of the Act provides a rule that applies to all amounts received by a person (vendor) who is entitled to an apprentice mechanic tool deduction for certain property under new paragraph 8(1)(*r*) of the Act, or who does not deal at arm's with the apprentice mechanic (e.g., a spouse, son or daughter), as consideration for the disposition of such property. In general, the vendor must include in income for a taxation year the amount received in the year only to the extent that the total of the amounts received in the year and preceding years in respect of the disposition exceeds the cost of the property to the vendor (e.g., the reduced cost under new subsection 8(7) of the Act) and the total of amounts previously included in income. However, this rule does not apply to a vendor who acquired the property in a rollover transaction to which new subsection 85(5.1) or subsection 97(5)of the Act applied. (For additional information, see the commentary to those new provisions.)

Example:

Assumed facts:

- *In 2002, Sarah was an eligible apprentice mechanic and the cost of a particular eligible tool owned by her was reduced from $500 to $100 because of subsection 8(7).*

- *In 2003, Sarah disposes of the particular eligible tool for $170, of which $50 is received in 2003 and $120 in 2004.*

Application of Paragraph 56(1)(k)

Year 2003:

Sarah does not have any income under paragraph 56(1)(k) in 2003 because the $50 she received in 2003 does not exceed the $100 cost of the tool.

Year 2004:

Sarah must include $70 in her income for 2004. This $70 is calculated as follows: $120 received in 2004 is included in income to the extent that $170 ($120 + $50) exceeds $100 ($100 + $0 [nil was included in income for a preceding year]).

Clause 25

Repayment of Benefits

ITA
60(*n*)

Paragraph 60(*n*) of the Act provides a deduction for repayments of certain benefits included in income. The amendment to this paragraph is consequential on the introduction of paragraph 110(1)(*g*) of the Act which provides for an offsetting deduction in respect of tuition assistance received under certain programs. (For additional information, see the commentary to new paragraph 110(1)(*g*).) Because tuition assistance eligible for this offsetting deduction is effectively tax-exempt, the amendment to paragraph 60(*n*) ensures that a repayment of any portion of that assistance does not trigger a deduction under that paragraph.

This amendment applies to the 1997 and subsequent taxation years.

Clause 26

Expenses for Food, etc.

ITA
67.1(2)

Subsection 67.1(2) of the Act provides exemptions from the application of the rule in subsection 67.1(1) which deems that amounts paid or payable for meals and entertainment are 50% of the lesser of a reasonable amount and the expenditure actually incurred.

Amended paragraph 67.1(2)(*e*.1), which applies after 2001, provides an exception to the rule in subsection 67.1(1), so that the cost to a taxpayer of meals provided to an employee at a work camp established specifically for the purpose of providing meals and accommodation, to employees working at a construction project, is fully deductible. It is required that the site be far enough from the employee's principal place of residence that the employee could not be expected to return to that residence on a daily basis. Further, the amount must be paid or payable in respect of the employee's duties performed

- at a site in Canada at which the taxpayer carries on a construction activity, or

- at a construction work camp at which the employee is lodged, that was constructed or installed at or near the construction site, to provide board and lodging to employees while they are engaged in construction services at the site.

The exception does not apply to amounts paid or payable in respect of entertainment or a conference, convention, seminar or similar event.

Clause 27

Death of a Taxpayer

ITA
70

Section 70 of the Act provides certain rules that apply on the death of a taxpayer.

Transfer of Farm Property to Child

ITA
70(9)

Subsection 70(9) of the Act provides a rule allowing a tax deferred rollover for capital gains and recaptured depreciation on intergenerational transfers of farm property from a taxpayer to a child

of the taxpayer as a result of the death of the taxpayer. This rule permits the legal representative of the deceased taxpayer to elect to transfer the property at any amount between its cost amount and its fair market value at the time of the death of the taxpayer. The elected amount is deemed to be the cost of the property to the child.

Subsection 70(9) requires that the farm property be used principally in a farming business in which a family member was actively engaged on a regular and continuous basis. While some woodlot owners may be considered to be farmers for income tax purposes, they may not be eligible for this rollover in respect of their woodlots if their woodlot activities are not considered to be regular and continuous. The long-term nature of woodlot operations often means that little or no activity, aside from monitoring, may be required for long periods of time.

Subsection 70(9) is amended to expand the intergenerational rollover provisions available for farm property to land and depreciable property used principally in a woodlot farming business. It will apply where the deceased taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was engaged in the woodlot operation to the extent required by a prescribed forest management plan in respect of the woodlot.

The expression "prescribed forest management plan" will be defined by regulation. The 2001 Budget announced the Government's intention to develop specific criteria for prescribed forest management plans in consultation with interested parties. In respect of transfers of property before the announcement of these criteria, it is proposed that the regulations will reflect that a prescribed forest management plan is a plan of the deceased taxpayer in respect of the woodlot that provides for the necessary attention to the woodlot's growth, health, quality and composition.

This amendment applies to transfers of property that occur after December 10, 2001.

Example

Mr. X inherited a 200-acre woodlot from his father in 1987. At that time the woodlot contained a mixture of species with varying conditions and ages. In 1993 Mr. X engaged an experienced forest

management consultant to develop a forest management plan that would propose objectives and strategies for development and harvest of the standing timber over an extended period. The plan described the activities that would be required of Mr. X at predetermined future dates in order to provide for the necessary attention to the woodlot's growth, health, quality and composition. The forest management plan was consistent with a business plan developed by Mr. X, in which he prepared a reasonable forecast of the long-term expectations for an operating profit from the woodlot operation. The majority of the expected profit from the operation would be realized between 2000 and 2025.

Mr. X performed the duties contemplated by the forest management plan. Due to his failing health, from 1997 to 2002 the duties were performed either by Mr. X's daughter or by an independent contractor hired by Mr. X.

Mr. X died on January 31, 2002. The woodlot and certain miscellaneous depreciable property that was used principally in the woodlot operation were transferred to his daughter in accordance with the terms of his will. The executor of Mr. X's estate elected under subsection 70(9) of the Act that the proceeds of disposition of the land be its adjusted cost base to Mr. X (which was less than the fair market value), and that the proceeds of disposition of the depreciable property be its fair market value (which was less than the cost amount to Mr. X of that property).

As a result, the executor reported no capital gain or loss on the land on the terminal income tax return of Mr. X, and reported a terminal loss on the depreciable property equal to the excess of its undepreciated capital cost over the elected proceeds of disposition.

ITA
70(9.3)(*b*)

Paragraph 70(9.3)(*b*) of the Act allows a capital gains rollover of a share of a family farm corporation from a spousal trust created by a taxpayer to a child of the taxpayer in consequence of the death of the taxpayer’s spouse. The provision applies regardless of whether the taxpayer's spouse, common-law partner, child or parent was actively engaged in the business of the corporation on a regular and continuous basis.

Effective after December 10, 2001, paragraph 70(9.3)(*b*) is amended, consequential to the amendment of the definition “share of the capital stock of a family farm corporation” in subsection 70(10) of the Act, to provide that, in the case of a woodlot operation, those persons need not be engaged in the woodlot operations, for the purposes of this rollover.

Definitions

ITA
70(10)

Subsection 70(10) of the Act provides several definitions that are used in section 70 and certain other provisions of the Act that deal with intergenerational rollovers. The definitions “interest in a family farm partnership” of a person and “share of the capital stock of a family farm corporation” of a person in the subsection are amended concurrently with the amendment of subsections 70(9) and 73(3) of the Act in respect of the intergenerational rollover of property used in a woodlot operation that is a farming business. These definitions provide that substantially all of the fair market value of the property of the partnership or corporation be attributable to land and depreciable property used principally in a farming business in which the person, the person's spouse or common-law partner or any of the person’s children was actively engaged on a regular and continuous basis. Such an interest or share is eligible for an intergenerational rollover to a child under subsection 70(9.2) or 73(4) of the Act.

The definitions are amended, effective after December 10, 2001, to provide that the eligible property of such a partnership or corporation may include the fair market value of land or depreciable property used principally in a woodlot farming business of the partnership or corporation in which the person or family member was engaged the extent required by a prescribed forest management plan in respect of the woodlot.

The notes to subsection 70(9) describe a prescribed forest management plan.

Clause 28

***Inter vivos* Transfer of Farm Property to Child**

ITA
73(3)

Subsection 73(3) of the Act provides a tax deferred rollover for capital gains and recaptured depreciation on an *inter-vivos* transfer of farm property by a taxpayer to a child of the taxpayer. This rule permits the taxpayer to elect to transfer the property at any amount between its cost amount and its fair market value at the time of the transfer. The elected amount is deemed to be the cost of the property to the child.

Before the transfer, the farm property must be used principally in a farming business in which the taxpayer or the taxpayer's spouse, common-law partner or a child was actively engaged on a regular and continuous basis. While some woodlot owners may be considered to be farmers for income tax purposes, they may not be eligible for this rollover in respect of their woodlots if their activities are not considered to be regular and continuous. The long-term nature of woodlot operations means that often little or no activity, aside from monitoring, may be required for long periods of time.

Concurrent with a similar amendment to subsection 70(9) of the Act, effective after December 10, 2001 subsection 73(3) will apply to circumstances where the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was engaged in the woodlot farming business to the extent required by a prescribed forest management plan in respect of the woodlot.

The notes to subsection 70(9) describe a prescribed forest management plan.

Clause 29

Transfer of Property to Corporation by Shareholder

ITA
85

Section 85 of the Act provides for tax-deferred transfers of certain types of properties by a taxpayer to a taxable Canadian corporation in exchange for shares.

Acquisition of Apprentice Tools re Capital Cost and Deemed Depreciation

ITA
85(5.1)

An apprentice mechanic may transfer tools for which he or she was entitled to a deduction under paragraph 8(1)(*r*) of the Act, on a tax-deferred basis to a corporation. In such a case, new subsection 86(5.1) of the Act, which applies after 2001, provides special rules that apply to the corporation for the purpose of determining the capital cost of the corporation's acquired property for capital cost allowance and adjusted cost base purposes as well as in determining the amount of capital cost allowance deemed to have been deducted by the corporation in respect of the property.

These special rules apply if

- the property was acquired by the corporation in circumstances to which subsection 85(1) applied,

- the cost of the property to the apprentice mechanic was reduced under subsection 8(7) of the Act, and

- the property is depreciable property of the corporation.

In such cases, the capital cost to the corporation of the property is deemed to be the original cost of the property to the apprentice mechanic and the amount by which the cost of the property was reduced because of subsection 8(7) is deemed to have been previously deducted by the corporation as capital cost allowance. The difference

is therefore potentially subject to recapture on a subsequent disposition by the corporation. A capital gain can also arise on a subsequent disposition to the extent that proceeds of disposition in respect of the property exceed the amount deemed to be the tool's adjusted cost base (i.e., capital cost).

Clause 30

Amalgamations – Rules Applicable

ITA
87(2)

Section 87 of the Act provides rules that apply where there has been an amalgamation of two or more taxable Canadian corporations to form a new corporation. The new corporation is generally treated as a continuation of its predecessor corporations for the purposes of the Act.

Subsections 125(5.1) and 157.1(1)

ITA
87(2)(*j*.92)

Paragraph 87(2)(*j*.92) of the Act is amended consequential to the introduction of section 157.1 of the Act, which allows eligible corporations to defer the payment of their eligible instalments of tax by at least six months. This amendment ensures that the definition "eligible corporation" in subsection 157.1(1) will apply to an amalgamated corporation as though it were a continuation of its predecessor corporations. The provisions of paragraph 87(2)(*j*.92) also apply, pursuant to paragraph 88(1)(*e*.2), for the purposes of the rules relating to the winding-up of a subsidiary into its parent corporation.

This amendment applies to taxation years that end after 2001.

Refundable Investment Tax Credit and Balance-due Day

ITA
87(2)(*oo*.1)

Paragraph 87(2)(oo.1) of the Act applies for the purpose of determining a new corporation's eligibility for refundable investment tax credits and for the one-month extension of the corporation's balance-due day under subparagraph 157(1)(*b*)(i). This paragraph is amended consequential to the relocation of the portion of the definition "balance-due day" in respect of a corporation from paragraph 157(1)(*b*) of the Act to paragraph (*d*) of the definition "balance-due day" in subsection 248(1) of the Act.

This amendment applies to taxation years that end after 2001.

Clause 31

Refundable Investment Tax Credit and Balance-due Day

ITA
88(1)(*e*.9)

Paragraph 88(1)(*e*.9) of the Act determines a parent corporation's eligibility for refundable investment tax credits and the one-month extension of the corporation's balance-due day under subparagraph 157(1)(*b*)(i). This paragraph is amended consequential to the relocation of the definition "balance-due day" in respect of a corporation from paragraph 157(1)(*b*) of the Act to paragraph (*d*) of the definition of "balance-due day" in subsection 248(1) of the Act.

This amendment applies to taxation years that end after 2001.

Clause 32

Acquisition of Apprentice Tools re Capital Cost and Deemed Depreciation

ITA
97(5)

An apprentice mechanic may transfer tools for which he or she was entitled to a deduction under paragraph 8(1)(*r*) of the Act, on a tax-deferred basis to a partnership. In such a case, new subsection 97(5) of the Act, which applies after 2001, provides special rules that apply to the partnership for the purpose of determining the capital cost of the partnership's acquired property for capital cost allowance and adjusted cost base purposes as well as in determining the amount of capital cost allowance deemed to have been deducted by the partnership in respect of the property.

These special rules apply if

- the property was acquired by the partnership in circumstances to which subsection 97(2) applied,

- the cost of the property to the apprentice mechanic was reduced under subsection 8(7), and

- the property is depreciable property to the partnership.

In such cases, the capital cost to the partnership of the property is deemed to be the original cost of the property to the apprentice mechanic, and the amount by which that cost was reduced because of subsection 8(7) is deemed to have been previously deducted by the partnership as capital cost allowance. The difference is therefore potentially subject to recapture on a subsequent disposition by the partnership. A capital gain can also arise on a subsequent disposition to the extent that proceeds of disposition in respect of the property exceed the amount deemed to be the tool's adjusted cost base (i.e., capital cost).

Clause 33

Deduction for Payments

ITA
110

Section 110 of the Act provides various deductions that may be claimed in computing a taxpayer's taxable income.

Charitable Donation of Employee Option Securities

ITA
110(1)(*d*.01)

Paragraph 110(1)(*d*.01) of the Act allows an employee a special deduction in respect of a portion of the employment benefit that the employee is deemed by subsection 7(1) of the Act to have received in connection with the acquisition of a security under an employee option agreement, if the employee donates the security to a qualified donee (other than a private foundation). Generally, the amount of deduction available for securities acquired after October 17, 2000 is ¼ of the employment benefit of the employee in respect of the acquisition. In order to qualify for the deduction, the donation must be made in the same year as the security is acquired and no later than 30 days after acquisition.

This provision to allow a special deduction was scheduled to expire on December 31, 2001. Paragraph 110(1)(*d*.01) is amended to extend the application of this measure indefinitely.

ITA
110(1)(*g*)

New paragraph 110(1)(*g*) provides a deduction for tuition assistance received in connection with basic adult education. Generally, the deduction will be available in respect of tuition assistance received under a program established under the authority of the *Department of Human Resources Development Act* or a similar provincial program under a labour-market agreement. Furthermore, this new deduction will be restricted to instances where the amount of the assistance is included in the student's income and the student is not allowed to

claim a tuition fee credit for the tuition fees paid under the program. Finally, this new offsetting deduction is applicable only to tuition assistance and not to other types of assistance a student may receive in connection with the student's training.

New paragraph 110(1)(*g*) applies to the 1997 and subsequent taxation years.

Clause 34

Non-capital Losses

ITA
111(8)

Subsection 111(8) of the Act contains definitions that apply for the purposes of loss carryovers. The definition "non-capital loss", which takes the form of a formula, is amended to include a reference to new paragraph 110(1)(*g*) of the Act. That paragraph allows an offsetting deduction in respect of tuition assistance received under certain programs. (For additional information, see the commentary to new paragraph 110(1)(*g*).) The amendment to the definition "non-capital loss" – which is made by modifying the description of E in the definition – applies to the 1997 and subsequent taxation years.

Clause 35

Non-residents with Canadian Investment Service Providers

ITA
115.2

Section 115.2 of the Act is an interpretive rule that ensures that, provided certain conditions are met, a qualified non-resident is not considered to be carrying on business in Canada solely because of the provision to the non-resident of designated investment services by a Canadian service provider.

Currently, the term "qualified non-resident" excludes partnerships of which one or more members are resident in Canada. This means that

the non-resident members of such a partnership may not be able to rely on the protection offered by section 115.2.

Section 115.2 is amended to apply to all non-resident persons, including those who are members of a partnership of which one or more members are resident in Canada. In effect, the section will not apply to a partnership *per se*, but rather to the partners themselves. In this regard, the definition "qualified non-resident" in subsection 115.2(1) is repealed, and a number of consequential amendments are made that remove references to that definition.

Further amendments to section 115.2, including the addition of new paragraph 115.2(2)(*c*), clarify that non-resident persons may still avail themselves of the benefit of this rule where the designated investment services are not directly provided to them but to a partnership, of which they are members and of which one or more members are resident in Canada. New subparagraphs 115.2(2)(*c*)(i) and (ii) place restrictions – comparable to those found in subparagraph 115.2(2)(*b*)(iii) – upon the application of the rule in those instances.

These changes to section 115.2 apply to the 2002 and subsequent taxation years.

New definition "Canadian investor" in subsection 115.2(1) simplifies the wording of new clauses 115.2(2)(*b*)(i)(A) and (B), which in part serve to add organizational clarity to subparagraph 115.2(2)(*b*)(i). Current subparagraph 115.2(2)(*b*)(i) precludes a non-resident from benefiting from section 115.2 if, before the particular time, an investment in the non-resident was sold to a person who is a resident of Canada. This rule is modified by clause 115.2(2)(*b*)(i)(B), which denies a non-resident the benefit of this section only if at the particular time a person, who at the time of the sale was, and at the particular time is, a Canadian investor, holds an outstanding investment in the non-resident person.

These amendments to section 115.2 apply to the 1999 and subsequent taxation years. Transitional rules for the definition "Canadian investor" and subparagraph 115.2(2)(*b*)(i) ensure that the wording of these provisions is consistent with the rest of section 115.2, given that the repeal of the definition "qualified non-resident" does not apply, as noted above, until the 2002 taxation year.

Clause 36

Education Tax Credit

ITA
118.6(1)

Subsection 118.6(1) of the Act provides for various education-related definitions for the purposes of the child care and attendant care expense deductions and the tuition and education tax credits. The definition "qualifying educational program" in subsection 118.6(1) is amended to ensure that the receipt by an individual of government assistance under programs established under the authority of the *Department Human Resources Development Act* or similar provincial programs under labour-market agreements will not be taken into account in determining whether the educational program in which the individual is enrolled is a qualifying educational program.

This amendment applies to the 2002 and subsequent taxation years.

Clause 37

Deduction from Tax Payable where Employment out of Canada

ITA
122.3(1)(*e*)(iii)

Section 122.3 of the Act provides a tax credit to Canadian residents who are employed outside Canada by a specified employer for at least six months in connection with resource, construction, installation, agricultural or engineering contracts or for the purpose of obtaining those contracts. This credit is commonly known as the overseas employment tax credit (OETC). The computation of the OETC takes into account certain deductions allowed in computing taxable income. Subparagraph 122.3(1)(*e*)(iii) is amended to include a reference to new paragraph 110(1)(*g*) of the Act which allows, in computing taxable income, an offsetting deduction in respect of tuition assistance received under certain programs. (For additional information, see the commentary to new paragraph 110(1)(*g*).)

This amendment applies to the 1997 and subsequent taxation years.

Clause 38

Goods and Services Tax Credit

ITA
122.5

Section 122.5 of the Act provides the rules for determining the goods and services tax credit (GSTC) for individuals.

Currently, the GSTC is computed on the basis of income and family information provided in the previous year's income tax return. As a result, the credit does not respond to changes in family circumstances that occur in the current year. In some circumstances, such as the birth of a child, the GSTC paid to an eligible individual may not reflect these changes for as long as 18 months.

Section 122.5 is amended to provide that the eligibility to the credit and the amount paid in each quarter will reflect changes in family circumstances that occurred before the end of the preceding quarter.

All the amendments to section 122.5 apply starting July 2002, the month of the first GSTC quarterly payment made in relation to the 2001 taxation year.

Definitions

ITA
122.5(1)

Subsection 122.5(1) of the Act contains definitions for the purposes of the GSTC. The definitions "adjusted income", "eligible individual", "qualified dependant" and "qualified relation" are amended to allow for a determination of an individual's eligibility to the GSTC at the beginning of each quarter. Thus, starting with the July 2002 payments, the eligibility for the credit and the amount of the quarterly payment will reflect the family situation at the beginning of each quarter. Under existing rules, this was determined at the end of the previous year. The definition "cohabiting spouse or common law partner" is added to ensure consistent treatment for the purposes of the Canada Child Tax Benefit (CCTB) and the GSTC. Also added to that list is the definition "return of income". While

this latter addition does not affect GSTC claims made by Canadian residents, it allows claims to be made by new residents on the basis of a prescribed form, given that, in all likelihood, no Canadian income tax returns will have been filed by those new residents before their arrival in Canada.

Persons not Eligible

ITA
122.5(2)

Subsection 122.5(2) of the Act stipulates that the GSTC is not available in respect of certain individuals (for example, deceased persons, officers and servants of foreign countries and prisoners). The amendment to that subsection ensures that the GSTC is denied only when those circumstances prevail at the beginning of the quarter for which a GSTC payment is made (and for a 90-day period in the case of prisoners). It also clarifies that, as for the CCTB, no GSTC may be claimed for a person in respect of whom an allowance is payable under the *Childrens' Special Allowances Act*. Finally, it incorporates the restriction concerning non-residents (other than certain spouses or common-law partners of deemed residents) and deceased individuals, which is currently found in paragraph 122.5(5)(*c*).

Deemed Payment

ITA
122.5(3)

Subsection 122.5(3) provides for the calculation of the GSTC strictly on the basis of information contained in the previous year's tax return. This subsection is amended to ensure that the GSTC is computed quarterly, and thus reflects changes in family circumstances that occurred before the end of the preceding quarter.

Minimum Amount

ITA
122.5(3.1) and (3.2)

New subsections 122.5(3.1) and (3.2) of the Act provide that, where a particular quarterly GSTC payment in relation to a taxation year is less than $25 and it is reasonable to conclude that each subsequent quarterly payment in relation to the same year will not exceed $25, the total of each such subsequent payment will be included in the particular payment. This rule replaces a similar one currently found in paragraph 122.5(5)(*b*).

Exception re Eligible Individual

ITA
122.5(5)

Paragraph 122.5(5)(*a*) of the Act provides that, where an individual is a qualified relation of another individual for a period, only one individual may claim the GSTC in respect of the individual for the period. This paragraph is amended to ensure that this restriction does not apply after the breakdown of their marriage or common-law partnership. Paragraph 122.5(5)(*b*) is replaced by new subsection 122.5(3.1). (For additional information see the commentary on that subsection.) The restriction currently found in paragraph 122.5(5)(*c*) has been incorporated in subsection 122.5(2). (For additional information see the commentary on that subsection).

Subsection 122.5(5.1) of the Act, which applies to prisoners, is repealed, as it applied only to amounts deemed to be paid during months specified for the 2000 taxation year. The rules applicable to those individuals are included in revised subsection 122.5(2). (For additional information see the commentary on that subsection.)

Exception re Qualified Dependant

ITA
122.5(6)

Subsection 122.5(6) of the Act stipulates that only one individual may claim a person as a qualified dependant for a particular period. Thus,

for GSTC payments made in relation to the 2001 and subsequent taxation years, two or more individuals who would otherwise be eligible to claim the person as a qualified dependant must agree as to which of them will be the only individual to claim the person as a qualified dependant for the period. If they fail to agree, the person will be the qualified dependant of the individual to whom the CCTB in respect of the person is paid. If no CCTB is paid in respect of the person, the Minister of National Revenue will, based on the circumstances, decide which individual may include the person as a qualified dependant for GSTC purposes.

Notification to Minister

ITA
122.5 (6.1)

New subsection 122.5(6.1) of the Act requires that, where before the last month specified for a taxation year a person ceases to be an eligible individual or the qualified relation or a qualified dependant of an eligible individual, the eligible individual notify the Minister of National Revenue of that fact before the end of the month following the month in which the event occurred.

Non-residents and Part-year Residents

ITA
122.5(6.2)

New subsection 122.5(6.2) of the Act clarifies that, where a person is not resident in Canada throughout a taxation year, that person's income for the year for the purposes of the GSTC calculations is, for greater certainty, equal to the amount that would have been the person's income for the year had the person been resident in Canada throughout the year.

Clause 39

Foreign Tax Credit

ITA
126

Section 126 of the Act provides rules under which taxpayers may deduct, from tax otherwise payable, amounts they have paid in respect of foreign tax. This tax deduction takes into account certain amounts deducted in computing a taxpayer's taxable income.

ITA
126(1),(2.1) and (3)

Subclauses 126(1)(*b*)(ii)(A)(III) and 126(2.1)(*a*)(ii)(A)(III) and subparagraph 126(3)(*b*)(iii) are amended to include a reference to new paragraph 110(1)(*g*) of the Act which allows, in computing taxable income, an offsetting deduction in respect of tuition assistance received under certain programs. (For additional information, see the commentary on new paragraph 110(1)(*g*).)

These amendments apply to the 1997 and subsequent taxation years.

Clause 40

Minimum Tax

ITA
127.52(1)(*h*)

Subsection 127.52(1) of the Act defines an individual's adjusted taxable income for the purpose of determining the individual's minimum tax liability under Part I of the Act. Paragraph 127.52(1)(*h*) provides that only certain deductions available in computing taxable income may be taken into account in that determination. Paragraph 127.52(1)(*h*) is amended to include the amount deducted under new paragraph 110(1)(*g*) of the Act which allows an offsetting deduction in respect of tuition assistance provided under certain programs. (For additional information, see the commentary on new paragraph 110(1)(*g*)).

This amendment applies to the 1997 and subsequent taxation years.

Clause 41

Payment by Corporations

ITA
157(1)

Subsection 157(1) of the Act sets out the required payment dates for corporate income tax instalments and for any balance of corporate taxes payable. Paragraph 157(1)(*b*) determines when a corporation's balance of tax payable for a taxation year is due. This paragraph is amended to refer to a corporation's "balance-due day" consequential to the relocation of that definition in respect of corporations to paragraph (*d*) of the definition "balance-due day" in subsection 248(1) of the Act.

This amendment applies to taxation years that end after 2001.

Clause 42

Instalment Deferrals – Corporations

ITA
157.1

New section 157.1 of the Act enables eligible corporations to defer payment of their corporate tax instalments otherwise becoming due in the months of January, February and March 2002 for a period of at least six months, without payment of interest or penalties.

This new section applies to taxation years that end after 2001.

Definitions

ITA
157.1(1)

“eligible corporation”

An “eligible corporation” for a taxation year means a corporation that is resident in Canada and, if it is not associated with other corporations for the purposes of the Act, did not have more than $15 million of taxable capital employed in Canada in the previous taxation year. If a resident corporation is associated with other corporations, its taxable capital employed in Canada in the previous taxation year must not exceed the amount by which $15 million exceeds the taxable capital employed in Canada of all of the associated corporations in the previous year.

“eligible instalment day”

An “eligible instalment day” means a day in January, February, or March, 2002 on which an instalment on account of the corporation's tax otherwise becomes payable.

Deferred Balance-due Day

ITA
157.1(2)

New subsection 157.1(2) of the Act determines the deferred balance-due day for a taxation year of an eligible corporation to be the later of

- the day that would otherwise be the corporation's balance-due day for the year, and

- the day that is six months after the last eligible instalment day in the taxation year.

Deferred Instalment Day

ITA
157.1(3)

New subsection 157.1(3) of the Act determines the deferred instalment day of eligible instalments of an eligible corporation. Instead of being on the normal instalment day, an eligible instalment becomes payable

- six months after the eligible instalment day if that deferred day is in the same taxation year as the eligible instalment day, and

- in any other case, on the deferred balance-due day as determined by subsection 157.1(2).

Clause 43

Joint Liability – GSTC Payments

ITA
160.1(1.1)

Subsection 160.1(1.1) of the Act provides that, where a person is a qualified relation (that is, a cohabiting spouse or common-law partner) of an individual who is a goods and services tax credit (GSTC) recipient, both the person and the individual are jointly and severally liable for any excess GSTC paid or credited to the individual. This subsection is amended consequential on the amendments to section 122.5 (for additional information see comments on that section) that ensure that the amount of the GSTC reflects changes in family circumstances that occurred in the preceding quarter.

This amendment applies to amounts deemed to be paid during months specified for the 2001 and subsequent taxation years.

86

Clause 44

Definitions

ITA
248(1)

“balance-due day”

Paragraph (*d*) of the definition of “balance-due day” in subsection 248(1) of the Act is amended to incorporate the substantive provisions of paragraph 157(1)(*b*) rather than referring to it by cross-reference.

This amendment applies to taxation years that end after 2001.

APPENDIX B

DRAFT *INCOME TAX REGULATIONS*
AND EXPLANATORY NOTE

Capital Cost Allowance

1. Subsection 1104(13) of the *Income Tax Regulations* is amended by adding the following in alphabetical order:

"blast furnace gas"

"blast furnace gas" means the gas produced in a blast furnace of a steel mill by the chemical reaction of carbon (in the form of coke, coal or natural gas), oxygen and iron ore.

(2) The definition "fossil fuel" in subsection 1104(13) of the Regulations is replaced by the following:

"fossil fuel"

"fossil fuel" means a fuel that is petroleum, natural gas or related hydrocarbons, blast furnace gas, coal, coal gas, coke, lignite or peat.

2.(1) Clause (*d*)(ii)(A) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(A) has, if acquired after February 21, 1994 and before December 11, 2001, an annual average generating capacity not exceeding 15 megawatts upon completion of the site development, or, if acquired after December 10, 2001, a rated capacity at the installation site not exceeding 50 megawatts, and

(2) Subparagraph (*d*)(iii) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(iii) an addition or alteration, which is acquired after February 21, 1994 and before December 11, 2001, to a hydro-electric installation described in subparagraph (ii) that results in an increase in generating capacity, if the resulting annual average generating

capacity of the hydro-electric installation does not exceed 15 megawatts,

(iii.1) an addition or alteration, which is acquired after December 10, 2001, to a hydro-electric installation described in subparagraph (ii) that results in an increase in generating capacity, if the resulting rated capacity at the hydro-electric installation site does not exceed 50 megawatts, and

3. (1) Section 1 applies in respect of property acquired after 2000.

(2) Section 2 applies after December 10, 2001.

CAPITAL COST ALLOWANCE

EXPLANATORY NOTES

ITR
1104(13)

Subsection 1104(13) of the *Income Tax Regulations* defines a number of terms used in that subsection and paragraphs (*c*) to (*g*) of capital cost allowance (CCA) Class 43.1 in Schedule II to the Regulations.

Subsection 1104(13) is amended in two respects. First, it is amended to add the definition "blast furnace gas", which is defined to be the gas produced in a blast furnace of a steel mill by the chemical reaction of carbon (in the form of coke, coal or natural gas), oxygen and iron ore. Second, the definition "fossil fuel" is amended to include "blast furnace gas". These changes apply for the purpose of determining whether certain property is included in Class 43.1 because it is part of a system that generates electrical energy with a heat rate attributable to "fossil fuel" of not more than 6,000 BTU per kilowatt-hour of electrical energy generated by the system.

These amendments apply in respect of property acquired after 2000.

ITR
Class 43.1, Schedule II

CCA Class 43.1 applies to certain types of renewable energy and energy conservation equipment. The CCA rate is 30% per year calculated on a declining balance basis.

Changes are made in respect of the types of hydro-electric projects that qualify for Class 43.1 treatment. In particular, the upper limit on the size of small hydro-electric projects that qualify for Class 43.1 is increased to a rated capacity at the installation site of 50 megawatts, from the current limit of an annual average generating capacity of 15 megawatts. Consequently, the new generating capacity test is based on "plated capacity" at the installation site rather than average capacity.

These amendments apply after December 10, 2001.

APPENDIX C

DRAFT *INCOME TAX REGULATIONS*
AND EXPLANATORY NOTES

Qualified Limited Partnerships

1. (1) Paragraph 5000(1.1)(*c*) of the *Income Tax Regulations* is repealed.

(2) Section 5000 of the Regulations is amended by adding the following after subsection (1.2):

(1.3) For the purpose of paragraph (*i*) of the definition "foreign property" in subsection 206(1) of the Act, the specified portion of a limited unit in a qualified limited partnership that is held at any time by a specified partner of the partnership is, at that time, not foreign property of the specified partner.

(1.4) For the purpose of subsection (1.3), the specified portion of a limited unit in a qualified limited partnership held at any time by a specified partner is

(*a*) if the number of limited units in the partnership each of which is held at that time by the specified partner or by any other specified partner with whom the specified partner does not deal at arm's length is less than or equal to 30% of the number of limited units in the partnership held at that time by specified partners, the limited unit; and

(*b*) in any other case, that proportion of the limited unit that the cost amount to the partnership of all property (other than foreign property) held by the partnership at that time is of the cost amount to the partnership of all property held by the partnership at that time.

(1.5) For the purposes of subsections (1.3) and (1.4), a specified partner of a qualified limited partnership at any time means a person or partnership that holds at that time a limited unit in the partnership and that is at that time neither

(*a*) the general partner of the partnership; nor

(*b*) a qualified trust or qualified corporation (as those expressions are defined in subsection 259(5) of the Act) to which subsection 259(1) of the Act applies.

(1.6) For the purposes of subsections (1.4) and (1.5), if a person or partnership (other than a taxpayer described in section 205 of the Act) holds at any time a unit or share in a "qualified trust" or "qualified corporation" (as those expressions are defined in subsection 259(5) of the Act), the person or partnership is deemed to hold at that time any property of the trust or corporation that it would be deemed, by paragraph 259(1)(*b*) of the Act, to hold at that time if that person or partnership were a taxpayer described in section 205 of the Act.

(3) Paragraphs (*d*) and (*e*) of the definition "qualified limited partnership" in subsection 5000(7) of the Regulations are replaced by the following:

(*d*) the interests of the limited partners were described by reference to units (in this section referred to as "limited units") of the partnership that were identical in all respects to each other,

2. Section 1 applies after 2001.

QUALIFIED LIMITED PARTNERSHIPS

EXPLANATORY NOTES

ITR
5000

Part XI of the *Income Tax Act* imposes a penalty tax on excess foreign property held by certain trusts and other tax-exempt persons governed by deferred income plans. "Foreign property" is defined in subsection 206(1) of the Act to include an interest in a partnership, except as prescribed by regulation. Paragraph 5000(1.1)(*c*) of the *Income Tax Regulations* prescribes the interest of a limited partner in a qualified limited partnership (QLP) as such an exception.

Subsection 5000(7) of the Regulations defines "qualified limited partnership" as a limited partnership that, at all times since its formation, has satisfied certain conditions. One of the conditions (set out in paragraph (*e*) of the definition) is that no limited partner (or group of non-arm's length limited partners) can hold more than 30% of the units of the partnership.

The QLP regulations are changed in several ways, effective after 2001. In general terms, the 30% ownership limitation is removed, thus allowing a limited partnership to be a QLP even if a limited partner holds more than 30% of the units of the partnership. Generally, units of a QLP held by a deferred income plan continue to be excluded from treatment as foreign property. However, if a plan holds (alone or as part of a non-arm's length group) more than 30% of the units of a QLP, the units held by the plan will be treated as foreign property of the plan in the same proportion as the foreign property held by the QLP.

These changes are accomplished in the following ways.

- The 30% ownership limitation on a QLP is eliminated through the repeal of paragraph (*e*) of the definition "qualified limited partnership" in subsection 5000(7). It should be noted that this allows a partnership that did not qualify as a QLP before 2002, solely because it failed to comply with the 30% ownership limitation, to so qualify after 2001.

- Paragraph 5000(1.1)(*c*), which prescribes an interest of a limited partner in a QLP not to be foreign property, is repealed. New provisions dealing with QLPs are set out in new subsections 5000(1.3) to (1.6) of the Regulations.

- Paragraph (*d*) of the definition "qualified limited partnership", which requires that the interests of the limited partners in a QLP be described by reference to identical units, is amended to indicate that those units are to be referred to in section 5000 as "limited units" of the QLP. This is to allow ease in referring to those units in new subsections 5000(1.3) to (1.5) of the Regulations.

New subsection 5000(1.3) of the Regulations contains the substantive rule for determining the extent to which an interest in a QLP is non-foreign property. Specifically, it provides that the specified portion (as defined in subsection 5000(1.4)) of a limited unit of a QLP that is held at any time by a specified partner (as defined in subsection 5000(1.5)) of the QLP is prescribed not to be foreign property of the specified partner at that time.

New subsection 5000(1.4) of the Regulations defines the specified portion of a limited unit of a QLP held at any time by a specified partner of the QLP. Specifically, paragraph 5000(1.4)(*a*) defines the specified portion to be the whole of the limited unit, if the total number of limited units held at that time, by the specified partner and by other specified partners not dealing at arm's length with the specified partner, does not exceed 30% of the total number of limited units held at that time by all specified partners of the QLP. If the 30% ownership threshold is exceeded, paragraph 5000(1.4)(*b*) defines the specified portion to be that proportion of the limited unit that the total cost amount to the QLP at that time of all its non-foreign property is of the total cost amount to the QLP at that time of all its property. (See Example 1.)

Where only a portion of a limited unit of a QLP held by a specified partner is prescribed not to be foreign property, the remainder of the limited unit is foreign property. In this case, the cost amount of the limited unit to the partner is allocated between the part that is foreign property, and the part that is not, in the same proportion as the limited unit itself is treated as foreign and non-foreign property. (See Example 1.)

Since paragraph 5000(1.4)(*b*) looks to the cost amount of a QLP's property at any time that a limited unit of the QLP is held by the specified partner, the specified portion of the limited unit that is prescribed not to be foreign property will change as the ratio of the cost amount of the QLP's foreign property to the cost amount of its non-foreign property changes. (See Example 2.) Although the determination of the specified portion is ongoing, the only determination that is relevant for purposes of the foreign property penalty tax is the one that is done as at the end of each month since it is at that time that the excess foreign property is determined.

If a QLP holds no foreign property, the specified portion of a limited unit of the QLP held by a specified partner is the whole of the unit, even if the 30% ownership threshold is exceeded.

New subsection 5000(1.5) of the Regulations defines "specified partner" of a QLP for the purposes of new subsections 5000(1.3) and (1.4). Generally, any person or partnership that holds a limited unit of a QLP is a specified partner of the QLP. If a qualified trust or qualified corporation to which the look-through rule in subsection 259(1) of the Act applies holds a limited unit of a QLP, any entity described in section 205 of the Act that has an interest in the trust or corporation is deemed to hold a proportionate share of the QLP unit. Consequently, such an entity is considered to be a specified partner of the QLP. (In general terms, the entities described in section 205 of the Act are trusts and other tax-exempt persons governed by deferred income plans.)

There are two situations in which an investor holding a limited unit of a QLP is not a specified partner of a QLP. The first is where the investor is the general partner of the QLP. The second is where the investor is a qualified trust or qualified corporation to which the look-through rule in subsection 259(1) of the Act applies.

The exclusion of a general partner from the definition "specified partner" is relevant in two ways.

- First, it means that any interest of the general partner in a QLP (including an interest in limited units of the QLP) is treated entirely as foreign property of the partner. This is because subsection 5000(1.3), which prescribes a certain portion of a

limited unit of a QLP not to be foreign property, applies only to limited units held by specified partners. (See Example 3.)

- Second, it means that any limited units of a QLP held by the general partner are disregarded for purposes of the new 30% ownership threshold in subsection 5000(1.4). Thus, even though the general partner of a QLP may be dealing at non-arm's length with a specified partner, the units held by the general partner are ignored in determining the total number of limited units held by the specified partner as part of a non-arm's length group. Also, any limited units held by the general partner of a QLP are ignored in determining the total number of limited units of the QLP held by all specified partners of the QLP. (See Example 3.)

The exclusion of a qualified trust or qualified corporation to which the look-through rule in subsection 259(1) of the Act applies reflects the fact that an entity, described in section 205 of the Act, which has an interest in the trust or corporation is a specified partner of the QLP in its own right. The exclusion of the trust or corporation thus ensures that there is no double counting of its limited units in determining if the 30% ownership threshold in new subsection 5000(1.4) has been exceeded. (See Example 4.)

New subsection 5000(1.6) of the Regulations provides a special rule relating to qualified trusts and qualified corporations, to which subsection 259(1) of the Act apply, where an entity that is not described in section 205 of the Act has an interest in the trust or corporation. The new rule provides that, for the purposes of new subsections 5000(1.4) and (1.5) of the Regulations, the entity is deemed to hold a proportionate share of any property that the entity would be deemed to hold if the entity were described in section 205 of the Act. Thus, if the trust or corporation holds a limited unit of a QLP, the non-section 205 entity is deemed to hold a proportionate share of the unit.

Although the consequence of this rule is to treat the non-section 205 entity as a specified partner of the QLP, its effect is limited to determining the specified portion of limited units of the QLP that are held (either directly or because of the deeming rule in subsection 259(1) of the Act) by entities to which the foreign property rule in Part XI of the Act applies. In particular, the units that the non-section 205 entity is deemed to hold will be taken into account in

determining the total number of limited units held by all specified partners of the QLP. Also, if the entity does not deal at arm's length with an entity to which Part XI of the Act applies, the limited units that the non-section 205 entity is deemed to hold will be relevant in determining whether the 30% ownership threshold has been exceeded in respect of any limited unit of the QLP held by the entity to which Part XI of the Act applies. (See Example 5.)

The following examples illustrate the application of the rules in new subsections 5000(1.3) to (1.6).

Example 1:

The facts:

A QLP has three limited partners (A, B and C). Each of the partners is an entity described in section 205 of the Act. The partners are specified partners, and deal with each other at arm's length. Partners A and B each hold 50 limited units of the QLP. Partner C holds 100 limited units. The general partner holds no limited units. The cost amount to the limited partners of each of their units is $100. The cost amount to the QLP of its non-foreign property is 80% of the cost amount of all its property.

The results:

Since Partners A and B each hold only 25% of the total number of limited units held by all specified partners (i.e., 50/200), the 30% ownership threshold is not exceeded. Thus, each of their units is treated, in its entirety, as non-foreign property.

Since Partner C holds 50% of the total number of limited units held by specified partners (i.e., 100/200), the 30% ownership threshold is exceeded. Since 80% of the QLP's property is non-foreign property, a corresponding portion of each of the limited units held by Partner C is treated as non-foreign property. The remaining portion continues to be foreign property. Therefore, the $100 cost amount of each of Partner C's units is similarly allocated: $80 to the non-foreign property portion and $20 to the foreign property portion.

Example 2:

The facts:

The facts are the same as in Example 1. However, after a period of time, the QLP sells some of its non-foreign property and acquires additional foreign property. As a result, the cost amount to the QLP of its foreign property increases to 30% of the cost amount of all of its property.

The results:

The change in the ratio of foreign property held by the QLP affects only Partner C, since Partner C is the only specified partner exceeding the 30% ownership threshold. The result is that the portion of each limited unit held by Partner C that is prescribed not to be foreign property is reduced to 70%, and the portion that is foreign property increases to 30%. Accordingly, the cost amount of the non-foreign property portion of each unit decreases to $70, while the cost amount of the foreign property portion increases to $30.

Example 3:

The facts:

The facts are the same as in Example 1, except that Partner C is also the general partner.

The results:

Although Partner C holds limited units, Partner C is not a specified partner.

This has consequences for Partners A and B, since the limited units held by Partner C are disregarded in determining if the 30% ownership threshold is exceeded in respect of either Partner A or B. The result is that Partners A and B each hold half of the limited units held by specified partners (i.e., 50/100), and the threshold is exceeded for both. Accordingly, only 80% of each of the units held by Partners A and B are treated as non-foreign property.

The consequences for Partner C are that the limited units held by it are treated, in their entirety, as foreign property.

Example 4:

The facts:

The facts are the same as in Example 1, except that Partner C is a qualified trust to which subsection 259(1) of the Act applies and, thus, is not a specified partner. Three trusts (X, Y and Z) governed by three separate registered pension plans have invested in the qualified trust. Trusts X and Y each hold 15% of the units of the qualifying trust. Trust Z holds the remaining 70% of the units. The pension plan trusts deal at arm's length with each other and with QLP Partners A and B.

The results:

Since there is an election under subsection 259(1), each pension plan trust is deemed to hold a proportionate interest in each of the properties held by the qualifying trust. Thus, Trusts X and Y are deemed to each hold 15% of each of the 100 limited QLP units held by the qualifying trust (as Partner C), and Trust Z is deemed to hold 70% of each of the 100 units.

The fact that the plan trusts are deemed to hold limited units of the QLP means that they are each specified partners of the QLP. This, coupled with the fact that Partner C is not a specified partner, means that the total number of limited units of the QLP held by specified partners is 200.

The limited QLP units that Trusts X and Y are each deemed to hold represent 7.5% of this total number of limited units (i.e., 15/200). Since the 30% ownership threshold is not exceeded for either trust, their units are treated, in their entirety, as non-foreign property.

The limited QLP units that Trust Z is deemed to hold represent 35% of the total number of limited units held by specified partners (i.e., 70/200). Since the 30% ownership threshold is exceeded, the units will be treated as foreign and non-foreign

property of Trust Z in the same proportion as the cost amount to the QLP of its foreign and non-foreign property.

Since the cost amount to the qualifying trust of each limited QLP unit is $100, the cost amount of the proportionate share of each unit that Trust Z is deemed to hold is $70. Accordingly, the cost amount to Trust Z of the non-foreign property portion of each portion of each QLP unit that it is deemed to hold is $56 (i.e., 80% of $70), while the cost amount of the foreign property portion is $14 (i.e., 20% of $70).

Example 5:

The facts:

The facts are the same as in example 4, except that Trust Z is not an entity described in section 205 of the Act and is not dealing at arm's length with Partner A.

The results:

Trust Z is deemed, by new subsection 5000(1.6) of the Regulations, to hold 70% of each of the 100 limited units of the QLP held by the qualified trust. Consequently, Trust Z is considered to be a specified partner of the QLP.

Since Trust Z is not subject to the foreign property rules in Part XI, it is not affected by the deeming rule in subsection 5000(1.6). However, the deeming rule is relevant in determining the foreign property portion of the limited units of the QLP held by the specified partners that are subject to Part XI of the Act (i.e., Partners A and B and Trusts X and Y).

As a result of the deeming rule, the total number of limited units of the QLP held by specified partners remains at 200. Since Partner B continues to hold only 25% of the units, and Trusts X and Y each continue to hold only 7.5% of the units, their units are treated, in their entirety, as non-foreign property.

Since Partner A does not deal at arm's length with Trust Z, the units that Trust Z is deemed to hold must be taken into account in determining the foreign property portion of each limited unit

held by Partner A. Since together they hold 60% of the total number of limited units held by specified partners (i.e., (70+50)/200), the 30% ownership threshold is exceeded in respect of Partner A. Thus, 20% of each of the units held by Partner A is foreign property.